

FORCE MAJEURE AND THE 2026 GULF OIL CRISIS

**Oil and Gas Supply, Shipping, Construction and Insurance Contracts under
English Law, the Laws of the Six GCC States, Singapore and Australia**

INTRODUCTION

1. On 28 February 2026 the United States and Israel began military operations against Iran. Within days:
 - (a) Iran declared the Strait of Hormuz closed;
 - (b) QatarEnergy stopped LNG production at Ras Laffan and served force majeure notices on its buyers, and
 - (c) The Joint War Committee of Lloyd's of London added Bahrain, Djibouti, Kuwait, Oman and Qatar to its list of areas of enhanced war risk.¹
2. More than seven months later:
 - (a) The Strait remains closed to normal commercial traffic;
 - (b) The Houthis control the whole of Yemen's Red Sea coast;
 - (c) Drones launched from Iraq shut Saudi Arabia's East-West pipeline on 11 September;
 - (d) Aramco have suspended loadings at Yanbu and cancelled late-September cargoes to European term buyers; and
 - (e) Brent oil has risen to \$108.²

¹ Malay Mail (AFP), "Iran declares Strait of Hormuz closed, threatens to set ships ablaze", 3 March 2026 (initial closure announced Saturday 28 February; IRGC declaration of 3 March); Argus Media, "QatarEnergy issues force majeure to some LNG buyers", 3 March 2026; Joint War Committee Circular JWLA-033, 3 March 2026. Sources folder: 01-Facts/41, 01-Facts/04, 08-Insurance/01.

https://lmalloyds.com/wp-content/uploads/2026/03/JWLA-033_Iran.pdf

² Al Jazeera, "Saudi Arabia shuts critical oil pipeline after drone attack: what it means", 12 September 2026; Reuters (J Saul) via EnergyNow, "Oil loadings suspended at Saudi's Red Sea port of Yanbu, shipping sources say", 15 September 2026; The National, "Houthis seize Yemen's entire western coast and strategic Red Sea islands", 11 September 2026. Sources folder: 01-Facts/01, 01-Facts/08, 01-Facts/56.

<https://www.aljazeera.com/news/2026/9/12/saudi-arabia-shuts-critical-oil-pipeline-after-drone-attack-what-happened>

3. On 22 September the United States and Iran resumed talks in New York for the first time since June.³ Since then the position in the Strait has got worse, not better. Iran sent a seven-day plan for reopening it through Qatar, reported on 25 September, and President Trump rejected the plan the next day. Papers are still passing through Qatar, but there is no agreement and the US blockade of Iranian ports continues. The week from 28 September to 5 October was the worst of the war for attacks on tankers, and from 7 October ships were struck off Qatar and the UAE, far inside the Gulf. On 8 October the President said that the United States would not attack Iran before the midterm elections on 3 November, and Brent closed at \$104.28.⁴ On the Saudi side matters have improved. Yanbu was loading again by the end of September, and on 9 October Aramco was reported to have told European refiners that they would receive all the crude they asked for in November.⁵
4. Every oil, gas, shipping, construction and insurance contract touching the Gulf is now being considered through the same lens: who bears the risk of this?
5. This paper seeks to suggest that the answer to that will depend in almost every case on three factors:
 - (a) The words of the relevant contract;
 - (b) The law which governs that contract; and
 - (c) The particular and specific obligation being considered.
6. Its purpose is to pull together in one place an (admittedly lengthy) “**cheat sheet**” with sources and the benefit of some experience, as to how:

3 Reuters via Business Standard, “Saudi Arabia restarts East–West pipeline, may resume Yanbu oil exports”, 22 September 2026; Reuters via Global Banking & Finance Review, 18 September 2026 (Aramco halts October crude deliveries to European refiners); Axios, 22 September 2026. Sources folder: 10-Update/01, 10-Update/17, 10-Update/10. https://www.business-standard.com/world-news/saudi-arabia-restarts-east-west-pipeline-may-resume-yanbu-oil-exports-126092201527_1.html

4 Al Jazeera, 25 September 2026 (seven-day plan; Hormuz to reopen on day six); Al Jazeera, 26 September 2026 (the plan “would not be acceptable”); Reuters (J Saul) via gCaptain, 7 October 2026 (“at least 12 attacks on oil, liquefied natural gas and liquefied petroleum gas tankers” in the week 28 September to 5 October, “the highest number of attacks in a single week since the US war with Iran began on February 28”); Maritime Executive, 7 October 2026 (tanker struck north of Madinat ash Shamal, Qatar); CBS News live updates, 8 October 2026 (“we will not be attacking Iran at any time prior to the Midterm Elections”); TNND/KOMO, 8 October 2026 (the blockade “will remain in full force and effect”); Reuters via GV Wire, 8 October 2026 (Brent “closed up \$4.08, or 4.1%, at \$104.28”). Sources folder: 12-Update/04, 12-Update/14, 12-Update/81, 12-Update/13, 12-Update/03, 12-Update/19, 12-Update/41. <https://gcaptain.com/attacks-on-tankers-in-hormuz-hit-highest-of-any-week-since-start-of-iran-war-sources-say/>

5 Reuters via Baird Maritime, 29 September 2026 (Yanbu loadings about 2 mb/d); Bloomberg via Report.az, 9 October 2026 (Aramco “will supply all the crude they request for November”). Sources folder: 12-Update/33, 12-Update/53. <https://report.az/en/other-countries/saudi-aramco-to-supply-full-oil-volumes-to-europe-customers-next-month>

- (a) The law of each of the following jurisdictions treats supervening events of this kind;
 - (i) England and Wales (which also supplies the law of the Abu Dhabi Global Market and the governing law of most of the standard forms);
 - (ii) The United Arab Emirates (onshore and the DIFC);
 - (iii) Saudi Arabia;
 - (iv) Singapore; and
 - (v) Australia.
 - (b) The standard-form contracts used in the oil, gas and shipping trades allocate the risks outlined above; and
 - (c) How, as a result, the answer to the question “**who bears this risk?**” changes with the governing law.
7. I have therefore organised the paper under the following headings:
- (a) Summary of conclusions;
 - (b) The facts: what has happened since 28 February 2026, and why the sequence matters;
 - (c) The questions every adviser must ask before reaching for a doctrine;
 - (d) English law (and the ADGM);
 - (e) UAE law: the onshore Civil Code (old and new), the Maritime Law and the DIFC;
 - (f) Saudi Arabian law: the Civil Transactions Law 2023 and the Sharia background;
 - (g) The other GCC states: Qatar and the QFC, Kuwait, Bahrain and Oman;
 - (h) Singapore law;
 - (i) Australian law;
 - (j) The comparison: the same facts under six laws;
 - (k) The standard forms: charterparties, crude oil general terms, LNG sale and purchase agreements, EPC forms, the ICC clauses and GAFTA;
 - (l) War-risk insurance, P&I and sanctions;

(m) Practical guidance.

8. I deal with each in turn.

SUMMARY OF CONCLUSIONS

9. In my view the position can be summarised as follows.

- (a) **Under English, Singapore and Australian law** there is no overarching doctrine of force majeure: the only matter of relevance is what, if anything, the parties have agreed in their contract in that regard. Each of those three common law systems applies the same method:
 - (i) Construe the words of the agreement carefully;
 - (ii) Where the parties have agreed some form of force majeure provision, require the party relying on the clause to prove:
 - (1) The event;
 - (2) The causal link between the event and the harm suffered;
 - (3) In most clauses, that reasonable steps could not have avoided the effect; and
 - (iii) Refuse relief where the true complaint is that performance has become more expensive.⁶
- (b) The closure of Hormuz is different in kind from the closest historical parallel: the closure of Suez:
 - (i) Cases relating to the Suez crisis generally turned on there being another route – but one which was longer and more expensive;
 - (ii) A cargo loaded inside the Gulf has no sea route at all while the Strait is shut.
 - (iii) Whether or not that prevents an obligation from being fulfilled depends on the precise nature of the obligation: an FOB seller inside the Gulf can still load a ship that is there; what is prevented is the arrival or departure of the buyer's vessel, and on FOB terms that is the buyer's obligation. A CIF or DES seller, who must procure the carriage, is prevented in its own performance.

⁶ **Thames Valley Power Ltd v Total Gas & Power Ltd** [2005] EWHC 2208 (Comm) at ¶50; **RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd** [2007] SGCA 39 at [70]; **Hyundai Merchant Marine Co Ltd v Dartbrook Coal (Sales) Pty Ltd** [2006] FCA 1324 at [60]–[62]. Sources folder: 02-England/09; 05-Singapore/01; 06-Australia/06. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2005/2208>

- (c) The Supreme Court’s decision in **MUR Shipping** in 2024 settles, for English law, that a reasonable-endearments proviso does not require the affected party either to accept an offer of non-contractual performance or itself to secure performance in a non-contractual way. Thus, where English law applies, a seller who contracted to load at Ras Tanura is not required, in order to invoke the clause, to tender Yanbu; and its buyer, on ordinary principles, need not take it, unless the load-port clause already includes Yanbu.⁷ Where the contract gives the seller a range of load ports, the position reverses: damming one channel diverts the duty to others.
- (d) Notice provisions are being enforced as conditions precedent without any gloss of prejudice.⁸
- (e) In contrast to the common law systems set out above, the UAE and Saudi Arabia are both civil-law systems with a three-part statutory scheme:
 - (i) Impossibility (which ends the contract);
 - (ii) Exoneration from liability for an external cause (a default rule the parties can displace); and
 - (iii) Hardship or “**exceptional circumstances**” (a mandatory rule the parties cannot displace, under which a court may reduce an obligation that has become oppressive).⁹
- (f) The other four GCC states follow an older Egyptian model:
 - (i) Qatar (Article 171(2) of the Civil Code),
 - (ii) Kuwait (Article 198),
 - (iii) Bahrain (Article 130) and
 - (iv) Oman (Article 159 of the Civil Transactions Law)

each have a mandatory hardship rule under which the court may reduce an oppressive obligation to a reasonable level, and in each any agreement to the

⁷ **RTI Ltd v MUR Shipping BV** [2024] UKSC 18 at ¶¶38–39, 44, 59, 102. Sources folder: 02-England/01. <https://caselaw.nationalarchives.gov.uk/uksc/2024/18>

⁸ **ADM Industries Centers Ltd v Inerco Trade SA** [2026] EWHC 1873 (Comm) at ¶¶51–52. Sources folder: 02-England/15. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2026/1873>

⁹ Civil Transactions Law, Royal Decree M/191 of 29/11/1444H (18 June 2023), arts 97, 110, 125, 174; Ministry of Justice Research Centre, شرح نظام المعاملات المدنية (Explanation of the Civil Transactions Law, 1st ed, 28 September 2026), Vol 1 pp 288–294 (art 97) and 334–336 (art 110). Sources folder: 04-Saudi/02a, 04-Saudi/37, 12-Update/95. https://wipolex-res.wipo.int/edocs/lexdocs/laws/ar/sa/sa110ar_1.pdf

contrary is void. Kuwait and Bahrain say expressly that the court may do so by increasing the other party's counter-performance, which in a supply contract means the price, and the Saudi Explanation now reads Article 97 the same way; whether the shorter Qatari and Omani wording allows the same is not settled. It is not apparent that there is a construction-specific rebalancing power of the sort found in the new UAE or Saudi law in any of the four, and the Qatari Civil Code provides that rises in the cost of materials and wages do not affect a contractor's obligations, subject only to the hardship rule.

- (g) The Qatar Financial Centre, like the DIFC, has a UNIDROIT-style force majeure excuse and, as reported, no hardship rule.¹⁰
- (h) The consequence is that the same facts can – and do – produce very different answers across the region. A Gulf supplier whose costs have doubled will probably get little or no relief under English law but may well get a judicial price adjustment under UAE or Saudi law. A party that has agreed to bear the risk of war gets no relief in London, Singapore or Sydney, is probably held to its bargain in Riyadh (Article 174 of the Saudi Code allows the debtor to take the risk of force majeure, though the recent Saudi Explanation reads such a clause narrowly), and may find its agreement void in Dubai insofar as it excludes the hardship article. A DIFC contract sits in between: a statutory force majeure excuse exists without a clause, there is no hardship rule, and the Court of Appeal has said that a plea of frustration faces **“the apparent lack of any principle of frustration”** in the Contract Law.¹¹
- (i) The published Gulf crude terms (ADNOC, QatarEnergy, BP) are drafted presciently and are friendly to the seller: allocation, deduction of the shortfall and deemed termination of the shipment are available, not damages. Saudi

¹⁰ Qatar Civil Code, Law No. 22 of 2004, art 171(2) (Arabic text, Supreme Judiciary Council encyclopedia; English per the ICNL-hosted translation), art 700 (as quoted by Clyde & Co, 23 May 2022); Kuwait Civil Code, Decree-Law No. 67 of 1980, art 198 (Arabic); Bahrain Civil Code, Decree-Law No. 19 of 2001, art 130 (Arabic and English, Bahrain EDB portal); Oman Civil Transactions Law, Royal Decree 29/2013, art 159 (Arabic); QFC Contract Regulations 2005, arts 85 and 94, as described in “Contract Law of Qatar” (Cambridge University Press), ch 13 (Regulations not opened). Sources folder: 11-GCC/08, 11-GCC/01, 11-GCC/09, 11-GCC/06, 11-GCC/10, 11-GCC/02, 11-GCC/05. <https://bahrainbusinesslaws.com/laws/Civil-Law>

¹¹ DIFC Contract Law, DIFC Law No. 6 of 2004, art 82; **Collection Club Restaurant Ltd v MAG Development Services Ltd** [2026] DIFC CA 006 at ¶¶18, 43–49. Sources folder: 03-UAE/21, 03-UAE/40. <https://www.difccourts.ae/rules-decisions/judgments-orders/court-appeal/ca-0062026-1-collection-club-restaurant-limited-2-laurent-buisine-3-hugo-valat-v-mag-development-services-limited>

Aramco's terms are not published, and no source records an Aramco force majeure notice.

- (j) In shipping the war-risks clauses tend to govern the dispute, not force majeure:
 - (i) A blockade is an express war risk; and
 - (ii) An owner who makes a good-faith and objectively reasonable judgment that the vessel may be exposed can refuse to enter that blockade or continue its course, and on the 2013 and 2025 BIMCO wordings can do so whether or not the risk existed when the charter was fixed.
- (k) Sanctions now affect every contract in the chain. A Hormuz transit “**toll**” is prohibited for US persons, exposes non-US persons to secondary sanctions, discharges hull war insurers under the LMA's Transit Fee Condition and is arguably an order for a “**Sanctioned Activity**” which an owner may refuse under the BIMCO clause. Since 29 September 2026 the United Kingdom has again banned Iranian-origin oil and prohibited insurance for persons connected with Iran, and in October OFAC warned foreign banks that deal with sanctioned Iranian banks that they could be designated without notice.

THE FACTS: WHAT HAS HAPPENED SINCE 28 FEBRUARY 2026

10. The legal analysis is date-sensitive, so the sequence needs to be stated with some care.
- (a) Hormuz has not been closed continuously: a two-week ceasefire from 8 April did not materially reopen it (ADNOC’s chief executive said on 9 April that the Strait was “**not open**”), it was reopened under the US–Iran memorandum of 17 June, and it was closed again by the IRGC on 11 July.¹²
 - (b) The Qatari force majeure has two distinct causes: a production halt and transit pause from 2 March, and the physical destruction of two liquefaction trains announced on 24 March, which took about 17 per cent of Qatar’s export capacity out for years.¹³
 - (c) Workarounds have been established for the export of crude (the East–West pipeline to Yanbu, the Habshan–Fujairah pipeline, ship-to-ship transfers, “**dark**” transits);
 - (d) LNG has fared less well; and
 - (e) For an FOB seller inside the Gulf none of this prevents loading; it prevents the buyer’s ship arriving or leaving. That distinction runs through everything that follows.
11. The table below sets out the events on which the legal analysis depends. Each entry is footnoted in the sources folder. To establish the timeline I have used wire, official or specialist trade-press reports, except for the April and July blockade dates, which rest on secondary timelines and are marked as such.¹⁴

12 Gulf News, 8 April 2026 (two-week ceasefire; Brent –15.9 per cent to \$93.38); ADNOC Operational Updates, 9 April 2026 (Dr Sultan Al Jaber: “the Strait of Hormuz is not open. Access is being restricted, conditioned and controlled”), Sources folder 03-UAE/39; Al Jazeera, 17 and 18 June 2026 (MoU signed; CENTCOM: “All US military blockade enforcement efforts have ceased”); Axios, 11 July 2026 (IRGC: the Strait “will be closed until further notice”). Sources folder: 01-Facts/31, 01-Facts/36, 01-Facts/55, 01-Facts/46. <https://www.aljazeera.com/news/2026/6/18/us-military-says-it-has-lifted-naval-blockade-of-iranian-ports>

13 Al Jazeera, “QatarEnergy declares force majeure on some LNG contracts”, 24 March 2026 (CEO al-Kaabi: “about 17 percent of the country’s LNG export capacity”). Sources folder: 01-Facts/10. <https://www.aljazeera.com/news/2026/3/24/qatarenergy-declares-force-majeure-on-some-lng-contracts>

14 The table is compiled from the following, each saved in the sources folder (01-Facts): US MARAD Alert 2026-001A (21); Malay Mail/AFP 3 Mar (41); Argus 2–3 Mar (13) and 3 Mar (04); Gulf News 4 Mar (57); JWLA-033 (19); S&P Global Platts 4 Mar (58); Business Standard 4 Mar (52); Bapco Energies press release 9 Mar (11); Al Jazeera 13 Mar (09) and 11 Mar (49); Oman Observer 11 Mar (14); Business Today 10 Mar (42); IEA (16); UNSC Res 2817 (08-Insurance/55); World Oil/Reuters 20 Mar (24); Al Jazeera 24 Mar (10); Gulf News 8 Apr (31); Malay Mail/AFP 10 Apr (46); World Oil/Bloomberg 20 Apr (12); US Treasury 27 May (08-Insurance/31); FDL 25/2025 (03-UAE/03); Latham & Watkins 3 Jul on Cabinet Resolution 94/2026 (03-UAE/43); Al Jazeera 17 and 18 Jun (36, 55); OFAC GL X1 (08-Insurance/32); Reuters via EnergyNow 6 Jul (28); UKMTO Update 068 (44); Axios 11 Jul (46); GOV.UK 13 Jul (08-Insurance/34); Al Jazeera 20 and 23

Date	Event	Legal character
28 Feb 2026	US–Israeli strikes on Iran; Iran announces closure of Hormuz; US MARAD alert 2026-001A	Outbreak of hostilities; threatened and reported blockade
2–4 Mar	Ras Tanura refinery shut by debris from intercepted drones (c. 16 days); Ras Laffan taken offline; QatarEnergy FM notices; IRGC “set those ships ablaze” declaration; JWC JWLA-033; P&I clubs cancel non-mutual war cover on 72 hours’ notice	Physical damage; production halt; actual blockade; listed-area change
4 Mar	Platts cash Dubai premium \$13.05; Petronet serves FM upstream on QatarEnergy and downstream on GAIL, IOC and BPCL	Force majeure passed both up and down the supply chain
9–13 Mar	Bapco Energies serves FM “on its Group operations” (9 Mar); Kuwait Petroleum Corporation declares FM (8 Mar, as reported); Shell declares FM on Qatari cargoes it resells; OQ Trading declares FM to Petrobangla; India’s Natural Gas (Supply Regulation) Order 2026 overrides gas sale agreements; IEA agrees 400 million barrel stock release	State-entity FM; pass-through FM; governmental act overriding contracts
11 Mar	UN Security Council Resolution 2817 condemns Iranian closure or obstruction of Hormuz	Characterisation of the closure as unlawful
20 Mar	Iraq declares FM on foreign-operated fields; Basra output 3.3 to 0.9 mb/d; lifters cannot nominate tankers	Seller ready, buyer’s ships cannot come

Jul and Reuters via Insurance Journal 23 Jul (25, 51); LMA5708 (08-Insurance/03); JWLA-034 (08-Insurance/02); OFAC Alert 24 Aug (08-Insurance/07); UK P&I Circular 14/26 (08-Insurance/22); IMO statement 28 Aug (47); OilPrice c. 28 Aug (46); Al Jazeera 2 and 7 Sep (37, 32); SI 2026/983 (08-Insurance/54); The National and Al Jazeera 11 Sep (56, 06); Al Jazeera 12 Sep (01); Reuters via EnergyNow 15 Sep (08); Business Recorder 14 Sep (50); OilPrice/AP (54); OilPrice via Yahoo 15 Sep (07); and, for 10–23 September, the files in 10-Update: OFAC recent actions (25), US Treasury 14 Sep (26), JWLA-035 (24), Baltic Exchange week 38 (23), Maritime Executive 21 Sep (07), AFP/UKMTO 21 Sep (08), Reuters 18 Sep (17), OilPrice 18 Sep (16), Reuters 22 Sep (01), The National 22 Sep (09), Axios 22 Sep (10), Al Jazeera 23 Sep (11), Reuters 23 Sep (04); and, for 23 September to 9 October, the files in 12-Update: OFSI 23 Sep (67), Al Jazeera 24 Sep (24), Yahoo Finance data (45), Al Jazeera 25 and 26 Sep (04, 14), Umm Al-Qura 25 Sep (89), Reuters 25 Sep (78), Edison/Teleborsa 28 Sep (38), Maritime Executive 29 Sep (15), Al-Madina 28 Sep (88), Reuters 29 Sep (33), SI 2026/983 (64), USNI 9 Oct (01), Maritime Executive 1 Oct (49), Treasury 1 Oct (61), Reuters 2 Oct (48), AFP 3 Oct (47), Report.az 4 Oct (32), OFAC 5 Oct (60), AeroCorner/GACA (07), The National 5 Oct (34), Reuters 7 Oct (43), Maritime Executive 7 and 9 Oct (13, 12), Treasury 8 Oct (59), TNND/KOMO and CBS 8 Oct (19, 03), Reuters 7 Oct (81), Reuters 8 Oct (41), Baltic Exchange week 41 (40), Bloomberg via Report.az 9–10 Oct (53). <https://www.imo.org/en/mediacentre/pressbriefings/pages/statement-on-the-ongoing-crisis-in-the-strait-of-hormuz.aspx>

Date	Event	Legal character
24 Mar	QatarEnergy FM on long-term SPAs after two trains destroyed (c. 12.8 mtpa)	Permanent capacity loss
8 Apr	US–Iran two-week ceasefire; Strait remains restricted; Brent falls to \$93	Easing, not reopening
9–10 Apr	Strikes on Manifa, Khurais, an East–West pumping station, SATORP, Ras Tanura, SAMREF; Saudi capacity down c. 600,000 b/d	Physical damage
13 Apr	US naval blockade of Iranian ports (transit to non-Iranian ports not impeded) (date from secondary reports)	Blockade (selective)
17–20 Apr	KPC declares further FM on oil shipments	Second FM declaration
27 May	OFAC designates the “ Persian Gulf Strait Authority ” (toll collector)	Sanctions on toll payments
1 Jun	New UAE Civil Code (FDL 25/2025) in force; UAE Cabinet designates the “ Iranian acts of aggression ” an Emergency Financial Crisis from 28 Feb	Change of governing law mid-crisis
14–18 Jun	Ceasefire; US–Iran MoU (60 days; gradual reopening; no transit fees); US blockade lifted; 12.5 million barrels transit on 17 Jun	Reopening
21 Jun–7 Jul	OFAC General License X authorises dealings in Iranian oil; revoked by GL X1 on 7 Jul (wind-down to 17 Jul)	Sanctions relaxed then re-imposed
6 Jul	Brent c. \$72; Aramco cuts August Arab Light OSP by \$11 (“ largest on record ”)	Price, not supply, response
7–11 Jul	Three tankers struck in one day (7 Jul); IRGC re-closes Hormuz “ until further notice ” (11 Jul); US strikes resume; blockade reinstated 13–15 Jul (secondary reports)	Re-closure; qualitative change of risk for post-June fixtures
13–17 Jul	UK designates IRGC under the National Security (State Threats) Act 2026	Sanctions
20–23 Jul	Houthi declare naval blockade of Saudi Arabia; Encelia and Layla attacked; Hormuz war cover 7.5 to 10 per cent of hull; Red Sea cover above 1 per cent, up to 3 per cent from southern Saudi ports; LMA issues Transit Fee Condition LMA5708 (23 Jul)	Second chokepoint; premium escalation; insurance condition

Date	Event	Legal character
29 Jul	JWC JWLA-034: whole of Saudi Arabia listed; Red Sea line moved north to 25.5°N (Yanbu inside); OFAC designates PGMIC and HormuzSafe	Listed-area change
12–13 Aug	UK P&I Club 72-hour notice cancelling non-mutual war cover for the Red Sea	Cover repriced
28 Aug	IMO: at least 70 verified attacks, 19 seafarers killed, up to 400 ships and 6,000 seafarers unable to leave the Gulf; QatarEnergy extends cancellations to October and November	Duration; trapped tonnage
31 Aug–7 Sep	Bahri tanker Sidr attacked, two seafarers killed; US strikes three Iranian tankers; Brent c. \$97	Attrition
7 Sep	Iran (Sanctions) (Amendment) Regulations 2026 made (in force 29 Sep)	UK oil and insurance bans
10–14 Sep	OFAC applies a “ presumption of denial ” to Iran-related specific licence applications (10 Sep); designates VTB Bank under the Iran programme, with a secondary-sanctions warning to foreign banks (14 Sep)	Sanctions tightening; payment-chain risk
10–11 Sep	Houthi seize Yemen’s western coast and Perim; drones from Iraq’s Maysan province strike the East–West pipeline near Riyadh and Medina (unclaimed)	Physical damage to the only alternative export route
11–15 Sep	Pipeline shut “ as a precaution ”; Yanbu loadings suspended; Aramco cancels or defers late-September cargoes to at least three European term buyers; Asian refiners receive delayed-loading notifications; repairs “ three to five weeks ”; Brent \$108; Shanghai INE crude \$138; VLCC in the Gulf \$30–32 per barrel plus war-risk premium	Cancellation notices (no FM notice reported)
16 Sep	JWC JWLA-035 (Black Sea only; Gulf and Red Sea listed areas unchanged)	No listed-area change
17 Sep	Baltic Exchange TD3C (Ras Tanura–Ningbo) at WS1,140, about \$1.21 million a day	Freight cost, not prevention

Date	Event	Legal character
17–21 Sep	At least four tankers struck in or near Hormuz; UKMTO: a tanker “conducting an inbound transit was struck by an unknown projectile” (21 Sep); JMIC: 0–3 transits a day	Continuing attack risk; Strait not open
18 Sep	Aramco tells European term buyers their October allocations are zero; Asian buyers supplied from Ras Tanura through Hormuz with ship-to-ship transfer off Sohar; no FM notice reported	Allocation or cancellation, not declared FM
22 Sep	East–West pipeline restarted at a low rate (three of eleven pumping stations damaged; 40 per cent within days, full 4 mb/d in 6–8 weeks); Yanbu loadings resuming	Interruption ending; temporary
22–23 Sep	Iran offers to reopen Hormuz “within seven days” if the US lifts its blockade; first US–Iran talks since June (New York; Qatar and Oman mediating); no agreement; Brent below \$100 on 22 Sep and briefly on 23 Sep (intraday)	Prospect of reopening; no change yet
23 Sep	OFSI: licence applications by designated Iranian banks presumed refused; general licence INT/2025/7628424 not to be renewed after 22 Oct	Payment-chain risk on legacy contracts
24 Sep	Six Houthi ballistic missiles fired at Taif and the Yanbu area, all intercepted; Brent closes at \$106.60	Threat to the Red Sea export route
25 Sep	Iran’s seven-day plan sent through Qatar (Hormuz to reopen on day six if the US lifts the blockade, waives oil sanctions and frees frozen assets); Saudi Ministry of Finance Decision 257 (price adjustment on public contracts); Reuters: Hormuz war-risk quotes 6–9 per cent, Saudi-linked calls at Yanbu about 3 per cent	Conditional offer; statutory price relief; cost, not prevention
26 Sep	President Trump rejects the plan (“would not be acceptable”)	Early reopening recedes
28 Sep	QatarEnergy extends LNG force majeure to Edison to early December (35 cargoes since April); Kuwaiti VLCC Al Funtas struck in the Strait; Saudi Ministry of Justice publishes its four-volume Explanation of the Civil Transactions Law	Declared FM renewed; continuing attacks; official reading of the Saudi Code

Date	Event	Legal character
Late Sep	Yanbu loadings resume (about 2 mb/d by 29 Sep) after about two and a half weeks	Interruption ending
29 Sep	UK Iran (Sanctions) (Amendment) Regulations 2026 in force (oil and petrochemical bans; insurance ban for persons connected with Iran; specified ships)	UK supervening illegality
28 Sep–5 Oct	At least 12 attacks on tankers, the most in any week of the war; projectile strikes inside Yanbu port (1 Oct), loading briefly halted	Strait not open; alternative route exposed
1–2 Oct	OFAC extends sector sanctions to Iran’s automotive and rail sectors (1 Oct); China suspends October fuel exports; G7 agrees a 100 million barrel release (2 Oct)	Sanctions widened; governmental acts
4–7 Oct	Iran announces an initial reply to a US counterproposal, sent through Qatar (4 Oct); OFAC alert to foreign banks (5 Oct); Houthi strikes on Abha and Riyadh airports kill three (6–7 Oct); Aramco November OSPs cut for Asia; IEA speeds up stock releases (7 Oct)	Talks only; sanctions pressure; second front widens
7–9 Oct	Tankers struck off Qatar (7 and 8–9 Oct) and Oman (7 Oct); IRGC says pursuit “will not be limited to the Strait of Hormuz” (9 Oct)	Danger reaches the western Gulf
8 Oct	OFAC adds 22 tankers to the SDN List; President Trump: no attack on Iran before 3 Nov, blockade “will remain in full force and effect” ; Brent \$104.28; Baltic TD3C at WS1,318.75 (about \$1.41 million a day) in the week 41 report	Pause, not peace
9 Oct	Aramco reported to tell European refiners their November allocations will be met in full; no FM notice reported at any stage	Allocation restored without declared FM

12. Four further facts should be kept in mind throughout.

- (a) **First**, ADNOC has not declared force majeure. Its statement of 7 March 2026 refers to assessing the position **“on a product-by-product and transaction-by-transaction basis”** and of using **“export capacity that bypasses the**

Strait”; a Rystad analyst quoted by Bloomberg in May contrasted this with QatarEnergy’s declaration.¹⁵

- (b) **Second**, the force majeure declarations have been passed down supply chains. Petronet served notice both upstream and downstream; Shell declared force majeure on Qatari cargoes it resells; OQ Trading did so on a single Bangladeshi contract. Trade lawyers quoted in March warned that **“it’s not sufficient to simply say my supplier declared force majeure”** and that letter-of-credit obligations survive once bills of lading issue.¹⁶
- (c) **Third**, governments have intervened:
 - (i) India’s Natural Gas (Supply Regulation) Order 2026 **“will override existing gas sale agreements”** and imposes a pooled price;
 - (ii) China banned refined-product exports on 12 March;
 - (iii) The UAE Cabinet designated the conflict an **“Emergency Financial Crisis”** under its Bankruptcy Law with effect from 28 February.¹⁷
 - (iv) In October China suspended fuel exports for the month, the G7 agreed a release of 100 million barrels and the IEA agreed to speed up the releases agreed in March.¹⁸ Governmental acts of this kind are listed events in almost every force majeure clause and are the easiest to prove.
- (d) **Fourth**, that roiling combination of factors has resulted in both the elevated prices and volatility illustrated at Figure 1 below.

15 ADNOC press release, 7 March 2026; Bloomberg (Stapczynski and Di Paola) via Energy Connects, 8 May 2026 (“Adnoc hasn’t declared force majeure, unlike QatarEnergy”). Sources folder: 03-UAE/38, 03-UAE/37. <https://www.adnoc.ae/en/news-and-media/press-releases/2026/copy>

16 Global Trade Review, “Traders, buyers face disruption after wave of Gulf force majeure claims” (late March 2026), quoting Baldev Bhinder and Sumeet Malhotra. Sources folder: 01-Facts/23. <https://www.gtreview.com/news/global/traders-buyers-face-disruption-after-wave-of-gulf-force-majeure-claims/>

17 Business Today, 10 March 2026; OPIS Factbox, “Countries Impose Fuel Export Restrictions During Global Energy Crisis”, 15 July 2026; Latham & Watkins, 3 July 2026 and Habib Al Mulla on Cabinet Resolution No. 94 of 2026 (the Resolution itself not opened). Sources folder: 01-Facts/42, 08-Insurance/39, 03-UAE/43, 03-UAE/44. <https://www.businesstoday.in/latest/economy/story/hormuz-disruptions-govt-notifies-four-priority-gas-sectors-provisions-override-existing-gas-sale-agreements-519883-2026-03-10>

18 Reuters via The Nation (Thailand), 2 October 2026 (no approvals for October exports of diesel, petrol or jet fuel); AFP via Kuwait Times, 3 October 2026 (G7 release of 100 million barrels over four months); G7 Leaders’ Statement on Global Energy Security and Market Stability, 2 October 2026; Reuters via GV Wire, 7 October 2026 (IEA). Sources folder: 12-Update/48, 12-Update/47, 12-Update/68, 12-Update/43. <https://www.gov.uk/government/news/g7-leaders-statement-on-global-energy-security-and-market-stability>

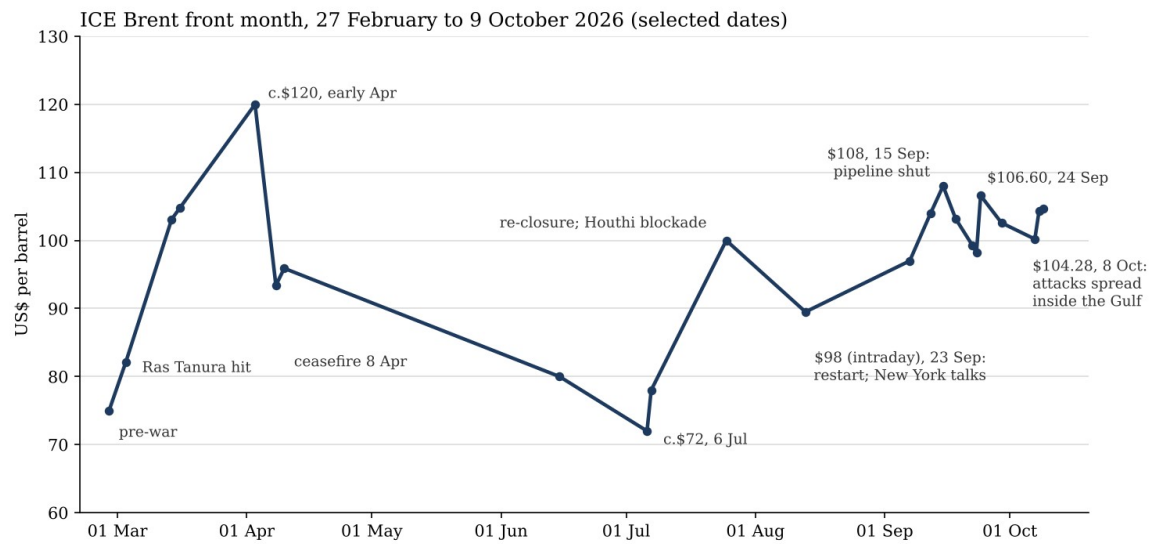


Figure 1: ICE Brent front-month, selected dates 27 February to 9 October 2026 (US\$ per barrel), from the press reports and price data in the sources folder.

THE QUESTIONS TO ASK

13. The survey of the legal position set out below means that before one turns to the law one needs answers to seven questions about the particular contract:
- (a) **Which law governs?** The published Gulf and international crude terms are English-law contracts: ADNOC chooses English law and ICC arbitration seated in London, QatarEnergy English law with a tiered process ending in arbitration, and BP English law with the Commercial Court in London (LMAA arbitration only for small claims and demurrage).¹⁹ Many charterparties are English-law. Aramco's terms are not public. Construction contracts in the Kingdom and the Emirates are usually local-law. The DIFC and ADGM are different again.
 - (b) **Which obligation is said to be affected?** A seller's duty to load; a buyer's duty to bring a ship; an owner's duty to proceed; a charterer's duty to pay hire; a contractor's duty to complete by a date? The same event may prevent one and merely hinder another.
 - (c) **Which event is relied on?** The war; the declaration of closure; the physical damage to a terminal or pipeline; the unavailability of a vessel at any price; the withdrawal of a supplier; a governmental order; sanctions. These are different events with different dates, and a clause may cover some and not others.
 - (d) **What is the precise relevant verb?** "Prevent" means impossibility. "Hinder", "delay", "disrupt" and "interfere with" mean something less. The choice of verb decides many cases.
 - (e) **When was the contract made?** Before 28 February 2026, between then and 1 June 2026 (when the new UAE Code came in), after the June reopening, or after the July re-closure? Foreseeability, "accepted risk" and the transitional rules all turn on the date.
 - (f) **Was notice given, to whom, when, and did it identify the event and its effect?** Most clauses make notice a condition. Some make it the trigger from which relief runs.

¹⁹ ADNOC GTC (January 2021), arts 16.1, 17.2; QatarEnergy (QPSPP) FOB GTC (2019), cll 16.1–16.3; BP GTC 2015 v1.2, ss 73.1–73.3, 75.1. Sources folder: 07-Forms/36, 07-Forms/37, 07-Forms/39.
<https://www.bp.com/content/dam/bp/business-sites/en/global/bp-supply-trading-and-shipping/documents/bp-oil-gtc-2015-version-1.2.pdf>

- (g) **What does the clause say happens next?** Suspension; extension of the shipment period; allocation among customers; a right to cancel after a stated period; automatic cancellation; a price adjustment. The remedy is in the clause, and often it is less than the party invoking it hopes.

14. With those questions in mind, I turn to the law.

The starting point: there is no doctrine, only what the parties have agreed.

15. English law has no overarching doctrine of force majeure. Hamblen J put it in a sentence in **Tandrin Aviation**: **“Whether a force majeure clause in a contract is triggered depends on the proper construction of the wording of that clause; ‘force majeure’ is not a term of art.”**²⁰ The burden of proof lies on the party invoking the clause, both as to the facts and as to the construction.²¹ Frustration *is* a common-law doctrine but the Supreme Court has said in terms that it is **“inappropriate to try to draw conclusions about force majeure (or exceptions) clauses from the frustration case-law. After all, if FM clauses simply mirrored the common law of frustration, they would be pointless.”**²²
16. That said, most force majeure clauses share some similarities and the Supreme Court in **MUR Shipping** has now endorsed a textbook description of the concept. A clause **“will generally be interpreted (or a term will be implied to the same effect) as applicable only if the party invoking it can show that the event or state of affairs was beyond its reasonable control and could not be avoided by the taking of reasonable steps.”**²³ That reflects the fact that the wording of such clauses nearly always gives rise to three questions: was there a qualifying event beyond the party’s reasonable control; did it cause the failure to perform; and could the party have avoided the effect by reasonable steps? I take them in turn, and then the questions of price, foreseeability and notice, before turning to frustration, illegality and the war-risks cases.

Causation: “prevented”, “hindered” and the “but for” test

17. Here the precise verb in the clause makes a considerable difference. **“Prevent”** means that performance has become impossible. **“Hinder”** is wider. Foxton J summarised the line in **Litasco v Der Mond** in 2023, an oil-trading case: clauses triggered when an

20 **Tandrin Aviation Holdings Ltd v Aero Toy Store LLC** [2010] EWHC 40 (Comm) at ¶43 (Hamblen J). Sources folder: 02-England/08. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2010/40>

21 **Tandrin** at ¶48; **Seadrill Ghana Operations Ltd v Tullow Ghana Ltd** [2018] EWHC 1640 (Comm) at ¶97 (Teare J). Sources folder: 02-England/08, 02-England/07. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2018/1640>

22 **RTI Ltd v MUR Shipping BV** [2024] UKSC 18 at ¶92. Sources folder: 02-England/01. <https://caselaw.nationalarchives.gov.uk/uksc/2024/18>

23 **MUR Shipping** at ¶26; and see ¶27, quoting Chitty on Contracts (35th ed) para 27-066 and Treitel, The Law of Contract (15th ed) para 19.079 (“comparatively high hurdle”). Sources folder: 02-England/01. <https://caselaw.nationalarchives.gov.uk/uksc/2024/18>

event “**hinders**” performance “**have a wider field of operation than those limited to events which ‘prevent’ performance**”, and the older cases treat dislocation of trade by war as a hindrance even where it does not prevent.²⁴ The qualification is that “**it is performance of the obligation which must be rendered ‘more or less difficult’, not a particular method of performance where the contract does not require performance by that method.**”²⁵ That qualification is one Gulf sellers will often need to contend with: a seller who can perform from another source, or a trader who can buy in, is not hindered in performing the obligation, only in performing it the way it had planned.

18. The House of Lords’ decision in **Tennants (Lancashire) v Wilson** remains the leading authority for both halves of that proposition:

- (a) Earl Loreburn held that “**by ‘hindering’ delivery is meant interposing obstacles which it would be very difficult to overcome.**” He said that he did not consider that “**even a great rise of price hinders delivery**”; and that the argument that a man can be excused “**when it becomes ‘commercially’ impossible ... seems to me a dangerous contention, which ought not to be admitted unless the parties have plainly contracted to that effect.**”
- (b) He then held, however, that a supplier whose war-shortened supply could have satisfied this buyer only by breaking its other contracts was hindered: “**To place a merchant in the position of being unable to deliver unless he dislocates his business and breaks his other contracts in order to fulfil one surely hinders delivery.**”²⁶
- (c) Two immediately relevant points arise from that:
 - (i) First, a producer whose output has been cut by attacks and who is serving its term customers in reduced volumes can should, under a

24 **Litasco SA v Der Mond Oil and Gas Africa SA** [2023] EWHC 2866 (Comm) at ¶36 (Foxton J), citing **Peter Dixon & Sons Ltd v Henderson Craig & Co Ltd** [1919] 2 KB 778. Sources folder: 02-England/27. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2023/2866>

25 **Litasco** at ¶37. Sources folder: 02-England/27. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2023/2866>

26 **Tennants (Lancashire) Ltd v CS Wilson & Co Ltd** [1917] AC 495 at 510 (Earl Loreburn); the passages appear at 55 SLR 523, 526–527 in the report on BAILII ([1917] UKHL 523); see also Lord Dunedin at 529 and Lord Wrenbury at 533 on the multiple-contracts point. Sources folder: 09-Gapfill/03. <https://www.bailii.org/uk/cases/UKHL/1917/55SLR0523.html>

“hindered” clause, be able to rely on the shortage without proving that it could not have served this buyer by starving another; and

- (ii) Second, in contrast, a producer with enough oil who simply prefers to supply a better-paying contract cannot so rely.

19. Under an excusing clause the invoking party must also show that, but for the event, it would have performed: see **Classic Maritime v Limbungan**, where the Court of Appeal held that a charterer who would not have shipped the cargoes anyway could not say that its failure **“resulted from”** the bursting of the Fundão dam.²⁷ Males LJ drew the distinction which governs the whole field: a **“contractual frustration”** clause of the GAFTA type **“brings the contract ... to an end forthwith and automatically once an event occurs”**, whereas **“an exceptions clause ... simply operates to relieve a party from the obligation to pay damages after a breach has occurred”**, and **“what matters is not the label but the content of the tin.”**²⁸ The published crude terms I discuss below are in the main excusing and suspending clauses (ADNOC’s deemed termination of a shipment after the loading range operates only once relief has been established), so the **“but for”** test applies to them.
20. The consequence of failing the test is severe. In **Classic Maritime** the owners recovered US\$19.87 million although the cargoes could never have been shipped: **“impossibility is not a defence”**, and **“the fact that the charterer was unable to perform even if it had wished to do so is irrelevant to the assessment of damages in circumstances where it undertook an absolute obligation”**.²⁹
21. Where there are two effective causes, one within the clause and one not, the clause is not available. **Sadrill v Tullow** is the oil-industry example: a governmental drilling moratorium was a force majeure event, but Tullow’s failure to give drilling instructions was also caused by a commercial decision about another field, and Teare J held that **“Tullow is unable to rely upon the force majeure clause notwithstanding that a force majeure prevented it from using West Leo”**.³⁰ Expect counterparties to run this

27 **Classic Maritime Inc v Limbungan Makmur Sdn Bhd** [2019] EWCA Civ 1102 at ¶¶45, 48 (Males LJ). Sources folder: 02-England/04. <https://caselaw.nationalarchives.gov.uk/ewca/civ/2019/1102>

28 **Classic Maritime** at ¶¶61–62. Sources folder: 02-England/04. <https://caselaw.nationalarchives.gov.uk/ewca/civ/2019/1102>

29 **Classic Maritime** at ¶¶83, 89 (Males LJ) and ¶93 (Rose LJ). Sources folder: 02-England/04. <https://caselaw.nationalarchives.gov.uk/ewca/civ/2019/1102>

30 **Sadrill Ghana Operations Ltd v Tullow Ghana Ltd** [2018] EWHC 1640 (Comm) at ¶¶75, 78–79 (Teare J), applying **Intertraded SA v Lesieur-Tourteaux SARL** [1978] 2 Lloyd’s Rep 509. Sources folder: 02-

argument wherever a cancellation coincided with a poor margin, a pre-existing operational problem or a decision to redirect cargoes.

Reasonable endeavours: MUR Shipping and the Yanbu question

22. The Supreme Court's decision in **MUR Shipping v RTI** is the most important modern English authority in relation to reasonable endeavours:

- (a) The facts were sanctions-related: OFAC designated the charterer's parent, the owner's bank would not process US dollar freight, the owner declared force majeure and the charterer offered to pay in euros and indemnify the conversion cost.
- (b) The clause required that for relief to be available the event **"cannot be overcome by reasonable endeavors from the Party affected"**.
- (c) The Court held that the reasonable-endeavours proviso **"is concerned with the steps which the affected party should have reasonably taken to enable the contract to continue to be performed. It is not concerned with the steps that could or should have been taken to secure some different, non-contractual, performance."**³¹ A party does not give up the right to insist on contractual performance **"unless the contract makes clear (whether expressly or by necessary implication) that the party has given up that right"**.³² The Court adopted Arnold LJ's example from the Court of Appeal: if the contract requires carriage to port A, which is strike-bound, the party invoking the clause is not required to accept an offer to divert to port B.³³

23. Applied to the Gulf, the decision cuts two ways:

- (a) A seller whose contract requires loading at Ras Tanura, or a buyer whose contract entitles it to Ras Tanura cargo, is not obliged to tender or accept Yanbu instead in order to satisfy a reasonable-endeavours proviso. Yanbu is a different

England/07. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2018/1640>

31 **MUR Shipping** at ¶38; and see ¶36 (the proviso is about causation) and ¶39. Sources folder: 02-England/01. <https://caselaw.nationalarchives.gov.uk/uksc/2024/18>

32 **MUR Shipping** at ¶44. Sources folder: 02-England/01. <https://caselaw.nationalarchives.gov.uk/uksc/2024/18>

33 **MUR Shipping BV v RTI Ltd** [2022] EWCA Civ 1406 at ¶74 (Arnold LJ, dissenting), adopted at [2024] UKSC 18 ¶¶22, 51, 103. Sources folder: 02-England/02, 02-England/01. <https://caselaw.nationalarchives.gov.uk/ewca/civ/2022/1406>

performance. The same is true of a Fujairah cargo under a contract for loading at Ruwais, and of a substitute grade or origin.

- (b) Where the contract already gives the seller a range of load ports (Ras Tanura, Ju'aymah or Yanbu at the seller's option, for example), Yanbu is contractual performance and the analysis changes. Lord Devlin's distinction in the Vancouver Strikes case, quoted by the Supreme Court, applies: **"Where there is no option in the business sense, the consequence of damming one channel is simply that the flow of duty is diverted into others"**; but where there is a true **"business option"** the party need not exercise it.³⁴ I think a tribunal will treat a load-port range in a sale contract as alternatives of performance for the benefit of both parties, not a **"business option"**, so that a seller who could have loaded at Yanbu but did not will struggle. The threshold is high: in Seadrill Teare J held that **"greater expense or a greater risk of an unprofitable outcome is not a matter which enables Tullow to say that it has exercised its reasonable endeavours"**.

24. MUR Shipping v RTI also matters for payment. A payee whose bank will not process dollars need not accept euros, unless the clause says so. But two things can change that. A targeted sanctions clause requiring the parties to **"cooperate and promptly take all necessary steps in order for the payments to be resumed"** was held in Gravelor to require the owner to nominate an alternative account, and the Supreme Court distinguished it as **"much more specific and targeted than the general force majeure clause"**.³⁵ ADNOC's terms write the same distinction into the clause: failure to pay is excluded from force majeure **"other than as to any specified means, currency or place of payment"**, so a banking-channel or currency impediment is within the clause and an inability to pay is not.³⁶ And applying for a licence is the paradigm reasonable endeavour: **"if a specific licence for continued performance of the contract by**

34 Reardon Smith Line Ltd v Ministry of Agriculture, Fisheries and Food [1963] AC 691 at 730 (Lord Devlin), as quoted in MUR Shipping at ¶72 and Seadrill at ¶93. Sources folder: 02-England/01, 02-England/07. <https://caselaw.nationalarchives.gov.uk/uksc/2024/18>

35 Gravelor Shipping Ltd v GTLK Asia M5 Ltd [2023] EWHC 131 (Comm) at ¶92 (Foxton J); MUR Shipping at ¶¶98–101. Sources folder: 02-England/12, 02-England/01. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2023/131>

36 ADNOC GTC (January 2021), art 14.3(a). Sources folder: 07-Forms/36. <https://www.adnoc.ae/-/media/adnoc-v2/files/gtcs/adnoc-crude-condensate-and-lpg-general-terms-and-conditions-january-2021-edition.ashx>

payment of US dollars could, and should, reasonably have been obtained then the impediment to performance would likely have been overcome.”³⁷

Price is not force majeure

25. **Thames Valley Power v Total** is the closest analogue to a long-term Gulf gas or LNG supply contract. The clause excused a party “unable to prevent or overcome” an event beyond its control. Christopher Clarke J held that “the fact that it is much more expensive, even very greatly more expensive for it to do so, does not mean that it cannot do so”; that to read “commercially impractical” into the clause would “enforce a qualification highly uncertain in ambit and open ended in reach”; and that a supplier “as familiar with the effect of fluctuations as Total” which wanted that protection “would need to do so in much more explicit terms”.³⁸ In **Tandrin Hamblen J** recorded that “there has been no reported case where change of economic / market circumstances has been held by an English court to amount to force majeure”.³⁹ In July 2026 Waksman J, in an LNG-carrier charter dispute, described an unforeseen market spike as “simply a vicissitude of commercial life”.⁴⁰
26. It follows that a war-risk premium of 10 per cent of hull value, a VLCC at \$30 a barrel (the Baltic Exchange’s Ras Tanura–Ningbo route was assessed at about \$1.41 million a day in its report of 9 October), or an IRGC “toll”, is not of itself force majeure for an owner, a seller or a buyer.⁴¹ Aramco’s own response points the same way: it cut its November price for Arab Light to Asia to \$5 below the Oman/Dubai average, the widest discount since 2020, and the reports explain the cut by the cost of freight.⁴² The market dealt with the extra cost through price. Those costs are dealt with, if at all, by

³⁷ **MUR Shipping** at ¶39. Sources folder: 02-England/01.

<https://caselaw.nationalarchives.gov.uk/uksc/2024/18>

³⁸ **Thames Valley Power Ltd v Total Gas & Power Ltd** [2005] EWHC 2208 (Comm) at ¶50(1), (2), (4), (5) (Christopher Clarke J). Sources folder: 02-England/09.

<https://caselaw.nationalarchives.gov.uk/ewhc/comm/2005/2208>

³⁹ **Tandrin** at ¶¶40, 49. Sources folder: 02-England/08.

<https://caselaw.nationalarchives.gov.uk/ewhc/comm/2010/40>

⁴⁰ **Briety Shipping Inc v Trafigura Maritime Logistics Pte Ltd** [2026] EWHC 1714 (Comm) at ¶¶237, 239, 243 (Waksman J). Sources folder: 02-England/20.

<https://caselaw.nationalarchives.gov.uk/ewhc/comm/2026/1714>

⁴¹ Baltic Exchange, Weekly Tanker Report, week 41, 9 October 2026 (TD3C WS1,318.75; time-charter equivalent \$1,412,594 a day). Sources folder: 12-Update/40. <https://www.balticexchange.com/en/data-services/WeeklyRoundup/tanker/news/2026/tanker-report-week-41.html>

⁴² The National, 5 October 2026; Business Today (Bloomberg), 6 October 2026. Sources folder: 12-Update/34, 12-Update/53. <https://www.thenationalnews.com/business/energy/2026/10/05/saudi-aramco-cuts-asia-crude-prices-to-six-year-low-amid-recovery-as-oil-flows-rebound/>

the war-risks and premium clauses discussed below, or by hardship provisions which English law does not supply.

Foreseeability

27. For a force majeure clause, foreseeability matters only if that is what the parties have agreed in their clause. Many clauses contain such agreement. GAFTA's **"unforeseeable and unavoidable impediments to transportation or navigation"** was construed in July 2026 in ADM v Inerco: an event is **"unforeseeable"** if its probability at the time of contracting was **"so remotely likely to occur and affect its performance that it can be described as 'negligible'"**, and the enquiry may focus on degree and duration, because **"bad weather may be foreseeable, but three days of hurricanes may not be."**⁴³ Iran's parliament is reported to have voted to close the Strait on 22 June 2025, and closure had been threatened for decades; but it had never happened, and I think a tribunal could readily find that a closure lasting months was of negligible probability for a contract made in 2025.⁴⁴ Counterparties will frame the question as **"was a closure of Hormuz foreseeable?"**; but the court is warned against framing foreseeability **"too closely to the exact, specific, nature of the supervening event"**, and many courts may take the view that the better question is whether a closure of this length, with this destruction, was.⁴⁵ For a contract made after 2 March 2026 the answer is the opposite, and for one made after the 11 July re-closure it is emphatic.
28. The war-risks cases add a specific rule for parties who contracted into a known war zone. In The Polar Lord Hamblen approved The Product Star, a time charter fixed while the Arabian Gulf was a war zone during the Iran–Iraq war, with a clause putting extra Gulf premiums on charterers: the owners **"could not exercise their discretion to refuse to proceed if the risks of doing so were no more extensive than they were at the date of the charter"**, and their refusal was a repudiation.⁴⁶ Refusal requires **"a**

43 ADM Industries Centers Ltd v Inerco Trade SA [2026] EWHC 1873 (Comm) at ¶¶38, 44–45 (Paul Stanley KC). Sources folder: 02-England/15. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2026/1873>

44 Oon & Bazul, "Strait of Hormuz Crisis: Managing Force Majeure and Supply Chain Risks", 30 March 2026 ("Iranian parliament vote of 22 June 2025 to close the Strait"); Hadeef & Partners, April 2026 (both secondary). Sources folder: 05-Singapore/11, 03-UAE/30. <https://oonbazul.com/strait-of-hormuz-crisis-managing-force-majeure-and-supply-chain-risks/>

45 Canary Wharf (BP4) T1 Ltd v European Medicines Agency [2019] EWHC 335 (Ch) at ¶212 (Marcus Smith J). Sources folder: 02-England/05. <https://caselaw.nationalarchives.gov.uk/ewhc/ch/2019/335>

46 Herculito Maritime Ltd v Gunvor International BV (The Polar) [2024] UKSC 2 at ¶¶62–63 (Lord Hamblen), describing Abu Dhabi National Tanker Co v Product Star Shipping Ltd (The Product Star) (No 2) [1993] 1 Lloyd's Rep 397. Sources folder: 02-England/03. <https://caselaw.nationalarchives.gov.uk/uksc/2024/2>

change in its degree sufficient to make it qualitatively different". A charter fixed in January 2026 with **"Persian Gulf always allowed"** is one thing; the same words agreed in August 2026 are another. Skuld's guidance of 4 March 2026 makes exactly this point.⁴⁷

Notice

29. Notice clauses are being enforced strictly. In ADM v Inerco the words **"provided that Sellers shall have served a notice ... within 7 consecutive days"** were held to be **"unmistakeably the language of condition precedent"**, with no implied test of prejudice: **"leaving the buyers in prolonged ignorance of a force majeure event which is contractually consequential is almost inevitably prejudicial."**⁴⁸ In Seadrill Teare J read the repeated references to notice as making it a condition precedent, while holding that notice is not required **"when there is no more than a possibility that delay may be caused"**.⁴⁹ Where two causes operate, notice must be given of each.⁵⁰ The MUR clause itself is a model of the strict type (the point was not in issue): 48 hours, failing which the party **"shall not be permitted to claim force majeure"**.⁵¹
30. A premature declaration is itself a repudiation. In Bunge v Nidera the sellers cancelled a GAFTA contract on 9 August 2010 in reliance on a Russian export ban which was not to begin until 15 August; that was a repudiation, though damages were nil because the ban would in any event have cancelled the contract.⁵² A supplier who cancels a September cargo in early September because it expects the pipeline still to be shut in late September is taking that risk. So is one who zeroes a whole month's allocation before it knows how long the interruption will last: the pipeline restarted on 22 September, eleven days after it was shut, and Yanbu was loading about 2 mb/d by the end of September.

47 Skuld, "US/Israeli military intervention in Iran: Charterparty implications" (N Mason), 4 March 2026 (secondary). Sources folder: 02-England/30. <https://www.skuld.com/topics/legal/pi-and-defence/usisraeli-military-intervention-in-iran-charterparty-implications/>

48 ADM v Inerco at ¶¶51–52. Sources folder: 02-England/15. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2026/1873>

49 Seadrill at ¶81. Sources folder: 02-England/07. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2018/1640>

50 Seadrill at ¶79, describing Intertradex v Lesieur. Sources folder: 02-England/07. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2018/1640>

51 MUR Shipping at ¶4 (clause 36.4–36.5). Sources folder: 02-England/01. <https://caselaw.nationalarchives.gov.uk/uksc/2024/18>

52 Bunge SA v Nidera BV [2015] UKSC 43 at ¶¶2–3; and see Classic Maritime at ¶79. Sources folder: 02-England/25, 02-England/04. <https://caselaw.nationalarchives.gov.uk/uksc/2015/43>

Frustration

31. Frustration is the default rule, “**applicable in a narrow range of changed circumstances**”, with “**the drastic consequence that the contract is automatically terminated**”.⁵³ The test is Lord Radcliffe’s in **Davis Contractors**: frustration occurs “**whenever 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. Non haec in foedera veni. It was not this that I promised to do.**” He added that “**it is not hardship or inconvenience or material loss itself which calls the principle of frustration into play.**”⁵⁴ Lord Simon’s fuller definition in **National Carriers v Panalpina** requires an event “**which so significantly changes the nature (not merely the expense or onerousness) of the outstanding contractual rights and/or obligations from what the parties could reasonably have contemplated**”.⁵⁵ Rix LJ’s “**multi-factorial approach**” in **The Sea Angel** is the modern method: the terms, the context, the parties’ knowledge and assumptions as to risk, the nature of the event and the parties’ reasonable calculations about future performance.⁵⁶
32. Suez cases are often cited. In my view they should be read with care. In **Tsakiroglou v Noble Thorl** the House of Lords held that a CIF Hamburg sale of Sudanese groundnuts, shipment November/December 1956 from Port Sudan, was not frustrated by the closure of the Canal on 2 November. The Cape route was more than twice as long (11,137 miles against 4,386) and freight doubled from £7 10s to £15 a ton. Viscount Simonds held that “**an increase of expense is not a ground of frustration**”, that “**there was no evidence that the buyers cared by what route or, within reasonable limits, when the nuts arrived**”, and that the doctrine “**must be applied within very narrow limits**”. Lord Reid asked, “**Where, then, is there any basis for**

53 **MUR Shipping** at ¶92. Sources folder: 02-England/01.

<https://caselaw.nationalarchives.gov.uk/uksc/2024/18>

54 **Davis Contractors Ltd v Fareham UDC** [1956] AC 696 at 729 (Lord Radcliffe); [1956] UKHL 3. The page reference is confirmed by Lord Hailsham LC in **National Carriers Ltd v Panalpina (Northern) Ltd** [1981] AC 675 at 688. Sources folder: 09-Gapfill/01, 09-Gapfill/02.
<https://www.bailii.org/uk/cases/UKHL/1956/3.html>

55 **National Carriers Ltd v Panalpina (Northern) Ltd** [1981] AC 675 at 700 (Lord Simon of Glaisdale); [1980] UKHL 8. Sources folder: 09-Gapfill/02. <https://www.bailii.org/uk/cases/UKHL/1980/8.html>

56 **Edwinton Commercial Corp v Tsavliris Russ (Worldwide Salvage & Towage) Ltd (The Sea Angel)** [2007] EWCA Civ 547 at ¶111 (Rix LJ). Sources folder: 02-England/10.
<https://caselaw.nationalarchives.gov.uk/ewca/civ/2007/547>

frustration?”, noting that counsel had **“rightly”** not argued that the doubling of freight was enough, and leaving open **“what the result might be if the increase had reached an astronomical figure.”**⁵⁷

33. Further re **Tsakiroglou**:

- (a) The customary route is judged at the time of performance, and **“if there is only one route, that must be taken if it is practicable”**⁵⁸; and
- (b) The contract’s own force majeure clause, which extended time where force majeure prevented **“shipment”**, did not apply, because **“shipment”** means loading at the port and loading was not prevented.⁵⁹
- (c) The Supreme Court in **MUR Shipping** read **The Eugenia** and **The Captain George K** as pointing the same way: in the latter the voyage round the Cape **“was not radically different and was merely more expensive”**, and in the former, in Lord Denning’s words, **“there was no obligation to go through the Suez Canal, but only to go by the route which was customary at the time of performance”**.⁶⁰

34. The Suez reasoning rests on the existence of another route. A cargo loaded, or to be loaded, at Ras Tanura, Mina al-Ahmadi, Ras Laffan or Ruwais has no sea route out of the Gulf while the Strait is shut. Whose performance that prevents depends on the delivery term. An FOB seller’s obligation is to load, and **Tsakiroglou** holds that loading is **“shipment”** for the purposes of a force majeure clause; a seller who can load a vessel already inside the Gulf is not prevented, and a clause excusing prevention of shipment does not help it. The FOB buyer, whose vessel cannot arrive from outside or leave from inside, is the party prevented. A CIF, CFR or DES seller, who must procure the carriage, is prevented in its own performance, though risk in goods already shipped has passed

57 **Tsakiroglou & Co Ltd v Noblee Thorl GmbH** [1962] AC 93 at 93–95 (headnote and special case), 112–116 (Viscount Simonds), 117–119 (Lord Reid). Sources folder: 09-Gapfill/05 (full report from Trans-Lex). https://www.trans-lex.org/311500/_/tsakiroglou-co-ltd-v-noblee-thorl-gmbh-the-law-report-1962-at-page-7-et-seq/

58 **Tsakiroglou** at 113–114 (Viscount Simonds); 117–118 (Lord Reid). Sources folder: 09-Gapfill/05. https://www.trans-lex.org/311500/_/tsakiroglou-co-ltd-v-noblee-thorl-gmbh-the-law-report-1962-at-page-7-et-seq/

59 **Tsakiroglou** at 112 (Viscount Simonds, approving Bailhache J). Sources folder: 09-Gapfill/05. https://www.trans-lex.org/311500/_/tsakiroglou-co-ltd-v-noblee-thorl-gmbh-the-law-report-1962-at-page-7-et-seq/

60 **MUR Shipping** at ¶¶90–91, describing **Ocean Tramp Tankers Corp v V/O Sovfracht (The Eugenia)** [1964] 2 QB 226 at 240 (Lord Denning MR). Sources folder: 02-England/01. <https://caselaw.nationalarchives.gov.uk/uksc/2024/18>

to the buyer. Tsakiroglou also distinguishes sales from charterparties: Viscount Simonds agreed with Pearson J that **“the position was very different in a contract for the sale of goods”**, so a voyage charter for an inside-Gulf loading may be frustrated long before the sale contract it serves.⁶¹

35. Some further points on frustration:

- (a) Foreseeability is a factor, not a bar – see Rix LJ: **“even events which are not merely foreseen but made the subject of express contractual provision may lead to frustration: as occurs when an event such as a strike, or a restraint of princes, lasts for so long as to go beyond the risk assumed under the contract”**.⁶² That is the best argument for the charterer of a trapped ship, who is paying hire: the war-risks clause dealt with the risk of entering a dangerous area, not with six months of detention.
- (b) Self-induced frustration does not work: a producer with reduced output who chooses which customers to serve cannot say that the contracts it chose not to serve were frustrated. The Super Servant Two is the authority: Wijsmuller had the option of two vessels, one sank, and its decision to use the other elsewhere defeated frustration, because **“it is ... inconsistent with the doctrine of frustration as previously understood on high authority that its application should depend on any decision, however reasonable and commercial, of the party seeking to rely on it.”** Bingham LJ added that **“force majeure clauses are, where their terms permit, to be construed and applied as in the commodity cases”**.⁶³ Allocation among customers is therefore a matter for the clause. English law has no default pro-rata rule; the safe course is an express allocation clause, of which Total’s obligation to **“treat all its customers ... fairly and equally”** in Thames Valley is a real example.⁶⁴

61 Tsakiroglou at 112 (“shipment” means loading), 116 (agreeing with Pearson J in Sidermar). Sources folder: 09-Gapfill/05. https://www.trans-lex.org/311500/_tsakiroglou-co-ltd-v-noblec-thorl-gmbh-the-law-report-1962-at-page-7-et-seq/

62 The Sea Angel at ¶127; and see ¶¶103–104 (quoting Chitty 29th ed paras 23-057, 23-058) and Canary Wharf (BP4) T1 Ltd v European Medicines Agency [2019] EWHC 335 (Ch) at ¶¶211–212. Sources folder: 02-England/10, 02-England/05. <https://caselaw.nationalarchives.gov.uk/ewca/civ/2007/547>

63 J Lauritzen AS v Wijsmuller BV (The Super Servant Two) [1989] EWCA Civ 6; [1990] 1 Lloyd’s Rep 1 (Bingham LJ); and see the five propositions as quoted in Canary Wharf v EMA at ¶24. Sources folder: 09-Gapfill/04, 02-England/05. <https://www.bailii.org/ew/cases/EWCA/Civ/1989/6.html>

64 Thames Valley Power v Total at ¶6 (standard condition 15.3). Sources folder: 02-England/09. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2005/2208>

- (c) Consequences: the Law Reform (Frustrated Contracts) Act 1943 allows recovery of sums paid and a just sum for benefits conferred, gives effect to any contractual provision intended to operate in frustrating circumstances in priority to the Act, and does not apply at all to voyage charters or other contracts for the carriage of goods by sea, nor to contracts of insurance.⁶⁵ For a frustrated voyage charter the losses lie where they fall. The Act applies in the ADGM, with s 2(1)–(2) omitted.⁶⁶

Supervening illegality and sanctions

36. A change in English law which makes performance illegal suspends the obligation or, if permanent, may frustrate the contract. Foreign illegality is different. The **Ralli Bros** rule is “a limited exception to the general principle that the enforceability of a contract governed by English law is determined without reference to illegality under any other law”; it applies only “where contractual performance necessarily requires an act to be done in a place where it would be unlawful to carry it out”, not to “equipping to perform”; and “a party will not be excused if performance would be legal if a licence was obtained, unless that party shows that they either made reasonable efforts to obtain a licence or that any such efforts would have been in vain.”⁶⁷ Where supervening illegality affects only an obligation to pay, the effect “is to suspend the obligation to pay, not to frustrate the entire agreement”.⁶⁸ An Iranian decree closing the Strait is not a law of the place of performance for a Saudi-loading contract; it is a physical impediment to be run under the force majeure or war-risks clause, not under illegality.
37. Contractual sanctions provisos are read generously to the party complying. In **Lamesa v Cynergy** a proviso excusing non-payment “in order to comply with any mandatory provision of law” covered US secondary sanctions which did not directly bind the English payer, because “its effect is clearly one of prohibition” and “what matters

⁶⁵ Law Reform (Frustrated Contracts) Act 1943, ss 1(2), 1(3), 2(3), 2(5)(a)–(b). Sources folder: 02-England/13. <https://www.legislation.gov.uk/ukpga/Geo6/6-7/40>

⁶⁶ ADGM Application of English Law Regulations 2015, s 1 and Schedule. Sources folder: 03-UAE/26. <https://en.adgm.thomsonreuters.com/entiresection/20236>

⁶⁷ **Celestial Aviation Services Ltd v UniCredit Bank GmbH** [2024] EWCA Civ 628 at ¶¶103, 105–106 (Falk LJ); **Banco San Juan Internacional Inc v Petroleos de Venezuela SA** [2020] EWHC 2937 (Comm) at ¶¶62, 77, 79, 84 (Cockerill J). Sources folder: 02-England/29, 02-England/28. <https://caselaw.nationalarchives.gov.uk/ewca/civ/2024/628>

⁶⁸ **GTLK Malta Four Ltd v Pola Maritime Ltd** [2026] EWHC 2514 (Comm) at ¶46, applying **Celestial Aviation** at ¶68. Sources folder: 12-Update/83. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2026/2514>

here is Cynergy’s reason for the non-payment, not whether Cynergy is certain or only likely to be sanctioned”.⁶⁹

38. In May 2026 the Court of Appeal held in **Tonzip v 2 Rivers** that a charterparty sanctions clause triggered where, “**in the reasonable judgment of the Owners**”, performance will “**expose**” them to sanctions is engaged by a real risk, not a probability, and allowed the owners’ appeal.⁷⁰ On 6 October 2026 the Supreme Court refused the charterers permission to appeal, on the ground that the application did “**not raise a point of law of general public importance**”, so the Court of Appeal’s reading is final.⁷¹ Payment difficulty falls the other way: in **Litasco** a lack of foreign currency caused by war and sanctions was “**too remote**” and “**a significant degree of difficulty ... perhaps one approaching, albeit falling short of, impossibility**” would be needed before even a “**hinder**” clause suspended an accrued payment obligation.⁷²

War risks: the owner’s right to refuse, and who pays

39. Most Gulf charterparties contain a war-risks clause: where they do, such a clause, rather than force majeure, is likely to be the operative provision. The BIMCO definition of “**War Risks**” in every edition includes “**actual, threatened or reported ... blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership ...)**” which “**may be dangerous or may become dangerous to the Vessel**”.⁷³ An IRGC declaration enforced by attacks on 70 ships is within those words on any view; selective passage for favoured flags is within them expressly.
40. The owner’s judgment must be made in good faith and be objectively reasonable. Teare J in **The Triton Lark**: the words “**may be, or are likely to be, exposed**” require “**a real likelihood ... in the sense of a real danger**”, which can include “**an event**

⁶⁹ **Lamesa Investments Ltd v Cynergy Bank Ltd** [2020] EWCA Civ 821 at ¶¶35, 40, 45 (Sir Geoffrey Vos C). Sources folder: 02-England/06. <https://caselaw.nationalarchives.gov.uk/ewca/civ/2020/821>

⁷⁰ **Tonzip Maritime (Singapore) Pte Ltd v 2 Rivers Pte Ltd** [2026] EWCA Civ 641 at ¶¶38, 58, 89 (Foxton LJ); **Ceto Shipping Corp v Savory Shipping Inc** [2025] EWHC 2033 (Comm) at ¶243 (Cockerill J). Sources folder: 02-England/16, 02-England/36. <https://caselaw.nationalarchives.gov.uk/ewca/civ/2026/641>

⁷¹ UK Supreme Court, UKSC/2026/0103, permission to appeal refused 6 October 2026. Sources folder: 12-Update/84. <https://supremecourt.uk/cases/uksc-2026-0103>

⁷² **Litasco** at ¶¶37–38, 40 (quoting Scrutton LJ’s “Mr Micawber” passage). Sources folder: 02-England/27. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2023/2866>

⁷³ BIMCO CONWARTIME 2013, cl (a)(ii); VOYWAR 2025, cl (a)(iii). Sources folder: 07-Forms/02, 07-Forms/05. https://www.bimco.org/contractual-affairs/bimco-clauses/earlier-clauses-list/war_risks_clause_for_time_charters_2013/

which has a less than an even chance of happening” but not “a bare possibility”; and “it must be made in good faith; otherwise it would not be a judgment but a device to obtain a financial gain. Further, the judgment reached must be objectively reasonable.”⁷⁴

41. The 2013 and 2025 wordings substitute “**may be exposed**”, and apply “**whether such risk existed at the time of entering into this Charter Party or occurred thereafter**”.⁷⁵ On the 2004 wording, and on BPVOY4 clause 39 which follows it, **The Paiwan Wisdom** holds that there is no implied requirement of escalation since the charter date, but the **Product Star** principle bites where the owner has accepted a particular risk by the terms of the charter (an “**always allowed**” clause, or a clause allocating premium for a named area).⁷⁶ In August 2026 HHJ Hodge KC held that the right “**not to continue ... through**” an Area “**must ... import a right to leave the area**”, while expressing doubt about the earlier decision that an off-hire clause overrides the “**due fulfilment**” deeming provision.⁷⁷
42. The war clause is not the charterer’s only exposure. A time charterer who orders a vessel to a port warrants its prospective safety at the time of the order: **The Evia (No 2)** “**is best known for establishing that the safe port undertaking in a time charter relates to the prospective safety of the port at the time of the order to go there**”. In that case the vessel was ordered to Basrah in March 1980, hostilities between Iran and Iraq broke out while she was discharging, no ship could leave the Shatt al-Arab, the port was found to have become unsafe only on 22 September, and the charter was held frustrated on 4 October 1980.⁷⁸ The argument that a war-risks clause with premium for

74 **Pacific Basin IHX Ltd v Bulkhandling Handymax AS (The Triton Lark)** [2011] EWHC 2862 (Comm) at ¶¶40, 55 (Teare J); (No 2) [2012] EWHC 70 (Comm) at ¶¶11–12. Sources folder: 07-Forms/15, 07-Forms/16. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2011/2862>

75 CONWARTIME 2013, cl (b), and BIMCO Special Circular No. 5 (2013) explanatory notes (the amendment responds to **The Paiwan Wisdom** [2012] EWHC 1888 (Comm) at ¶16); CONWARTIME 2025, cl (b). Sources folder: 07-Forms/02, 07-Forms/17, 07-Forms/04. https://www.bimco.org/contractual-affairs/bimco-clauses/current-clauses/war_risks_clause_for_time_charters_2025/

76 **Taokas Navigation SA v Komrowski Bulk Shipping KG (The Paiwan Wisdom)** [2012] EWHC 1888 (Comm) at ¶¶11, 16–17, 20 (Teare J). Sources folder: 07-Forms/17. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2012/1888>

77 **Olam International Ltd v Pacific Basin Supramax Ltd (The Grande Island)** [2026] EWHC 2136 (Comm) at ¶¶107, 123. Sources folder: 02-England/18. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2026/2136>

78 **The Polar** [2024] UKSC 2 at ¶¶43–44 (Lord Hamblen), describing **Kodros Shipping Corp v Empresa Cubana de Fletes (The Evia) (No 2)** [1983] 1 AC 736 (not opened). Sources folder: 02-England/03. <https://caselaw.nationalarchives.gov.uk/uksc/2024/2>

charterers' account is **“an exhaustive code of the owners' rights in the event of any unsafety arising from the risks and dangers of war”** was rejected in The Chemical Venture, a Mina al-Ahmadi missile strike during the same war, and the Supreme Court has now confined The Evia (No 2) to its own terms: **“there is no principle exempting charterers from liability for their breaches of contract ... merely on the ground that they have directly or indirectly provided the funds whereby the owners insured themselves”**.⁷⁹ Club guidance in 2026 is that many ports north and west of the Strait arguably do not meet the objective safety test, and that selective passage may make a port **“safe”** for some vessels and **“unsafe”** for others.⁸⁰ A charterer who orders a vessel into the Gulf after 2 March 2026 is therefore exposed on the safe-port warranty independently of the war clause, and paying the premium does not protect it.

43. Who pays? Under CONWARTIME 2013 the charterers reimburse **“any additional premiums required by the Owners' insurers and the costs of any additional insurances that the Owners reasonably require”**; under the 2025 wording they reimburse defined **“Insurance Costs”** for a vessel proceeding **“to or through or remain[ing] in”** an Area, net of discounts, only if **“actually incurred”**, and the owners must on request **“demonstrate that they have used reasonable endeavours to obtain appropriate cover and terms (including premium)”**.⁸¹ Under the 2013 wording a charterer may argue that premium accruing while the vessel merely sits trapped is outside a clause directed at proceeding **“to or through”** an Area; BIMCO's 2025 notes concede that the earlier wording did not cover the stuck vessel expressly, and the point is live for the 400 ships the IMO says cannot leave.⁸²
44. The Supreme Court in The Polar rejected the argument that paying the premium buys immunity: **“the mere fact that charterers pay an extra insurance premium is not enough to create an insurance code or fund”**; the threshold is **“necessary**

⁷⁹ The Polar at ¶¶56–57, 74. Sources folder: 02-England/03.

<https://caselaw.nationalarchives.gov.uk/uksc/2024/2>

⁸⁰ NorthStandard, “Persian Gulf Hostilities – Charterparty FAQs”, 2 April 2026; Japan P&I Club, “Navigating the Chaos”, 15 April 2026 (both secondary). Sources folder: 07-Forms/20, 07-Forms/22. <https://north-standard.com/insights-and-resources/resources/articles/persian-gulf-hostilities-charterparty-faqs>

⁸¹ CONWARTIME 2013, cl (d)–(e); CONWARTIME 2025, cl (a)(ii), (d) and explanatory notes (“to cover the scenarios where it may become stuck in such a location”). Sources folder: 07-Forms/02, 07-Forms/04. https://www.bimco.org/contractual-affairs/bimco-clauses/current-clauses/war_risks_clause_for_time_charters_2025/

⁸² CONWARTIME 2013 cl (d) (“proceeds to or through”); CONWARTIME 2025 explanatory notes (“to cover the scenarios where it may become stuck in such a location”); IMO statement, 28 August 2026. Sources folder: 07-Forms/02, 07-Forms/04, 01-Facts/47. <https://www.imo.org/en/mediacentre/pressbriefings/pages/statement-on-the-ongoing-crisis-in-the-strait-of-hormuz.aspx>

consequence”; The Evia (No 2) “turned on the particular terms of the charter in that case”; and “if parties wish to provide that there be no right of recovery or subrogation ... that can be easily stated – as clause 13 of the Barecon 89 form illustrates.”⁸³

45. Bill of lading holders are not made liable for the premium by manipulating “**the Charterers**” into “**the holders of the bill of lading**”, so cargo interests under Gulf bills remain exposed in general average to war-related expenditure although the charterers paid the premium.⁸⁴

The 2026 crisis in the English courts so far

46. No English decision applying force majeure or frustration to the closure had been published by 10 October 2026.⁸⁵ The Commercial Court has recorded “**the onset of active and destructive US/Israeli military operations against Iran at the end of February**” in Mercuria v Baltic Exchange, a dispute about whether the TD3C benchmark (a VLCC from Ras Tanura to Ningbo, through Hormuz) should have been suspended, with an expedited trial “**later this year**”.⁸⁶ ADM v Inerco (foreseeability and notice), Tonzip (sanctions clauses), The Grande Island (CONWARTIME), Briety (market spikes) and GTLK v Pola (frustration by sanctions) were all decided in 2026 on earlier facts. They are the cases the first Hormuz awards will cite.

The ADGM

47. The Abu Dhabi Global Market applies “**the common law of England (including the principles and rules of equity), as it stands from time to time**”, together with a schedule of English statutes which includes the Law Reform (Frustrated Contracts) Act

83 The Polar [2024] UKSC 2 at ¶¶48, 57, 74. Sources folder: 02-England/03. <https://caselaw.nationalarchives.gov.uk/uksc/2024/2>

84 The Polar at ¶¶93, 99. Sources folder: 02-England/03. <https://caselaw.nationalarchives.gov.uk/uksc/2024/2>

85 Searches of the National Archives Find Case Law service for “Hormuz”, “force majeure”, “war risks”, “frustration”, “sanctions clause” and “Iran”, 23 September and 10 October 2026 (12-Update/82). Naftiran Intertrade Co (NICO) Ltd v Greenland Ltd [2026] EWHC 2418 (Comm) (22 September 2026) concerns unpaid invoices for Iranian crude and records, without deciding, a pleaded EU-sanctions illegality defence; it is not a crisis case. Sources folder: 10-Update/30, 12-Update/82. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2026/2418>

86 Mercuria Energy Trading SA v Baltic Exchange Information Services Ltd [2026] EWHC 1942 (Comm) at ¶¶2–5 (Andrew Baker J). The trade press reports the trial as listed for 15 days from 26 October 2026 (Splash247, 28 May 2026; Lloyd’s List); I have not confirmed that against the court list, and I have seen no report of an adjournment or settlement by 10 October 2026. Sources folder: 02-England/19, 10-Update/31, 12-Update/85. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2026/1942>

1943 and the Sale of Goods Act 1979.⁸⁷ The ADGM Court of Appeal has held that English precedent binds it.⁸⁸ Everything in this section therefore applies to an ADGM-law contract without modification, subject to ADGM enactments and applicable Abu Dhabi law prevailing.

⁸⁷ ADGM Application of English Law Regulations 2015, s 1(1)–(2) and Schedule. Sources folder: 03-UAE/26. <https://en.adgm.thomsonreuters.com/entiresection/20236>

⁸⁸ **AC Network Holding Ltd v Polymath Ekar SPV1** [2023] ADGMCA 0002 (Lord Hope), as described by Gibson Dunn, 29 November 2023 (secondary; judgment not opened). Sources folder: 03-UAE/27. <https://www.gibsondunn.com/abu-dhabi-global-market-court-of-appeal-deepens-adgm-wholesale-adoption-of-english-law/>

The three doctrines.

48. Onshore UAE law does not have a body of **“force majeure clause”** case law. Rather it has three statutory rules which do different jobs, and it is the failure to separate them that causes most of the confusion in practice.
- (a) **Impossibility.** Where force majeure makes performance impossible, the obligation and its counter-obligation are extinguished and the contract is cancelled automatically. Partial or temporary impossibility extinguishes only the affected part.
 - (b) **Exoneration.** Where loss is caused by an extraneous cause beyond the party’s control (**“such as a natural disaster, unavoidable accident, force majeure, act of a third party, or act of the person suffering loss”**), the party is not liable **“in the absence of a legal provision or agreement to the contrary”**. This is a default rule, and it is the doctrinal basis for the universal view that a contractual force majeure clause displaces the Code.
 - (c) **Exceptional circumstances (hardship).** Where exceptional circumstances of a general nature, which could not have been foreseen, make performance **“oppressive”** so as to threaten **“grave loss”**, the judge may reduce the oppressive obligation to a reasonable level, **“and any agreement to the contrary shall be void”**. This is a mandatory rule.
49. Until 31 May 2026 those rules were Articles 273, 287 and 249 of Federal Law No. 5 of 1985.⁸⁹ On 1 June 2026, three months into the war, Federal Decree-Law No. 25 of 2025 repealed the 1985 Code and replaced it.⁹⁰ The renumbering will mislead anyone working from a note written before June. Old Article 249 (hardship) is now Article 224. Old Article 273 (impossibility) is now Article 236. Old Article 287 (extraneous cause)

⁸⁹ Federal Law No. 5 of 1985 (Civil Transactions Law), arts 249, 273, 287 (official portal translation). Art 249: “If exceptional circumstances of a public nature which could not have been foreseen occur as a result of which the performance of the contractual obligation, even if not impossible, becomes oppressive for the obligor so as to threaten him with grave loss, it shall be permissible for the judge ... to reduce the oppressive obligation to a reasonable level if justice so requires, and any agreement to the contrary shall be void.” Art 273(1): “In contracts binding on both parties, if force majeure supervenes which makes the performance of the obligation impossible, the corresponding obligation shall cease, and the contract shall be automatically cancelled.” Sources folder: 03-UAE/02, 03-UAE/01. <https://uaelegislation.gov.ae/en/legislations/1025/download>

⁹⁰ Federal Decree-Law No. 25 of 2025 Promulgating the Civil Transactions Law, issued 1 October 2025; Decree art 2 (repeal of Federal Law No. 5 of 1985) and art 3 (entry into force 1 June 2026). Sources folder: 03-UAE/03. <https://uaelegislation.gov.ae/en/legislations/4011/download>

is now Article 249, so a reference to “**Article 249**” now refers to a different rule from the one it named in May. The muqawala provisions on impossibility have moved from Articles 893 and 894 to Articles 835 and 839(2).⁹¹

50. The substance has changed as well:

- (a) **The new hardship article**, Article 224, fixes the test of foreseeability “**at the time of contracting**” and, for the first time, allows the court to “**reduce the onerous obligation to a reasonable level**” or, which is new, to “**order the cancellation of the contract**”. It remains mandatory: “**Any agreement to the contrary shall be void.**” For a Gulf supplier whose freight and premium have multiplied since March, this is the article on which any UAE-law claim for relief will be built.⁹²
- (b) **The new impossibility article**, Article 236, keeps automatic cancellation for total impossibility but, for partial impossibility, lets “**either contracting party ... invoke the extinction of the corresponding obligation or request the court to cancel the contract**”, and for temporary impossibility in continuing contracts adds a right to “**seek modification of the contract**”.⁹³ Unlike Article 224, it contains no words making it mandatory.
- (c) **A wholly new Article 829(3) applies to construction contracts**: where “**the contractual balance between the obligations of the employer and the contractor collapses due to general exceptional circumstances that could not have been foreseen at the time of contracting**”, the court may “**order the restoration of the contractual balance, including extending the performance period or increasing or decreasing the fee, or order the cancellation of the contract**”.⁹⁴ Mayer Brown’s analysis of May 2026 makes the point that this article, unlike Article 224, “**is not expressed to be**

91 FDL 25/2025, arts 224, 236, 249, 336, 428, 829, 835, 837, 839 (bilingual text and official portal). Sources folder: 03-UAE/03, 03-UAE/04. <https://uae.shushin.io/contractlaw/civil-transactions-law-2025/book-1>

92 FDL 25/2025, art 224 (English per the bilingual text at 03-UAE/03, marked as an unofficial translation; the official portal extract at 03-UAE/04 confirms the opening words). Sources folder: 03-UAE/03, 03-UAE/04. <https://uae.shushin.io/contractlaw/civil-transactions-law-2025/book-1>

93 FDL 25/2025, art 236(1)–(3) (English per the bilingual text at 03-UAE/03; official portal wording of para 1 at 03-UAE/04). Sources folder: 03-UAE/03, 03-UAE/04. <https://uae.shushin.io/contractlaw/civil-transactions-law-2025/book-1>

94 FDL 25/2025, art 829(3); and see art 829(1) (lump-sum contractor may not demand an increase for rises in the price of materials or wages). Sources folder: 03-UAE/03. <https://uaelegislation.gov.ae/en/legislations/4011/download>

mandatory – in other words, parties may contract out of this provision”.

For an EPC contractor in Abu Dhabi this is the first statutory basis for a price increase on a lump-sum contract, and the first thing employers’ lawyers will try to exclude.⁹⁵

51. Which Code applies? The new Code **“shall not apply to prior facts and dispositions, unless the law provides otherwise”**, and its **“mandatory legal rules that may not be contravened by agreement”** form part of public order.⁹⁶ The settled Cassation approach, as summarised by Habib Al Mulla, is that a contract remains governed by the law under which it was made, except that new rules of public order **“resume[] [their] immediate authority over the effects resulting from such acts, transactions, and contracts, so long as these effects continue to exist”**.⁹⁷ On that footing I think a UAE court is likely to hold that Article 224, being mandatory, applies to hardship arising after 1 June 2026 even under a contract made before it, so that the new cancellation remedy is available; and that Article 829(3), not being mandatory, is not. The point is untested. Most Gulf construction contracts have been in performance across the transition, so a single project may have pre-June and post-June events under different rules.

What the courts have done with the doctrines

52. The Cassation judgments are not published in English: the following is based on unofficial translations of them:
- (a) Force majeure under Article 273 means impossibility, not difficulty. The Dubai Court of Cassation has described it as an incident **“incapable of being foreseen upon concluding the agreement and ... impossible to prevent ... thus rendering performance of the obligation impossible and ... not only a**

⁹⁵ Mayer Brown (Moore, Ugalde Revilla, Sobek, Sinjab), “Examining the New UAE Civil Code Part 1: Force Majeure, Exceptional Circumstances and Relief in Times of Crisis”, 19 May 2026 (secondary). Sources folder: 03-UAE/05. <https://www.mayerbrown.com/en/insights/publications/2026/05/examining-the-new-uae-civil-code-part-1-force-majeure-exceptional-circumstances-and-relief-in-times-of-crisis>

⁹⁶ FDL 25/2025, arts 3(4) and 4(1). Sources folder: 03-UAE/03. <https://uaelegislation.gov.ae/en/legislations/4011/download>

⁹⁷ Habib Al Mulla (Al Mulla & Ehab), “The New Civil Code and Existing Contracts: Non-Retroactivity and Public Order in Focus”, 25 June 2026 (secondary; no case number given). Sources folder: 03-UAE/06. <https://habibalmulla.com/articles/the-new-civil-code-and-existing-contracts-non-retroactivity-and-public-order-in-focus/>

source of hardship or trouble for the Obligor”, judged objectively and within the trial court’s discretion; wars are among the paradigm events.⁹⁸

- (b) The COVID-19 cases applied that strictly: the event must be the sole cause; the party must show how performance became impossible rather than assert it; a contractor who kept working could not say it was impossible; a party whose delay pre-dated the event could not attribute it to the event.⁹⁹

53. The reported decisions on financial crises point in different directions, and they should be read with the same caution.

- (a) The Dubai Court of Cassation (2013, number not given) held that financial shocks **“occur frequently and could be anticipated in general”** and that the global financial crisis was not an exceptional circumstance under Article 249; the Abu Dhabi Court of Cassation is reported to have held a financial crisis **“not an unforeseen event for traders”** for force majeure purposes; the Federal Supreme Court is reported to have accepted the crisis as **“an exceptional general event”** under Article 249 and reduced a rent. The case numbers the firms give for the last two (73/15 and 45/4, both **“of 2007”**) should be verified before either is relied on.¹⁰⁰
- (b) The most useful reported authority is a 2024 Dubai Cassation decision holding that the outbreak of the Russia–Ukraine war was a force majeure event, unforeseeable at the time of contracting and unavoidable in its consequences.¹⁰¹

98 Dubai Court of Cassation 268/290 of 2009, as translated by Afridi & Angell (ACC slides, 11 March 2020); Dubai Court of Cassation 188/2009 and 730/2015, as quoted by Rubert & Partners (secondary only). Sources folder: 03-UAE/18, 03-UAE/19. <https://www.acc.com/sites/default/files/program-materials/upload/Force%20majeure%20clauses%20in%20contract%20governed%20under%20UAE%20law.pdf>

99 Abu Dhabi Court of Cassation 835 of 2021 and 512 of 2021; Dubai Court of Cassation 479 of 2021, as reported by Al Tamimi (Gaffney and Anani), “Recent UAE Judgments: Force Majeure and Covid-19 in the UAE” (secondary only). Sources folder: 03-UAE/09. <https://www.tamimi.com/law-update-articles/recent-uae-judgments-force-majeure-and-covid-19-in-the-uae/>

100 Dubai Court of Cassation (2013, unnumbered), reported by Al Tamimi, Law Update, October 2013 (seven conditions); Abu Dhabi Court of Cassation 73/15 of 2007 and Federal Supreme Court 45/4 of 2007, reported by Afridi & Angell (secondary only). Sources folder: 03-UAE/08, 03-UAE/18. <https://www.tamimi.com/law-update-articles/dubai-the-global-financial-crisis-and-the-principle-of-exceptional-circumstances/>

101 Dubai Court of Cassation Commercial Case No. 1 of 2024, as reported by K&L Gates (Paterson and Rwashdeh), “Conflict in the Middle East: Rights and Remedies under the Laws of the UAE”, 17 March 2026 (secondary only; not otherwise corroborated). Sources folder: 03-UAE/10. <https://www.klgates.com/Conflict-in-the-Middle-East-Rights-and-Remedies-Under-the-Laws-of-the-United-Arab-Emirates-UAE-3-17-2026>

And a 2025 decision reaffirms that a party already in breach cannot rely on force majeure or exceptional circumstances.¹⁰²

54. Can the parties contract out? Of the hardship rule, no: the statute says so, and every practitioner agrees.¹⁰³ Of the impossibility and exoneration rules, yes: the exoneration article is expressly subject to **“agreement to the contrary”**, the Commercial Transactions Law provides that merchants **“shall be governed by the agreement entered into by the contracting parties, unless such agreement contradicts a commanding commercial provision”**, and no source I have found treats Article 273 or 236 as public order.¹⁰⁴ I think most UAE courts and tribunals will give effect to a detailed FIDIC-style regime, or to a Gulf NOC force majeure clause, in preference to the Code, while keeping Article 224 in reserve and treating good faith (Article 221) and abuse of rights (Article 106) as a check on a harsh exercise of strict rights.

Mapping the crisis onto UAE law

55. The Commercial Transactions Law’s own FOB and CIF rules pass risk in the goods when they cross the ship’s rail, and a CIF seller **“shall not be required to insure against additional risks and the risks of war except where the same is required by the buyer”**; parties may opt for Incoterms instead. Closure of the only sea route from a Gulf terminal is the strongest impossibility case UAE law offers, and it is impossibility of a temporary and partial kind, so the automatic-cancellation rule does not apply; the seller must prove sole causation and that it could not perform otherwise (by the Fujairah pipeline, by ship-to-ship transfer outside the Strait, from storage abroad); and if performance was possible at ruinous cost the case is hardship, not impossibility. That is why ADNOC’s language has been **“transaction-by-transaction”** rather than a declaration. I think a UAE court would hold an ADNOC-type seller to its contract where a bypass route existed, and would treat the added cost

102 Cassation Appeal No. 624 of 2025 (Real Estate), as reported by Horizons & Co, 10 March 2026 (secondary only). Sources folder: 03-UAE/13. <https://www.horizlaw.ae/insights/force-majeure-uae-contract-law>

103 Old art 249 / new art 224 (“any agreement to the contrary shall be void”); Al Tamimi, 9 March 2026; Pinsent Masons, 18 March 2026; Habib Al Mulla, 15 April 2026 (secondary). Sources folder: 03-UAE/41, 03-UAE/11, 03-UAE/14. <https://uaelegislation.gov.ae/en/legislations/1025/download>

104 Old art 287 / new art 249; Federal Decree-Law No. 50 of 2022 (Commercial Transactions Law), art 2(1), (3); K&L Gates, 17 March 2026 (“Express force majeure provisions in contracts governed by UAE law will generally be enforceable. Similarly, contractual notice requirements ... will usually be upheld”); Charles Russell Speechlys 2026; Habib Al Mulla, 16 and 21 April 2026 (secondary). Sources folder: 03-UAE/32, 03-UAE/10, 03-UAE/07, 03-UAE/12, 03-UAE/16. <https://www.klgates.com/Conflict-in-the-Middle-East-Rights-and-Remedies-Under-the-Laws-of-the-United-Arab-Emirates-UAE-3-17-2026>

as a hardship question. A force majeure guidebook issued on 25 September 2026 by Dubai's Department of Economy and Tourism and Dubai Chambers, with Baker McKenzie, takes the same line: where alternative suppliers, routes or arrangements remain available, the case is likely to be one of exceptional circumstances, not force majeure, and regional instability is not of itself force majeure. It is guidance, not law, but it shows how the Dubai authorities see the question.¹⁰⁵

56. Hardship is the route most UAE-law parties will actually use. War-risk premiums, extended voyage times and the cost of alternative routing are general, exceptional and (for pre-2026 contracts) unforeseeable; the question is whether they threaten **“grave loss”**, and the cumulative effect will be what a court weighs. No court will rebalance a contract to relieve a party of a transit **“toll”** which is sanctioned and, on the London market's view, unlawful to reimburse. The remedy is judicial rebalancing, not suspension, and the party must go to court or tribunal to get it. The UAE Cabinet's own designation of the **“Iranian acts of aggression”** as an Emergency Financial Crisis from 28 February 2026 is, I think, evidence a court will treat as establishing the **“general”** and **“exceptional”** character of the circumstances.¹⁰⁶
57. Charterparties under UAE law. Most Gulf fixtures are English-law, but where the Maritime Law (Federal Decree-Law No. 43 of 2023) applies, its default rules differ sharply from the English forms. A voyage charter **“shall remain effective without compensation or freight increase”** where force majeure temporarily prevents sailing, and **“shall be terminated without compensation”** where force majeure makes completion impossible, with freight pro rata for the completed part; laytime is interrupted by force majeure but demurrage is not, though the court may reduce it if the impediment continues; if the ship cannot reach the agreed port because of force majeure the charterer bears the on-carriage cost; and under a time charter hire **“shall not be due if the ship ... becomes idle due to a force majeure event”**, and **“no agreement may be executed that the shipowner is entitled to the freight rate in all cases, otherwise**

¹⁰⁵ Dubai Department of Economy and Tourism, Dubai Chambers and Baker McKenzie, “UAE Force Majeure Guidebook”, 25 September 2026, as reported by Emarat Al Youm, 27 September 2026 (the guidebook itself not opened). Sources folder: 12-Update/91. <https://www.bakermckenzie.com/en/insight/publications/guides/uae-force-majeure-guidebook>

¹⁰⁶ Cabinet Resolution No. 94 of 2026 (1 June 2026), as described by Latham & Watkins, 3 July 2026 and Habib Al Mulla (secondary; Resolution not opened). Sources folder: 03-UAE/43, 03-UAE/44. <https://www.lw.com/en/insights/uae-implements-the-provisions-of-chapter-v-of-the-uae-bankruptcy-law>

the agreement shall be void”.¹⁰⁷ That last rule, a mandatory off-hire for force majeure, is the reverse of the English position and would matter for any UAE-flag or UAE-law fixture trapped in the Gulf.

58. Construction. The COVID cases show the courts refusing force majeure where the contractor kept working; delay, disruption and price escalation caused by the war are hardship cases. Under the old Code the statutory routes were Articles 893–894 (either party may seek termination where an excuse prevents completion; a contractor unable to complete for a cause beyond its control is paid for work done to the extent of the employer’s benefit) and Article 249; under the new Code Article 829(3) says expressly what the courts had been doing, but only if the parties have not contracted out of it, and FIDIC-based contracts with an exhaustive exceptional-events and notice regime will be argued to do so. An IBA article of 1 October 2026 reports a Dubai Court of First Instance judgment of July 2026, not numbered, which rejected a contractor’s claim for a higher price and more time, in part because **“the competent governmental authorities had not issued any instructions or decisions authorising such adjustments”**. I have not seen the judgment, and a first-instance decision reported in this way should be given little weight.¹⁰⁸¹⁰⁹

The DIFC

59. DIFC law is NOT English law on this subject. Instead, the DIFC Contract Law contains a statutory force majeure excuse modelled on the UNIDROIT Principles: **“Except with respect to a mere obligation to pay, non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it 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 excuse lasts only for a reasonable period where the impediment is temporary; the party must give notice, on pain of

107 FDL 43/2023 (Maritime Law), arts 130, 142, 143(1)(b), 145(4)–(5), 147(2), 153(1)–(2); art 288 (war risks excluded from marine insurance unless agreed). Sources folder: 03-UAE/33.

<https://faolex.fao.org/docs/pdf/uae226913E.pdf>

108 IBA (Samer Abou Said and Loaa Zaarour, Moaza Alkhadar), “Impact of exceptional circumstances on UAE construction contracts: the Strait of Hormuz context”, 1 October 2026 (secondary; judgment not seen; no case number given). Sources folder: 12-Update/91. <https://www.ibanet.org/impact-of-exceptional-circumstances-on-UAE-contracts-strait-of-hormuz>

109 Old arts 893–895; FDL 25/2025 arts 829(3), 835, 839(2); Habib Al Mulla, “FIDIC contracts and the conflict”, 21 April 2026 (courts insist on contemporaneous sub-clause 19.2 notices) (secondary). Sources folder: 03-UAE/01, 03-UAE/03, 03-UAE/16. <https://uae.shushin.io/contractlaw/civil-transactions-law-2025/book-1>

damages; and the other party keeps its rights to terminate, withhold performance and claim interest.¹¹⁰ The article can be excluded by contract.

60. In April 2026 the DIFC Court of Appeal (Martin CJ, French J and Gross J) gave the first appellate decision on Article 82. Three points emerge from that judgment:
- (a) First, **“Force majeure as embodied in Article 82 ... and frustration as known to English law, are quite different concepts and cannot be equated.”**
 - (b) Second, the exclusion of **“a mere obligation to pay”** was **“included precisely for the purpose of preventing a party from claiming that financial hardship caused by matters beyond their control prevented them from fulfilling their obligations to pay”**, though an obligation to pay **“linked or connected to an obligation to do or achieve something else”** may be excused if that other thing is precluded.
 - (c) Third, a plea of frustration faces **“the apparent lack of any principle of frustration in the DIFC Contract Law”** and **“the difficulty of arguing that a principle of English Law should be incorporated by implication into the DIFC Contract Law which is ... modeled ... upon the UNIDROIT Principles”**.¹¹¹
61. The DIFC Contract Law has no hardship article: the UNIDROIT hardship provisions were not adopted.¹¹² The 2024 amendments to the Application of Civil and Commercial Laws confirm that the common law only supplements DIFC statute and that DIFC judges are **“not free to incorporate into DIFC law any common law development from any common law jurisdiction”**.¹¹³ Earlier DIFC authority puts the burden of

110 DIFC Contract Law, DIFC Law No. 6 of 2004 (consolidated 2024), art 82(1)–(4); art 83 (payment); art 84(b) (no specific performance where “unreasonably burdensome or expensive”); art 11 (parties may exclude or vary). Sources folder: 03-UAE/21, 03-UAE/22.

https://luthraadvisors.ae/wp-content/uploads/2024/11/contract_law_difc_law_no_6_of_2004_updated_2024.pdf

111 **The Collection Club Restaurant Ltd v MAG Development Services Ltd** [2026] DIFC CA 006 at ¶¶18, 43–45, 48 (24 April 2026). Sources folder: 03-UAE/40.

<https://www.difccourts.ae/rules-decisions/judgments-orders/court-appeal/ca-0062026-1-collection-club-restaurant-limited-2-laurent-buisine-3-hugo-valat-v-mag-development-services-limited>

112 DIFC Contract Law, Part 8 (arts 77–91): arts 79–81 concern withholding performance, cure and additional time; there is no equivalent of UNIDROIT arts 6.2.1–6.2.3. Sources folder: 03-UAE/21.

https://luthraadvisors.ae/wp-content/uploads/2024/11/contract_law_difc_law_no_6_of_2004_updated_2024.pdf

113 DIFC Law No. 3 of 2004, art 8 as amended 21 November 2024, and **The Industrial Group Ltd v Hamid** [2022] DIFC CA 005 and 006 at ¶¶105–120, as described by Littleton Chambers, 17 February 2025 (secondary; statute and judgment not opened). Sources folder: 03-UAE/28.

<https://littletonchambers.com/through-the-waterfall-difcs-amendments-on-the-role-of-common-law/>

proving a contractual force majeure event and its causal effect on the party invoking it, and requires the notice to identify the event and the delay.¹¹⁴

62. As a result a DIFC-law oil trader facing a closed Strait has (a) the benefit of any contractual clause it was able to negotiate, (b) Article 82 for non-monetary obligations if it has no clause, (c) Article 84(b) as a shield against specific performance where performance is **“unreasonably burdensome or expensive”**, and (d), probably, nothing at all for pure economic hardship or for frustration. A DIFC-seated award can be set aside only on the Model Law grounds, one of which is that **“the award is in conflict with the public policy of the UAE”**, the words being **“of the UAE”** and not **“of the DIFC”**.¹¹⁵ Whether an onshore mandatory rule such as Article 224 could be invoked under that head against a DIFC-law award is an open question on which I have found no authority.

Arbitration and public order

63. Onshore, an award may be annulled where it **“has not applied the law agreed by the Parties”** or is **“in conflict with the public order and the public morality of the State”**.¹¹⁶ A DIAC clause silent as to seat now defaults to the DIFC as the initial seat, the tribunal having power finally to determine it.¹¹⁷ So:
- (a) A tribunal applying UAE law which ignores Article 224 invites an annulment application; and
 - (b) A tribunal applying English law under a UAE-seated arbitration between UAE parties may face the argument that the mandatory hardship rule overrides the chosen law as public order. I have found no decision either way. I would expect a Dubai court to be slow to annul a well-reasoned award on that ground, but the

¹¹⁴ **Rohan v Daman Real Estate Capital Partners Ltd** [2013] DIFC CA 005 and 006 (16 October 2014) at ¶¶24, 26; **DIFC Investments LLC v Zia** [2017] DIFC CFI 001 at ¶88. Sources folder: 03-UAE/25, 03-UAE/24. <https://www.difccourts.ae/rules-decisions/judgments-orders/court-first-instance/difc-investments-llc-v-mohammed-akbar-mohammed-zia-2017-difc-cfi-001>

¹¹⁵ DIFC Arbitration Law, DIFC Law No. 1 of 2008 (consolidated December 2013), art 41(2)(b)(iii) and art 44(1)(b)(ii). Sources folder: 09-Gapfill/08. <https://www.difc.com/business/laws-and-regulations/legal-database/difc-laws/arbitration-law-difc-law-no1-2008>

¹¹⁶ Federal Law No. 6 of 2018 on Arbitration, arts 2(1), 53(1)(e), 53(2)(b) (MoJ translation). Sources folder: 03-UAE/34. https://elaws.moj.gov.ae/UAE-MOJ_LC-En/00_ARBITRATION%20AND%20RECONCILIATION/UAE-LC-En_2018-05-03_00006_Kait.html?val=EL1

¹¹⁷ DIAC Arbitration Rules 2022, art 20.1 (text from the chambers arbitration-rules corpus; Mayer Brown, 7 April 2022, to the same effect). Sources folder: 03-UAE/36, 03-UAE/35. <https://www.diac.com>

risk is real enough to plead the point in the arbitration rather than discover it at enforcement.

The Civil Transactions Law 2023

64. Until December 2023 Saudi Arabia had no civil code. Contracts were governed by Sharia as interpreted, mainly, in the Hanbali school, applied case by case by judges with wide discretion and without binding precedent.¹¹⁸ The Civil Transactions Law, approved by Royal Decree M/191 of 29/11/1444H (18 June 2023), came into force 180 days after publication and is the first codification.¹¹⁹ Article 1 sets out the hierarchy: the Code, then the 41 general maxims in Article 720 (which include “**harm is to be removed**”, “**hardship begets facility**”, “**necessity is measured by its extent**”), then the provisions of Sharia most consistent with the Code.¹²⁰ Periods run on the Hijri calendar.¹²¹ On 28 September 2026 the Research Centre of the Ministry of Justice published a four-volume Explanation of the Code, article by article, with the Minister’s approval. It identifies, article by article, which rules are of public order. It is not a Royal Decree or a Supreme Court principle and does not claim binding force. But it comes from the judges’ own Ministry, it was reviewed by judges and law professors, and there is almost no appellate case law on the Code to compete with it. I think most tribunals applying Saudi law will treat it as the best evidence of how a Saudi court will read the Code, and will be slow to depart from it where it says a rule is public order.¹²² I note below where it changes what practitioners had taken the Code to mean.
65. The scheme mirrors the UAE’s, with two Saudi additions:

118 IBA, “Saudi Civil Transactions Law: substantive contract rules and cross-border litigation”; US Federal Judicial Center, Judiciaries Worldwide, Saudi Arabia country profile; GlobaLex (Ansary), “A Brief Overview of the Saudi Arabian Legal System” (all secondary). Sources folder: 04-Saudi/09, 04-Saudi/31, 04-Saudi/56.
<https://www.ibanet.org/saudi-civil-transactions-law>

119 Civil Transactions Law (نظام المعاملات المدنية), Royal Decree M/191 of 29/11/1444H; art 721 (commencement 180 days after publication in Umm al-Qura); WIPO Lex record (entry into force 17 December 2023; most firms use 16 December 2023). Sources folder: 04-Saudi/02, 04-Saudi/02a, 04-Saudi/37, 04-Saudi/01a. https://wipo.lex-res.wipo.int/edocs/lexdocs/laws/ar/sa/sa110ar_1.pdf

120 CTL arts 1, 720 (rules 16–23). Sources folder: 04-Saudi/02a (pp 1, 131–134).
https://wipo.lex-res.wipo.int/edocs/lexdocs/laws/ar/sa/sa110ar_1.pdf

121 CTL art 2. Sources folder: 04-Saudi/02a.
https://wipo.lex-res.wipo.int/edocs/lexdocs/laws/ar/sa/sa110ar_1.pdf

122 Ministry of Justice Research Centre, شرح نظام المعاملات المدنية (Explanation of the Civil Transactions Law, 1st ed, 28 September 2026), Vol 1 pp 5–9 (foreword and introduction); Al-Madina, 28 September 2026 (issued in four parts with the approval of the Minister of Justice). I have used an unofficial English translation prepared for me; the Arabic controls. Sources folder: 12-Update/95, 12-Update/88.
<https://www.al-madina.com/ampArticle/1007123>

- (a) **Impossibility:** Article 110. “**In bilateral contracts, if the performance of an obligation becomes impossible for a reason beyond the debtor’s control, said obligation and the corresponding obligation shall be extinguished, and the contract shall be automatically terminated.**” Partial impossibility extinguishes only the impossible part; the same applies to temporary impossibility in time-based contracts; in either case the creditor may seek termination, which the court may refuse if the impossible part is insignificant. The Explanation adds three points. Dissolution for total impossibility is automatic, with no notice and no court. Partial or temporary impossibility extinguishes the affected part and its counterpart; the Explanation does not speak of suspension. And the creditor gets no compensation for the part that has become impossible. The debtor bears the burden of proving both the impossibility and the external cause, and onerous performance does not extinguish the obligation.¹²³¹²⁴
- (b) **Exoneration:** Articles 125, 170(3) and 171. “**A person shall not be liable if it is proven that the damage arose from a cause beyond his control, such as through force majeure, the fault of a third party, or the fault of the affected party, unless otherwise agreed**”; no damages for non-performance or delay where the debtor proves a cause beyond its control.¹²⁵ The Code does not define force majeure. The Explanation does: an event that cannot be averted, could not be foreseen and for which the person is not responsible. It must be the sole cause, and a person who failed to take steps to avoid or reduce the harm is liable in proportion to that failure.¹²⁶

123 Ministry of Justice Research Centre, شرح نظام المعاملات المدنية (Explanation of the Civil Transactions Law, 1st ed, 28 September 2026), Vol 1 pp 334–336 (art 110); Vol 2 pp 353–356 (art 294). Sources folder: 12-Update/95, 12-Update/96. <https://www.al-madina.com/ampArticle/1007123>

124 CTL art 110(1)–(2) (English per BLK Partners and Pinsent Masons quoting the official translation); art 294 (extinction of the obligation generally); art 111 (restitution; no retroactive effect for continuing contracts). Sources folder: 04-Saudi/02a, 04-Saudi/37, 04-Saudi/04, 04-Saudi/46. <https://www.blkpartners.com/img/NAVIGATING%20THE%20SAUDI%20CIVIL%20TRANSACTIONS%20LAW.pdf>

125 CTL arts 125, 170(3), 171 (English per King & Spalding and BLK). Sources folder: 04-Saudi/02a, 04-Saudi/11, 04-Saudi/04. <https://www.kslaw.com/news-and-insights/saudi-arabias-new-civil-transactions-regulation>

126 Ministry of Justice Research Centre, شرح نظام المعاملات المدنية (Explanation of the Civil Transactions Law, 1st ed, 28 September 2026), Vol 1 pp 379–381 (art 125); Vol 2 pp 47–48 (art 174). Sources folder: 12-Update/95, 12-Update/96. <https://www.al-madina.com/ampArticle/1007123>

- (c) **Allocation:** Article 174. **“It may be contractually agreed that the obligor shall bear the consequences of force majeure.”**¹²⁷ This is the first Saudi addition: the allocation of force majeure risk is expressly a default rule. The Explanation reads such a clause narrowly. It does not oblige the debtor to do the impossible; the obligation still lapses, and the clause only shifts the consequences. A doubtful clause of that kind is read in the debtor’s favour.¹²⁸ Exclusions of contractual liability are permitted except for fraud or gross error, but tort liability cannot be excluded.¹²⁹
- (d) **Hardship:** Article 97. Where **“extraordinary events which were unforeseeable at the time of contracting ... make the fulfilment of a contractual obligation excessively onerous on the part of the debtor in such a way that it may cause heavy losses, the debtor may, without undue delay, invite the other party to negotiate”; “the request for negotiation shall not grant the debtor the right to not perform”**; if no agreement is reached within a reasonable time the court may **“reduce the onerous obligation to a reasonable level”**; and **“any agreement contrary to the provisions of this Article shall be deemed null and void”**.¹³⁰ This is the second Saudi addition: a duty to negotiate first and a prohibition on stopping performance while negotiating. A party that simply stops loading when freight and premium spike is in breach. The prohibition is on suspending for hardship; Article 114 preserves the ordinary right to withhold performance while the other party is itself in default.¹³¹ The Explanation settles several questions on which commentators had differed.

127 CTL art 174 («يجوز الاتفاق على أن يتحمل المدين تبعات القوة القاهرة»); Pinsent Masons (Alsugari), 11 March 2026: “force majeure is not a mandatory rule of public policy ... where parties have included a force majeure clause in their contract, that clause should take precedence.” Sources folder: 04-Saudi/02a, 04-Saudi/46.

<https://www.pinsentmasons.com/out-law/analysis/middle-east-conflict-force-majeure-saudi-contracts>

128 Ministry of Justice Research Centre, شرح نظام المعاملات المدنية (Explanation of the Civil Transactions Law, 1st ed, 28 September 2026), Vol 2 pp 47–48 (art 174). Sources folder: 12-Update/96.

<https://www.al-madina.com/ampArticle/1007123>

129 CTL art 173. Sources folder: 04-Saudi/02a.

https://wipolex-res.wipo.int/edocs/lexdocs/laws/ar/sa/sa110ar_1.pdf

130 CTL art 97(1)–(4) (Arabic; English per BLK and Pinsent Masons); Covington, 1 December 2023 (“this provision of the CTL is mandatory”). The Arabic requires the circumstances to be عامة (general). Sources folder: 04-Saudi/02a, 04-Saudi/04, 04-Saudi/46, 04-Saudi/03, 04-Saudi/40.

<https://www.cov.com/-/media/files/corporate/publications/2023/12/key-features-of-the-new-saudi-civil-transactions-law.pdf>

131 CTL art 114 (Arabic). Sources folder: 04-Saudi/37. <https://nezams.com/نظام-المعاملات-المدنية/>

- (i) The circumstances must be “**general**”: they must affect a class of people, not just the debtor. The debtor’s insolvency, or a fire at its premises, does not qualify.
- (ii) Foreseeability is judged objectively, by the ordinary person in the debtor’s position at the date of contracting. A movement in exchange rates is given as an example of a foreseeable event. A debtor whose own delay exposed it to the event bears the risk.
- (iii) Onerousness is measured against the particular contract, not against the debtor’s finances as a whole, and the debtor must prove it.
- (iv) Negotiation is a precondition. Going to court without first inviting negotiation is “**premature**”, and unjustified delay in inviting negotiation is “**an indicator that there is no exceptional circumstance**”.
- (v) The court’s powers are wider than the words “**reduce the onerous obligation**” suggest. It may suspend performance while a temporary event lasts, where that causes the creditor no serious harm; it may increase the counter-performance; it may reduce the onerous obligation, including the quantity; or it may combine these. The worked example is a supply of wheat at 3 riyals which rises to 9: the normal rise of 1 riyal stays with the supplier, the unusual 5 riyals is split, and the court may raise the price to 5.5. The creditor may then choose between paying the increase and terminating.
- (vi) There is no termination and no total release at the debtor’s request under Article 97, and the adjustment lasts only as long as the event.
- (vii) The court acts only on the debtor’s request, and may not give more than it asks for.
- (viii) The whole article is public order. An agreement made in advance against it is absolutely void, and the court may say so of its own motion.¹³²

¹³² Ministry of Justice Research Centre, شرح نظام المعاملات المدنية (Explanation of the Civil Transactions Law, 1st ed, 28 September 2026), Vol 1 pp 288–294 (art 97). Sources folder: 12-Update/95. <https://www.al-madina.com/ampArticle/1007123>

- (e) **Construction:** Articles 461 to 478. A lump-sum contractor cannot claim a price increase even if the cost of materials, wages or other expenses rises; but where there is a **“disruption to the balance of contractual obligations ... due to general exceptional circumstances that could not have been anticipated at the time of concluding the contract, and the basis upon which the estimate was determined becomes no longer valid”**, the court may **“order restoration of the contractual balance, including extending the execution period or increasing or decreasing the fees, or it may order termination of the contract”**; a contractor who becomes unable to complete for a cause beyond its control is paid for work done to the extent of the employer’s benefit.¹³³ Article 471(3) has no anti-waiver sentence, and whether it could be excluded was disputed: Pinsent Masons said it is not mandatory; Kirkland & Ellis doubted that any contracting-out would be enforced without an express statutory right.¹³⁴ The Explanation resolves the point the other way. It treats Article 471(3) as an application of Article 97, whose provisions must be applied **“as they are part of public order, and it is not permissible to agree otherwise”**. It adds that either party may invoke it, including an employer facing loss, and that the court may terminate only if the balance cannot be restored.¹³⁵ I think most tribunals will now treat a clause excluding price or time adjustment for general exceptional circumstances in a Saudi works contract as void. That is the opposite of the position under the new UAE Code, where Article 829(3) may be excluded.
- (f) **Liquidated damages:** Articles 178 to 180. No agreed compensation is payable if the debtor proves the creditor suffered no harm; the court may reduce it if excessive or if the obligation was partly performed; these rules are mandatory; and contractual damages are limited to loss foreseeable at contracting absent

133 CTL arts 471(1), 471(3), 476, 477 (Arabic; the description of 471(1) is my summary of the Arabic, cf Covington’s paraphrase; the English of 471(3) is Pinsent Masons’ rendering, 11 March 2026). Sources folder: 04-Saudi/02a, 04-Saudi/37, 04-Saudi/46. <https://www.pinsentmasons.com/out-law/analysis/middle-east-conflict-force-majeure-saudi-contracts>

134 Pinsent Masons, 11 March 2026; Kirkland & Ellis, “The Impact of the Saudi Civil Transactions Law on Major Project Delivery”, April 2024 (secondary). Sources folder: 04-Saudi/46, 04-Saudi/08. <https://www.kirkland.com/publications/kirkland-alert/2024/04/the-impact-of-the-saudi-civil-transactions-law-on-major-project-delivery>

135 Ministry of Justice Research Centre, شرح نظام المعاملات المدنية (Explanation of the Civil Transactions Law, 1st ed, 28 September 2026), Vol 3 pp 395–397 (art 471). Sources folder: 12-Update/97. <https://www.al-madina.com/ampArticle/1007123>

fraud or gross error. On the Explanation, once breach is proved, harm and causation are presumed; reduction for excess needs the debtor's request and an excess **"to a significant degree"**; and a contractor's delay penalty is valid.¹³⁶¹³⁷

- (g) Government contracts. Contracts with government bodies are governed by the Government Tenders and Procurement Law, under which delay penalties are reported to be capped (20 per cent of contract value for non-supply contracts, 6 per cent for supply contracts) and extensions of time and waiver of fines are available for matters beyond the contractor's control; the forum is the Board of Grievances; and during COVID the Ministry of Finance consultation route under High Order 61 of 2/3/1442H was used in place of the Supreme Court principles, a precedent for treasury-driven relief if the war produces similar measures.¹³⁸ The Ministry of Finance has now done something of that kind. Decision No. 257, dated 29/3/1448H, published in Umm Al-Qura on 25 September 2026 and effective from its date, replaces Article 113 of the Implementing Regulations of the current Government Tenders and Procurement Law. A contractor is compensated for rises in the prices of materials, services or items after the bid date where the rise increases the total contract cost by more than 3 per cent (changes in customs, fees and taxes are compensated in full), unless the rise is borne because of the contractor's own delay and it cannot prove that the delay was for a reason outside its control. The claim must be made before final acceptance. The new Article 113 applies to contracts made before the current Law came into force and to claims earlier rejected on form. It does not mention war, force majeure or exceptional circumstances, and it does not need them: for a contractor on a Saudi public contract it is a route to recovering crisis-driven cost increases without proving the conditions of Article 97.¹³⁹ A new Government Tenders and Procurement Law (Royal Decree M/76)

136 Ministry of Justice Research Centre, شرح نظام المعاملات المدنية (Explanation of the Civil Transactions Law, 1st ed, 28 September 2026), Vol 2 pp 55–62 (arts 178–179). Sources folder: 12-Update/96. <https://www.al-madina.com/ampArticle/1007123>

137 CTL arts 178, 179(1)–(4), 180. Sources folder: 04-Saudi/02a, 04-Saudi/37. https://wipolex-res.wipo.int/edocs/lexdocs/laws/ar/sa/sa110ar_1.pdf

138 HKA, "Litigating Construction Disputes in Saudi Arabia" (2026), on GTPL arts 72 and 74 and the Board of Grievances; Pinsent Masons, 15 March 2021, on High Order 61 (both secondary; the GTPL and the High Order not opened). Sources folder: 04-Saudi/42, 04-Saudi/16. <https://www.hka.com/article/litigating-construction-disputes-in-saudi-arabia/>

139 Minister of Finance Decision No. 257 of 29/3/1448H, Umm Al-Qura, 25 September 2026 (Arabic text), replacing art 113 of the Implementing Regulations of the Government Tenders and Procurement Law. Sources

was published on 4 September 2026 and takes effect 120 days later, in early January 2027. The Ministry's summary of the changes contains no force majeure or hardship provision; it allows change orders adding new items of up to 10 per cent and increasing existing items by up to 20 per cent, within an overall cap of 20 per cent, and reduces the cap on delay penalties for non-supply contracts from 20 to 15 per cent.¹⁴⁰

66. Retroactivity is dealt with not in the Code but in the Royal Decree. Clause Fifth provides that the Code applies to facts occurring before it came into force, except where a party invokes a conflicting statutory provision or judicial principle, or where a limitation period had already begun to run; clause Sixth applies the Code to commercial transactions so far as consistent with their nature.¹⁴¹ A contract made in 2022 and disrupted in 2026 is therefore governed by the Code, with the burden on the party resisting.

How Saudi courts think: the COVID principles and the judgments applying them

67. The best evidence of how a Saudi court will approach the war may well be the General Assembly of the Supreme Court's Decision No. 45/M of 8/5/1442H (23 December 2020), issued following Royal Order 15700, which laid down binding principles for contracts affected by COVID-19. The pandemic was “**an emergency circumstance**” where the obligation could be performed only with unusual loss, and “**force majeure**” where performance became impossible; five conditions applied (contract made before the precautionary measures; direct and unavoidable effect; the pandemic the sole cause; no waiver or settlement; no special regulation); for construction and supply contracts the court could increase the price (the obligor bearing the usual rise), reduce the quantity, suspend performance temporarily, or terminate the part that had become impossible; and, in a paragraph beside which the Code's Article 174 now sits uneasily, that a clause exempting a party from liability on the occurrence of an emergency circumstance or force majeure “**shall have no effect**” (my translation

folder: 12-Update/89. <https://www.uqn.gov.sa/decisions-and-regulations/4001948>

¹⁴⁰ Ministry of Finance, summary of the principal amendments to the Government Tenders and Procurement Law 1448H; Clyde & Co, 1 October 2026; Greenberg Traurig, August 2026 (secondary). Sources folder: 12-Update/90, 10-Update/35. <https://www.clydeco.com/en/insights/2026/10/saudi-arabia-new-government-tenders-procurement>

¹⁴¹ Royal Decree M/191, cll خامساً and سادساً (Arabic text at nezams.com; corroborated by King & Spalding, Pinsent Masons, Covington, IBA, Fenwick Elliott, HKA). Sources folder: 04-Saudi/37, 04-Saudi/11, 04-Saudi/07. <https://nezams.com/نظام-المعاملات-المدنية/>

of the Arabic; DLA Piper renders it “**if an emergency or force majeure occurs, that provision shall have no effect**”).¹⁴²

68. The Commercial Courts applied those principles in a run of judgments now published on the Ministry of Justice portal. A Riyadh circuit ordered the return of a deposit under a wedding-services contract on the footing that the pandemic was force majeure making performance impossible, citing the Supreme Court decision, the maxim “**harm is to be removed**” and the hadith “**there should be neither harming nor reciprocating harm**”; another Riyadh circuit refused a SAR 7 million penalty under a hotel operating agreement because the pandemic caused the delay; and Riyadh, Madinah and Dammam circuits applied the same principles to a consultancy contract, an Umrah bus lease and a damages period respectively.¹⁴³ And in 2023 a Riyadh circuit gave effect to an express force majeure clause in a logistics contract listing “**acts of war ... governmental actions**”, applying it to an executive attachment of the warehouse.¹⁴⁴ In June 2026 a Madinah circuit recorded a subcontractor pleading the 2026 raw-material price spike as an “**emergency circumstance**” under the Code, though it decided only a procedural application.¹⁴⁵
69. Two conclusions follow:
- (a) First, Saudi courts are consistent – they reason in Sharia terms even under the Code: the maxims in Article 720 are not window dressing but core concepts underlying that reasoning;
 - (b) Second, the COVID template (impossibility ends the affected part; unusual loss leads to price increase, quantity reduction or suspension; penalties fall away where the event caused the delay) is the closest thing to a Saudi judicial precedent for how relief will be shaped in a supply contract disrupted by the

142 Supreme Court General Assembly Decision No. 45/M dated 8/5/1442H (Arabic full text as republished by Manie Law), paras رابعاً (ب), أولاً, ثانياً; English of the principles per CMS (15 March 2021), DLA Piper (May 2021) and Pinsent Masons (15 March 2021); the translation of para رابعاً (2) in the text is mine. Sources folder: 04-Saudi/17, 04-Saudi/14, 04-Saudi/13, 04-Saudi/16. <https://manielaw-sa.com/1442-05-08-موتاريخ-45-قرار-رقم-45>

143 Commercial Court Riyadh, judgment 433737167 of 8/12/1443H (7 July 2022); Riyadh 4430161433 of 23/3/1444H (19 October 2022), affirmed 19/1/1445H; Riyadh 4430688089 of 28/8/1444H (20 March 2023); Madinah 4430513368 of 7/4/1444H (1 November 2022), affirmed; Dammam 4430347184 of 11/5/1444H (5 December 2022), all from the MoJ Legal Portal (party names anonymised by the portal in five of the six files saved; the Dammam judgment is not). Sources folder: 04-Saudi/57 to 04-Saudi/61. <https://laws.moj.gov.sa/ar/JudicialDecisionsList/0/>

144 Commercial Court Riyadh, judgment 4530165162 of 29/2/1445H (2023), cl 11 of the contract. Sources folder: 04-Saudi/62. <https://laws.moj.gov.sa/ar/JudicialDecisionsList/0/>

145 Commercial Court Madinah, judgment 4830029013 of 9/1/1448H (24 June 2026) (status order only; no ruling on the point). Sources folder: 04-Saudi/63. <https://laws.moj.gov.sa/ar/JudicialDecisionsList/0/>

war. The important change since 2020 is Article 174: the allocation of force majeure risk is now expressly a matter for agreement, whereas the Supreme Court's COVID principles overrode contractual allocation. The Explanation narrows that change. A clause putting the risk on the debtor shifts the consequences but does not keep alive an obligation that has become impossible, and a doubtful clause is read for the debtor (paragraph 65(c)). And the Explanation's account of the court's hardship powers (suspension, a higher price, a smaller quantity) is very close to the COVID template, which suggests that the template has survived codification.

Mapping the crisis onto Saudi law

70. Is war force majeure under Saudi law? Not automatically. There appear to be Board of Grievances decisions that treated the Gulf War and the Lebanese civil war as force majeure exempting contractors from delay penalties, one of them notwithstanding the authority's argument that the war was known and foreseeable when the contract was signed; but the case numbers are not given and I have not seen them.¹⁴⁶ Under the Code the question is whether performance is impossible or merely onerous:
- (a) A seller obliged to deliver FOB Ras Tanura while the Strait is closed to its buyer's vessels faces objective impossibility of that delivery. On the Explanation's reading, Article 110(2) does not suspend the affected liftings: it extinguishes them, together with the price for them, and the buyer may apply to the court to end the rest of the contract if the impossible part is not insignificant. The buyer gets no compensation for the lost liftings. The pipeline shutdown of 11 September had the same effect on Yanbu liftings that could not be made while it lasted. For a term contract that matters: on this reading a September or October cargo that was impossible is gone, not deferred, and the seller cannot later insist on delivering it at the old price. The Ministry of Energy's own statement that the April strikes had **"depleted a significant portion of**

¹⁴⁶ Pinsent Masons (Alsugari), 11 March 2026 (secondary; no citations); Al Tamimi (El Haggan and Anani), "Navigating the Concept of Exceptional Circumstances in Saudi Construction Contracts", September 2025, reporting Administrative Court Cases 1951/1406H and 2375/1425H (secondary; not opened). Sources folder: 04-Saudi/46, 04-Saudi/44. <https://www.pinsentmasons.com/out-law/analysis/middle-east-conflict-force-majeure-saudi-contracts>

operational and emergency inventories” is the kind of evidence a court would want.¹⁴⁷

- (b) A seller who can still export via Yanbu at greater cost, or a buyer whose freight and premium have multiplied, is in Article 97: invite renegotiation promptly, keep performing, then ask the court to adjust the obligation. Two points from the Explanation will matter in these claims. A supplier which waited months before inviting negotiation will meet the argument that its own delay shows there was no exceptional circumstance. And a Saudi court is not limited to trimming the supplier’s obligation: it can raise the buyer’s price, and the buyer may then choose between paying and ending the contract. I think most tribunals applying Saudi law will now follow the Explanation on both points. Against the supplier, the Explanation says that the maxim **“hardship begets facility”** gives no relief for hardship inherent in the obligation itself, and that the normal part of any price rise stays with the supplier.¹⁴⁸ Saudi practitioners are advising on exactly that line: port closures, sanctions prohibitions and airspace closures as force majeure; repricing of war-risk insurance, rerouting and cost spikes as hardship.¹⁴⁹
- (c) Where the contract has an express clause, Article 174 means the clause governs, read narrowly where it puts the risk on the debtor; Article 110 remains as a backstop for true impossibility the clause does not reach; and Article 97 cannot be excluded.

- 71. Aramco’s cancelled September cargoes. Aramco’s crude oil general terms are not published; the only public Aramco document describing its sales contracts is its 2019 bond prospectus, which records that they **“generally have a term of one year and are automatically renewed if not terminated”** and are priced by formula **“in the relevant**

147 Reuters, 9 April 2026 (quoting the Ministry statement verbatim); Saudi Press Agency, “Official Source at Ministry of Energy”, 9 April 2026. Sources folder: 04-Saudi/22, 04-Saudi/52. <https://spa.gov.sa/en/N2556681>

148 Ministry of Justice Research Centre, شرح نظام المعاملات المدنية (Explanation of the Civil Transactions Law, 1st ed, 28 September 2026), Vol 1 pp 288–294 (art 97); Vol 4 about p 265 (art 720, rule 21). Sources folder: 12-Update/95, 12-Update/98. <https://www.al-madina.com/ampArticle/1007123>

149 DWF, “Force majeure, hardship and contractual relief in the GCC”, 6 March 2026; Khoshaim & Associates, “Regional Conflict: key legal consequences for businesses in Saudi Arabia”, 2026; Norton Rose Fulbright, 2026 (all secondary). Sources folder: 04-Saudi/49, 04-Saudi/48, 04-Saudi/47. <https://dwfgroup.com/en/news-and-insights/insights/2026/3/force-majeure-hardship-and-contractual-relief-in-the-gcc-during-times-of-crisis>

geographical region in which the oil will be delivered”.¹⁵⁰ Trade-press reports describe Aramco term cargoes as destination-restricted and resaleable only with permission.¹⁵¹ Nothing can be said about the clause. What can be said is this: if the contracts are Saudi-law (the prospectus does not say), the pipeline shutdown is a physical impediment to Yanbu liftings which engages Article 110(2) and exonerates Aramco from delay damages under Articles 125 and 171, unless the terms allocate the risk differently under Article 174; the buyers’ answer is that Ras Tanura loadings through Hormuz remain physically possible at single-digit daily transits, so the impossibility is of the route, not of delivery. The Explanation suggests that the burden of proving both the impossibility and the external cause is on Aramco, and the event must be the sole cause. The Supreme Court’s COVID principles for supply contracts (quantity reduction, temporary suspension, partial termination for absolute unavailability) are the template a Saudi court would use to shape relief.

Arbitration and enforcement

72. Saudi-seated tribunals apply the chosen law **“taking into account the non-violation of the provisions of the Islamic Sharia and public order in the Kingdom”**; an award may be annulled or refused enforcement on that ground, with severance of the offending part.¹⁵² The SCCA’s country report records that the Courts of Appeal rejected 174 of 194 annulment applications between January 2023 and June 2025 and that annulment on Sharia or public-policy grounds accounted for 2.3 per cent of applications across the wider dataset.¹⁵³ The practical public-policy risk is interest, which Saudi courts treat as *riba* and *sever*, not the *force majeure* or hardship analysis.¹⁵⁴ It is perhaps sensible to note that because Article 97 is mandatory, and the Explanation now says in terms that

¹⁵⁰ Saudi Arabian Oil Company, Base Prospectus, 1 April 2019 (Global Medium Term Note Programme), p 40 (“Upstream Liquids Sales”) and p 119 (Concession force majeure and national-emergency provisions). Sources folder: 09-Gapfill/09. https://www.rns-pdf.londonstockexchange.com/rns/6727U_1-2019-4-1.pdf

¹⁵¹ S&P Global Platts, “Rare resale of Arab Light crude seen in China”, 9 June 2020 (secondary). Sources folder: 04-Saudi/26. <https://www.spglobal.com/commodity-insights/en/news-research/latest-news/crude-oil/060920-rare-resale-of-arab-light-crude-seen-in-china-amid-deep-discounts-for-may-deliveries>

¹⁵² Arbitration Law, Royal Decree M/34 of 24/5/1433H (2012), arts 2, 25(1), 38(1), 50(2), 55(2)(B) (English translation). Sources folder: 04-Saudi/27. <https://www.acerislaw.com/wp-content/uploads/2016/08/Saudi-Arbitration-law-reduced.pdf>

¹⁵³ HSF Kramer, “Arbitration in Saudi Arabia: unpacking the SCCA’s landmark country report”, July 2026 (secondary). Sources folder: 04-Saudi/28. <https://www.hsfkramer.com/notes/arbitration/2026-07/arbitration-in-saudi-arabia-unpacking-the-sccas-landmark-country-report>

¹⁵⁴ Pinsent Masons, “Saudi Civil Code: need to know for construction projects”, 12 January 2024; Lexis Middle East / Dentons practice note on enforcement, 1 February 2023 (secondary). Sources folder: 04-Saudi/07, 04-Saudi/55. <https://www.pinsentmasons.com/out-law/guides/saudi-arabia-civil-code-construction-projects>

the whole article is public order, an award enforcing a clause which purported to exclude hardship relief could be attacked under Articles 50(2) and 55(2)(B). The point is untested. The Explanation does not say whether the “**court**” in Articles 97 and 471(3) includes an arbitral tribunal; I think a tribunal will treat itself as having the court’s powers, but the point is open.

THE OTHER GCC STATES: QATAR, KUWAIT, BAHRAIN AND OMAN

One common model

73. Qatar, Kuwait, Bahrain and Oman each have a civil code in the Egyptian tradition, and each contains the same three rules as the UAE and Saudi codes: impossibility, exoneration for an extraneous cause, and hardship. The differences are in the detail. They matter to anyone whose contract is governed by one of those laws, and to anyone whose counterparty is a state entity there: Kuwait Petroleum Corporation is reported to have declared force majeure on 8 March, Bapco Energies declared it on 9 March, and QatarEnergy's declarations are the most significant of the crisis.¹⁵⁵
74. Two cautions apply to everything in this section. First, the Arabic text controls in each state, and the English versions in circulation are unofficial; where I quote an English translation I say whose it is, and where I give my own translation of the Arabic I say so. Second, I have not read any judgment of the courts of these four states. The decisions mentioned below rest on law-firm accounts, and should be checked before they are relied on.

Qatar and the Qatar Financial Centre

75. The Qatari hardship rule is Article 171(2) of the Civil Code (Law No. 22 of 2004). In the ICNL-hosted translation: **“Where, however, as a result of exceptional and unforeseeable events, the fulfilment of the contractual obligation, though not impossible, becomes excessively onerous in such a way as to threaten the obligor with exorbitant loss, the judge may, according to the circumstances and after taking into consideration the interests of both parties, reduce the excessive obligation to a reasonable level. Any agreement to the contrary shall be void.”**¹⁵⁶
- The translation omits one word which matters: the Arabic requires the events to be **“general”**, as the UAE and Saudi articles do.¹⁵⁷ The remedy is reduction only. There is

¹⁵⁵ Al Tamimi (Khaled Youssef), “Force Majeure and Exceptional Circumstances under Kuwaiti Law: What You Need to Know”, 9 March 2026 (KPC declaration of 8 March 2026, secondary); Bapco Energies press release, 9 March 2026 (Sources folder 01-Facts/11); Al Jazeera, 24 March 2026 (QatarEnergy). Sources folder: 11-GCC/07, 01-Facts/11, 01-Facts/10. <https://www.tamimi.com/news/force-majeure-and-exceptional-circumstances-under-kuwaiti-law-what-you-need-to-know/>

¹⁵⁶ Qatar Civil Code, Law No. 22 of 2004, art 171(2): Arabic text from the Supreme Judiciary Council legal encyclopedia; English per the translation hosted by ICNL (status not stated). Sources folder: 11-GCC/08, 11-GCC/01. https://www.icnl.org/wp-content/uploads/Qatar_29_Qatar_CivilCode_2004.pdf

¹⁵⁷ The Arabic reads “حوادث استثنائية عامة” (general exceptional events). Sources folder: 11-GCC/08. https://encycloped.sjc.gov.qa/lib/Images/court_civil/laws/22-2004/1.htm

no power to cancel the contract (contrast UAE Article 224) and no duty to negotiate first (contrast Saudi Article 97).

76. The rest of the Qatari scheme follows the pattern.

- (a) **Impossibility:** Article 188. In a bilateral contract, where performance becomes impossible for a cause beyond the obligor's control, the obligation and the correlative obligations are extinguished and the contract is rescinded by operation of law; where the impossibility is partial, the obligee may keep the contract for the part still possible or demand termination.¹⁵⁸
- (b) **Exoneration:** Article 256 relieves an obligor whose non-performance or delay “was due to a cause beyond his control”; and Article 258 provides that “**The parties may agree that the obligor shall bear liability for force majeure or unforeseen incident**”. Article 258 is the Qatari counterpart of Saudi Article 174.¹⁵⁹
- (c) **Construction.** Article 700, as quoted by Clyde & Co, provides: “**Without prejudice to the provisions of paragraph (2) of article 171, increases in the prices of raw materials, workers' salaries and other costs shall not influence the scope of contractual obligations.**”¹⁶⁰ A Qatari contractor therefore has only the general hardship rule. It has nothing equivalent to UAE Article 829(3) or Saudi Article 471(3).
- (d) **Arbitration.** The court annuls an award of its own motion if it conflicts with the public order of the State.¹⁶¹

77. A contract governed by the law of the Qatar Financial Centre is in a different position, and the parallel with the DIFC is close. The QFC Contract Regulations 2005 are modelled on the UNIDROIT Principles. As described in a chapter of Contract Law of Qatar (Cambridge University Press), Article 94 defines force majeure as circumstances

¹⁵⁸ Qatar Civil Code, art 188(1)–(2) (Arabic, SJC encyclopedia; English per ICNL). Sources folder: 11-GCC/08, 11-GCC/01. https://www.icnl.org/wp-content/uploads/Qatar_29_Qatar_CivilCode_2004.pdf

¹⁵⁹ Qatar Civil Code, arts 256, 258 (English per ICNL); and see art 204 (tort: no liability for damage from a cause beyond control “unless there is a provision to the contrary”). Sources folder: 11-GCC/01. https://www.icnl.org/wp-content/uploads/Qatar_29_Qatar_CivilCode_2004.pdf

¹⁶⁰ Qatar Civil Code, art 700, as quoted by Clyde & Co, “Increased costs under a Qatari construction contract”, 23 May 2022 (secondary; Arabic not seen). Sources folder: 11-GCC/09. <https://www.clydeco.com/en/insights/2022/05/increased-costs-under-qatari-construction-contract>

¹⁶¹ Law No. 2 of 2017 on Arbitration in Civil and Commercial Matters, art 33(3) (Arabic, QICDRC-hosted text). Sources folder: 11-GCC/13. <https://www.qicdrc.gov.qa/sites/default/files/regulation-pdf/2022-06/Law%20No%202%20of%2017%20-%20AR.pdf>

“not within the reasonable control of the party concerned and which that party could not be reasonably expected to have taken into account at the time of conclusion of the contract, including without limitation ... governmental action, civil commotion, riot or war”; while it lasts “neither party is in breach of its contractual obligations nor is it liable for its non-performance”; the affected party must give notice and “use all reasonable endeavours to minimise the effect”; the other party’s payment obligations are suspended; and if it continues “for a continuous period in excess of six months” the non-affected party may terminate. Article 85 provides that performance which becomes onerous does not free the party from performing, and the chapter reports no hardship provision. Article 2(1) disapplies State law on matters the Regulations deal with, so Article 171(2) of the Civil Code is unlikely to reach a QFC-law contract.¹⁶² I have not been able to open the Regulations themselves, and the article numbers should be checked before they are cited.

Kuwait

78. Kuwait’s hardship rule, Article 198 of the Civil Code (Decree-Law No. 67 of 1980), is the most explicit of the four about the remedy available to a party whose costs have risen. There is no official English translation. In my translation of the Arabic: if, after the contract is made and before it is fully performed, general exceptional circumstances arise which could not have been foreseen when it was made, and as a result performance, though not impossible, becomes oppressive for the debtor so as to threaten it with grave loss, the judge may, after balancing the interests of the parties, reduce the oppressive obligation to a reasonable level “**by narrowing its scope or increasing its counter-performance**”; and any agreement to the contrary is void.¹⁶³ The words “**increasing its counter-performance**” give the court an express power to raise the price payable to a supplier or contractor. None of the UAE, Saudi, Qatari or

¹⁶² QFC Contract Regulations 2005, arts 2(1), 85, 94, as described in “The Contract Regulations of the Qatar Financial Centre”, ch 13 of Contract Law of Qatar (Cambridge University Press), pp 204–220 (secondary; the Regulations were not opened, and the article numbers should be checked against the current (2024) version). Sources folder: 11-GCC/05. https://www.cambridge.org/core/services/aop-cambridge-core/content/view/72DD1BD00D3CEABD774F44308DC7BECA/9781316511510c13_204-220.pdf/the-contract-regulations-of-the-qatar-financial-centre.pdf

¹⁶³ Kuwait Civil Code, Decree-Law No. 67 of 1980, art 198: “بأن يضيق من مداه أو يزيد في مقابله” (Arabic text from wikikuwait and Al-Jarida, 9 August 2020; the two sources differ by one word in the opening phrase, and neither is an official gazette text). Sources folder: 11-GCC/06. <https://www.aljarida.com/articles/1596902066233184700>

Omani general hardship articles says that in terms, though the Saudi Explanation now reads Article 97 as allowing it (paragraph 65(d)).

79. Impossibility is Article 215, in the standard form: automatic dissolution, with the creditor's option to keep the possible part or terminate where the impossibility is partial.¹⁶⁴ The Court of Cassation is reported to have held that temporary impossibility suspends the obligation rather than extinguishing it, and that an extraneous cause must be both unforeseeable and irresistible.¹⁶⁵ A Kuwaiti firm describes Article 295 as permitting the parties to put the risk of force majeure on the obligor; I have not seen the text. Two features of Kuwaiti procedure matter. Kuwait has not adopted the Model Law. And where the court annuls an award it proceeds to decide the dispute itself.¹⁶⁶ A party that attacks a Kuwaiti award for ignoring Article 198 may therefore find the court deciding the hardship question for itself.

Bahrain

80. Bahrain's Article 130 (Civil Code, Decree-Law No. 19 of 2001) follows the Kuwaiti text almost word for word. In the English published on the Bahrain Economic Development Board's laws portal: **"When, however, as a result of exceptional and unpredictable events of a general character, the performance of the contractual obligation, without becoming impossible, becomes excessively onerous in such way as to threaten the debtor with exorbitant loss, the judge may, according to the circumstances, and after taking into consideration the interests of both parties, reduce to reasonable limits by lessening its extent or increasing its consideration,**

¹⁶⁴ Kuwait Civil Code, arts 215 and 437 (Arabic, as reproduced by mohamah.net, 2 November 2018); and art 233 (no liability for damage from an extraneous cause "unless there is a provision to the contrary"). Sources folder: 11-GCC/06. <https://www.mohamah.net/law/%D8%AA%D8%B9%D8%B1%D9%91%D9%81-%D8%B9%D9%84%D9%89-%D8%A7%D9%84%D8%B3%D8%A8%D8%A8-%D8%A7%D9%84%D8%A3%D8%AC%D9%86%D8%A8%D9%8A-%D9%88%D8%AA%D8%B7%D8%A8%D9%8A%D9%82%D8%A7%D8%AA%D9%87-%D9%81%D9%8A-%D8%A7/>

¹⁶⁵ Kuwait Court of Cassation 198/2001 (18 May 2002) and 103/2007 (9 October 2008), as reported by mohamah.net (secondary only; judgments not seen). Sources folder: 11-GCC/06. <https://www.mohamah.net/law/%D8%AA%D8%B9%D8%B1%D9%91%D9%81-%D8%B9%D9%84%D9%89-%D8%A7%D9%84%D8%B3%D8%A8%D8%A8-%D8%A7%D9%84%D8%A3%D8%AC%D9%86%D8%A8%D9%8A-%D9%88%D8%AA%D8%B7%D8%A8%D9%8A%D9%82%D8%A7%D8%AA%D9%87-%D9%81%D9%8A-%D8%A7/>

¹⁶⁶ Code of Civil and Commercial Procedure, Decree-Law No. 38 of 1980, art 187, as quoted in GAR, Middle Eastern and African Arbitration Review 2026 (secondary; the annulment grounds in art 186 not obtained). Sources folder: 11-GCC/13. <https://globalarbitrationreview.com/review/the-middle-eastern-and-african-arbitration-review/2026/article/kuwait-courts-redraw-the-boundaries-of-arbitration-in-landmark-run-of-2024-2025-decisions>

the obligation that has become excessive. Any agreement to the contrary is void.”¹⁶⁷

81. Impossibility is governed by Article 145. Article 218 provides that **“The debtor may by agreement accept liability for unforeseen events and for cases of force majeure or sudden accident”**, and Article 219 permits exemption from contractual liability except for fraud or gross negligence.¹⁶⁸ The Court of Cassation is reported to require an event which **“exceeded what is ordinarily expected to have happened”** and which was unforeseeable to the debtor and also **“to the most alert and insightful of persons”**.¹⁶⁹ That is a high bar for a hardship claim by a party that contracted in 2025 with a closure of Hormuz already threatened. Bahrain has adopted the Model Law, so an award conflicting with **“the public policy of this State”** may be set aside.¹⁷⁰

Oman

82. Oman’s Article 159 (Civil Transactions Law, Royal Decree 29/2013) is a reduce-only hardship rule. In CMS’s translation: **“If general exceptional accidents that were unforeseen at the time of contracting occur and result in that the execution of the contractual obligation, even if not impossible, become burdensome to the debtor and threaten the latter with serious loss, the court may, according to the circumstances and after balancing the interests of both parties, reduce the burdensome obligation to a reasonable limit.”** The Arabic adds that any agreement to the contrary is void.¹⁷¹ Curtis note that the discretion belongs to **“the court (or arbitral tribunal, if arbitration was the specified mode of dispute resolution)”**.¹⁷²

¹⁶⁷ Bahrain Civil Code, Decree-Law No. 19 of 2001, art 130 (English and Arabic, bahrainbusinesslaws.com (Bahrain EDB); the translation’s status is not stated). Sources folder: 11-GCC/10.

<https://bahrainbusinesslaws.com/laws/Civil-Law>

¹⁶⁸ Bahrain Civil Code, arts 145, 146, 165, 216, 218, 219 (English per the EDB portal). Sources folder: 11-GCC/10. <https://bahrainbusinesslaws.com/laws/Civil-Law>

¹⁶⁹ Bahrain Court of Cassation, Challenge No. 206 J.Y. 1995 and Challenge No. 145 J.Y. 2002, as reported by Charles Russell Speechlys, 2026 (secondary only; judgments not seen). Sources folder: 11-GCC/11.

<https://www.charlesrussellspeechlys.com/en/insights/expert-insights/construction-engineering-and-projects/2026/applicability-of-the-doctrine-of-force-majeure-during-unprecedented-times-in-bahrain/>

¹⁷⁰ Law No. 9 of 2015 promulgating the Arbitration Law, art 1 and annexed Model Law art 34(2)(b)(ii). Sources folder: 11-GCC/13. <https://bahrainbusinesslaws.com/laws/Arbitration-Law>

¹⁷¹ Oman Civil Transactions Law, Royal Decree 29/2013, art 159 (Arabic from qanoon.om, giving Official Gazette No. 1012 of 12 May 2013; English per CMS, Force Majeure Guide: Oman, 2020 (unofficial)). Sources folder: 11-GCC/02, 11-GCC/03. <https://qanoon.om/p/2013/rd2013029/>

¹⁷² Curtis, “Conflict in the Middle East: Implications for Construction Contracts in Oman”, 18 March 2026 (secondary). Sources folder: 11-GCC/04. <https://www.curtis.com/our-firm/news/conflict-in-the-middle-east-implications-for-construction-contracts-in-oman>

83. The Omani impossibility article, Article 172, does something the Qatari, Kuwaiti and Bahraini articles leave to the courts (Saudi Article 110(2) is to similar effect). As I read the Arabic, it applies the rule on partial impossibility (the part that has become impossible is extinguished) expressly to temporary impossibility in continuing contracts, and in both cases gives the creditor a right to terminate after notice to the debtor.¹⁷³ For a term supply contract under Omani law, a buyer faced with a months-long suspension appears to have a statutory exit, subject to that check. The exoneration rule in Article 177 yields expressly to **“the agreement”**, which is the Omani route to allocating force majeure risk. An award which **“violates public order in the Sultanate”** is annulled by the court of its own motion.¹⁷⁴

What the four add

84. Three points follow for practice.
- (a) Everywhere in the GCC except the three common-law and UNIDROIT-model centres (the ADGM, the DIFC and the QFC), hardship is mandatory. A clause purporting to exclude it is void to that extent. The drafting response is not an exclusion but a price-review or change-in-cost mechanism that leaves a court less to do.
 - (b) The remedy differs. The Qatari and Omani articles speak only of reducing the oppressive obligation. The Kuwaiti and Bahraini articles say expressly that the court may do so by increasing the counter-performance. The UAE article now adds cancellation, and the Saudi article requires negotiation first; on the Explanation the Saudi court may also suspend performance or increase the price. I have found no authority on whether a Qatari or Omani court would read its article as extending to an increase in price.
 - (c) As in the UAE, a Qatari or Omani court raises public order of its own motion, so an award seated there which ignores the mandatory hardship article is exposed to annulment even if neither party takes the point. As with the UAE (paragraph 63), I have found no decision either way.

¹⁷³ Oman Civil Transactions Law, art 172(1)–(2) (Arabic, qanoon.om; the text obtained is incomplete between the rule on temporary impossibility and the creditor’s right to terminate, and should be checked against the Official Gazette); and see art 177 (no liability for damage from an extraneous cause “unless the law or the agreement provides otherwise”). Sources folder: 11-GCC/02. <https://qanoon.om/p/2013/rd2013029/>

¹⁷⁴ Arbitration Law, Royal Decree 47/97, art 53(2) (Curtis translation, 2013). Sources folder: 11-GCC/13. <https://omanlawblog.curtis.com/2013/10/annulment-of-arbitration-award.html>

85. The table below sets out the provisions side by side, with the UAE and Saudi Arabia for comparison.

State	Hardship (mandatory in each)	Impossibility	Obligor may agree to bear FM risk	Construction price rule	Award set aside for public order
UAE (FDL 25/2025)	Art 224: reduce or cancel	Art 236	Art 249 (exoneration subject to agreement)	Art 829(3): rebalance or cancel; may be excluded	Law 6/2018 art 53(2)(b)
Saudi Arabia (CTL 2023)	Art 97: negotiate first, keep performing; court may reduce, suspend or increase the counter-performance (Explanation)	Art 110 (temporary impossibility extinguishes the affected part: Explanation)	Art 174 (read narrowly: Explanation)	Art 471(3): rebalance or terminate; public order (Explanation)	Arbitration Law 2012 art 50(2)
Qatar (Law 22/2004)	Art 171(2): reduce	Art 188	Art 258	Art 700: cost rises do not affect obligations, subject to art 171(2) (reported)	Law 2/2017 art 33(3), of the court's own motion
QFC (Contract Regulations 2005)	None; onerous performance no excuse (art 85, reported)	Art 94: excuse; termination after six months (reported)	Freedom of contract	None	QFC regime
Kuwait (DL 67/1980)	Art 198: reduce, by narrowing the obligation or increasing the counter-performance	Art 215	Art 295 (reported; text not seen)	None found	Civil Procedure Code; court decides the merits after annulment (art 187)
Bahrain (DL 19/2001)	Art 130: as Kuwait	Art 145	Art 218	None found	Law 9/2015 (Model Law) art 34(2)(b)(ii)
Oman (RD 29/2013)	Art 159: reduce	Art 172, including temporary impossibility in continuing contracts; creditor may terminate on notice	Art 177 (subject to "the agreement")	None found	RD 47/97 art 53(2), of the court's own motion

SINGAPORE LAW

86. Singapore is very similar to the law of England but with one difference of emphasis: its Court of Appeal has a coherent modern jurisprudence on force majeure clauses, generated by a single event which is the closest analogue to Hormuz in the modern common-law cases, the Indonesian ban on sand exports of January 2007, which cut off the only practicable source of a commodity on which an entire industry depended.
87. **The principles: “What is referred to as force majeure in our law ... is really no more than a convenient way of referring to contractual terms that the parties have agreed upon to deal with situations that might arise, over which the parties have little or no control”; “the precise construction of the clause is paramount”.**¹⁷⁵ The party relying on the clause bears the burden, must plead it, and **“must be strictly held to its contractual obligations and should only be released from them where supervening events make it impossible, and not merely onerous, to fulfil them”**.¹⁷⁶ A market shortage that can be met by buying at a higher price is not **“beyond the supplier’s control”**: **“The Contract had merely become more onerous for the Defendant to perform”**; and the court noted that a supplier which **“consciously opted to supply concrete to other purchasers who were willing to pay higher rates”** would be doing something **“unacceptable”**.¹⁷⁷
88. **The vocabulary: Holcim v Precise Development** is the best authority in any of the jurisdictions covered on the operative verb. **“Disrupt”**, like **“hinder”**, **“does not mean ‘prevent’**”, and **“an increase in costs alone will not constitute a ‘disruption’**”; but whether a set of circumstances is a disruption **“ought to be informed by considerations of commercial practicability”**, and the sand ban, which left only main contractors with access to the government stockpile, was one, so that **“a case of frustration would have been made out had it been pleaded”**.¹⁷⁸ The court adopted

175 Magenta Resources (S) Pte Ltd v China Resources (S) Pte Ltd [1996] SGHC 122 at [64] (S Rajendran J), approved in RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd [2007] SGCA 39 at [57]; RDC Concrete at [53]–[54] (Andrew Phang JA). Sources folder: 05-Singapore/05, 05-Singapore/01.

https://www.elitigation.sg/gd/s/2007_SGCA_39

176 RDC Concrete at [51], [64]–[65], [80]. Sources folder: 05-Singapore/01.

https://www.elitigation.sg/gd/s/2007_SGCA_39

177 RDC Concrete at [70], [74]. Sources folder: 05-Singapore/01.

https://www.elitigation.sg/gd/s/2007_SGCA_39

178 Holcim (Singapore) Pte Ltd v Precise Development Pte Ltd [2011] SGCA 1 at [53]–[54], [56], [62]–[64]. Sources folder: 05-Singapore/02. https://www.elitigation.sg/gd/s/2011_SGCA_1

Earl Loreburn's dictum in Tennants that a merchant who can deliver only by dislocating his business and breaking his other contracts is hindered.¹⁷⁹ It left open **"what the legal position would be if the increase in price is astronomical"**.¹⁸⁰

89. **Reasonable steps.** Holcim rejects a free-standing rule but derives the duty from the words **"beyond the control"**: **"at least where the clause in question relates to events that must be beyond the control of one or more of the parties, then the party or parties concerned ought to take reasonable steps to avoid the event or events stipulated in the clause"**; the duty **"is also not an absolute duty as only reasonable steps need to be taken"**; and where the counterparty's own refusal to cooperate is the substantial reason the clause is triggered, **"it does not lie in the Respondent's mouth to insist that the Appellant is unable to rely upon cl 3."**¹⁸¹ That last point applies to a buyer who withholds cooperation needed for contractual performance (access, approvals, nominations) and then complains of non-performance. It does not oblige a buyer to accept a substitute cargo: on that, MUR Shipping governs in England, and there is no Singapore authority the other way.
90. **Frustration.** Alliance Concrete adopts Davis Contractors and The Sea Angel, holds that **"absolute or literal impossibility is [not] required"**, and, most usefully, holds that a contract can be frustrated by the failure of a source which both parties contemplated even though it is not specified in the contract: **"the unavailability of a particular source from which the subject-matter of the contract is derived may operate to frustrate the contract where both parties contemplated or could reasonably have contemplated that unspecified source"**.¹⁸² The elements map on to a term contract for Gulf crude of a specified grade with some precision: the source was the only practicable one; the buyer's downstream requirements were tied to it; switching would cause delay incompatible with the delivery obligations; and the event was unforeseeable at contracting. The court fixed the date of frustration at the date the ban became complete, not the announcement or the date stocks ran out, and put the

179 Holcim at [57]–[58]. Sources folder: 05-Singapore/02. https://www.elitigation.sg/gd/s/2011_SGCA_1

180 Holcim at [53]; Alliance Concrete Singapore Pte Ltd v Sato Kogyo (S) Pte Ltd [2014] SGCA 35 at [39]. Sources folder: 05-Singapore/02, 05-Singapore/03. https://www.elitigation.sg/gd/s/2014_SGCA_35

181 Holcim at [66], [69]–[71], [100]. Sources folder: 05-Singapore/02. https://www.elitigation.sg/gd/s/2011_SGCA_1

182 Alliance Concrete at [33], [37]–[39], [50]–[55], [81], [100]. Sources folder: 05-Singapore/03. https://www.elitigation.sg/gd/s/2014_SGCA_35

burden of proving self-induced frustration on the party alleging it.¹⁸³ Against that, **Glahe** holds that a 15 per cent duty and inflation “**only made the performance of the contract more expensive and costly**” and that changes forming part of a “**continuum**” already under way at contracting do not frustrate, which is the answer for contracts made after the Iranian parliament’s reported vote of June 2025.¹⁸⁴

91. **Commodity sales. Magenta Resources** dealt with a C&F urea sale from the collapsing Soviet Union. The court held that a widely drawn definition extended to situations “**akin to war**”; that a definition section confers no benefit unless the operative clause is satisfied and the seller proves it “**was unable to ship the cargo ... because of the force majeure event**”; that the degree of tracing required depends on the event (“**if ... a party sought to invoke force majeure ... because of (say) a fire, it would clearly not be sufficient ... to prove that there was a fire at a factory in the place where the cargo was to be obtained**”); that a seller who had already arranged supply up the string was not obliged to buy from an alternative source; and, on appeal, that the certificate requirement was to be read “**from a practical point of view**” and that the buyer’s peremptory call on the performance bond was a repudiation.¹⁸⁵ The “**degree of tracing**” point is the one for Aramco’s cancelled cargoes: a drone strike on one pipeline is a discrete event, and a seller relying on it would be expected to show that the specific cargo was to be supplied through that pipeline and that no Yanbu-side supply existed.
92. **Statute.** The Frustrated Contracts Act 1959 tracks the English 1943 Act, including the priority of contractual provisions and the exclusion of voyage charterparties, contracts for the carriage of goods by sea and insurance.¹⁸⁶ No Singapore decision yet applies a force majeure clause to the 2026 crisis or to the Red Sea diversions; Singapore firms record that force majeure has been invoked since 28 February 2026 under BP and Shell general terms and the GAFTA, FOSFA and RSA forms, and that the Singapore construction forms give time but not money for war and embargo events, with notice as a condition precedent.¹⁸⁷

183 **Alliance Concrete** at [62], [83], [98]–[102]. Sources folder: 05-Singapore/03. https://www.elitigation.sg/gd/s/2014_SGCA_35

184 Oon & Bazul, 30 March 2026 (secondary), Sources folder: 05-Singapore/11; **Glahe International Expo AG v ACS Computer Pte Ltd** [1999] SGCA 23; [1999] 1 SLR(R) 945 (PDF paras 24–25, 34–35), Sources folder: 05-Singapore/04. https://www.elitigation.sg/gd/gd/1999_SGCA_23/pdf

185 **Magenta Resources** [1996] SGHC 122 at [68]–[69], [103]–[107]; **China Resources (S) Pte Ltd v Magenta Resources (S) Pte Ltd** [1997] SGCA 2 at [61]–[63]. Sources folder: 05-Singapore/05, 05-Singapore/06. https://www.elitigation.sg/gd/gd/1997_SGCA_2/pdf

AUSTRALIAN LAW

93. Australia is again similar to England. There is no doctrine of force majeure; the clause is construed by its words; impracticability is not prevention. Kiefel J in **Hyundai v Dartbrook**, a coal voyage charter in which the charterer's buyer refused the cargo: **"There is no doctrine in English law which corresponds with the doctrine of force majeure in French law"**; the recognised characteristics of a force majeure event are that it is **"irresistible"**, **"unforeseeable"**, **"external to the person claiming discharge"** and **"has made performance impossible and not merely more onerous or difficult"**; and **"the requirement that Dartbrook be prevented from performance, in practical terms, implies causation between the event and the inability to perform. ... They were not prevented from performance."**¹⁸⁸ Croft J's summary in **World Touring v Australian Grand Prix Corporation** is to the same effect and adds that force majeure clauses, **"including any mechanical elements, are often construed strictly"**.¹⁸⁹
94. Two Queensland decisions are directly in point for supply chains. In **Yara Nipro v Interfert** the seller of Russian or Ukrainian urea relied on a clause covering circumstances **"beyond that party's reasonable control, including ... non-supply to Interfert of Product"**; the Court of Appeal held that the clause was not engaged because the seller had not proved it could not source the product elsewhere: **"Had it been intended in that way to transfer from Interfert to Nipro the risk of loss of the contract on account of non-supply by one particular supplier chosen by Interfert, one would expect to see that expressed in clause 7"**; and **"if the delay or failure were avoidable by adoption of an available alternative it would be unreasonable to regard the delay or failure as having been caused by the**

186 Frustrated Contracts Act 1959 (2020 Rev Ed) (Singapore), ss 2(1)–(4), 3(3), 3(5); Sale of Goods Act 1979 (2020 Rev Ed) (Singapore), ss 6–7. Sources folder: 09-Gapfill/06, 09-Gapfill/07.
<https://sso.agc.gov.sg/Act/FCA1959>

187 Oon & Bazul, "Strait of Hormuz Crisis: Managing Force Majeure and Supply Chain Risks", 30 March 2026; Rajah & Tann, "The Hormuz Effect", 13 April 2026 (both secondary; the PSSCOC, SIA and REDAS forms were not opened). Sources folder: 05-Singapore/11, 05-Singapore/10. <https://oonbazul.com/strait-of-hormuz-crisis-managing-force-majeure-and-supply-chain-risks/>

188 **Hyundai Merchant Marine Co Ltd v Dartbrook Coal (Sales) Pty Ltd** [2006] FCA 1324 at [60]–[62] (Kiefel J). Sources folder: 06-Australia/06.
<https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2006/1324.html>

189 **World Touring Melbourne Ltd v Australian Grand Prix Corporation** [2024] VSC 521 at [204]–[206], [215]–[217] (Croft J). Sources folder: 06-Australia/15.
<https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2024/521.html>

particular impact.”¹⁹⁰ In AGL Sales v Dawson Sales, a coal-seam gas supply agreement, the court held that listed events must still satisfy the general chapeau (“**not within the control of a Party, and which by the exercise of Good Engineering and Operating Practice ... that Party is not able to prevent or ... overcome**”), and that a curtailment notice not given “**without delay**” was of no legal effect.¹⁹¹

95. **Sanctions: Alumina and Bauxite Co v Queensland Alumina** is the leading Australian authority on sanctions as force majeure. O’Byrne J held that supervening illegality is a common-law defence; that the Russia sanctions were “**acts or restraints of governmental authority**” within the tolling contracts’ definition; that a limb covering sanctions “**which results in third parties refusing to provide services**” was engaged by the refusal itself regardless of the sanctions’ true legal effect (“**The definition refers to the result of the sanctions, not the legal effect**”); and, applying Shepherd v Felt & Textiles, that a party may rely on a force majeure ground not stated in its notice. The Full Court dismissed the appeal.¹⁹² The “**result, not legal effect**” holding is the one that matters for knock-on declarations down a Gulf supply chain: everything depends on whether the trader’s own clause is drafted by reference to the supplier’s refusal.
96. **Electricity Generation Corporation v Woodside Energy** is the High Court’s answer to the question what a gas seller owes under a reasonable-endavours supply obligation when a third-party outage sends the market price above the contract price. After the Varanus Island explosion of 3 June 2008 the sellers, who had capacity, declined to supply supplemental gas at the contract price. The clause provided that in determining whether they were “**able**” to supply, the sellers “**may take into account all relevant commercial, economic and operational matters**”. The majority held that a reasonable-endavours obligation “**is not an absolute or unconditional obligation**”, that “**an obligor’s freedom to act in its own business interests ... is not necessarily foreclosed**”, and that the sellers “**are not obliged to forgo or sacrifice their business**

190 Yara Nipro Pty Ltd v Interfert Australia Pty Ltd [2010] QCA 128 at [26], [29], [31]–[32], [37] (Fraser JA), adopting Lord Mustill’s three-limb test in Hoecheong Products Co Ltd v Cargill Hong Kong Ltd [1995] 1 WLR 404 at 409. Sources folder: 06-Australia/01. <https://archive.sclqld.org.au/qjudgment/2010/QCA10-128.pdf>

191 AGL Sales (Qld) Pty Ltd v Dawson Sales Pty Ltd [2009] QCA 262 at [7], [36]–[37], [68]–[69], [112]. Sources folder: 06-Australia/11. <https://archive.sclqld.org.au/qjudgment/2009/QCA09-262.pdf>

192 Alumina and Bauxite Company Ltd v Queensland Alumina Ltd [2024] FCA 43 at [357], [360]–[363], [369]–[372] (O’Byrne J); [2024] FCAFC 142 at [19], [178], [224]. Sources folder: 06-Australia/12, 06-Australia/13. <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2024/43.html>

interests” under that clause.¹⁹³ The result depended entirely on the clause’s internal standard, and the sellers had physical capacity: **Woodside** is strong authority for a seller whose clause lets it weigh its own interests and who wishes to divert available molecules to a better market, and no authority at all for a seller physically cut off. Contrast **RDC Concrete** at [74].

97. **Frustration.** The High Court adopted Lord Radcliffe’s test in **Codelfa**.¹⁹⁴ Aickin J’s treatment of the Suez cases is the passage for Hormuz: **“there was no evidence that the buyers attached any importance to the route, i.e. there was no time fixed by which delivery was required to be made and the longer journey round the Cape, though more expensive, would not involve any failure to deliver in accordance with the contract”**; and a shortage of labour or materials is **“a different situation”** from a supervening prohibition.¹⁹⁵ **Scanlan’s New Neon** is the wartime authority: a government prohibition on external lighting did not frustrate neon-sign hire contracts, and **“the ordinary courts have no power to make such adjustments”** of rent that fairness might suggest.¹⁹⁶ In 2023 the High Court declined to redraft a sale contract affected by COVID orders: the vendor’s obligation to carry on the business **“in the usual and ordinary course”** meant lawfully, and a clause **“is not to be redrafted merely because the doctrine of frustration was not engaged”**.¹⁹⁷ A pre-existing state of affairs cannot be a force majeure event **“occurring”** during the term, though later governmental directions can.¹⁹⁸
98. **Statute differs by State.** New South Wales, Victoria and South Australia each have a frustrated-contracts statute; all three exclude voyage charterparties, contracts for the

193 **Electricity Generation Corporation v Woodside Energy Ltd** [2014] HCA 7 at [3]–[8], [13], [41]–[43], [46]–[49] (French CJ, Hayne, Crennan and Kiefel JJ); Gageler J dissenting on construction; fn 42 (force majeure “of no relevance to the facts”). Sources folder: 06-Australia/02.
<https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2014/7.html>

194 **Codelfa Construction Pty Ltd v State Rail Authority of NSW** (1982) 149 CLR 337 at 357 (Mason J), 380 (Aickin J). Sources folder: 06-Australia/03.
<https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1982/24.html>

195 **Codelfa** at 381–382 (Aickin J). Sources folder: 06-Australia/03.
<https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1982/24.html>

196 **Scanlan’s New Neon Ltd v Tooheys Ltd** (1943) 67 CLR 169 (Latham CJ at paras 6–7, 10). Sources folder: 06-Australia/05. <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1943/43.html>

197 **Laundy Hotels (Quarry) Pty Ltd v Dyco Hotels Pty Ltd** [2023] HCA 6 at [21], [28], [41]. Sources folder: 06-Australia/14. <https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2023/6.html>

198 **West End Landco Pty Ltd v Medina Property Services Pty Ltd** [2025] VSC 544 at [172], [175]–[176] (Delany J). Sources folder: 06-Australia/16.
<https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/vic/VSC/2025/544.html>

carriage of goods by sea and insurance, and give priority to the contract's own provision; the NSW Act has a distinctive half-loss rule; the SA Act allows severance of a frustrated part.¹⁹⁹ So far as I am aware the other States and Territories have no equivalent statute, so that the common-law rules on the consequences of frustration apply.

¹⁹⁹ Frustrated Contracts Act 1978 (NSW), ss 5–7, 13; Australian Consumer Law and Fair Trading Act 2012 (Vic), Part 3.2, ss 35–36, 41; Frustrated Contracts Act 1988 (SA), ss 4–5, 7; Sale of Goods Act 1923 (NSW), ss 11–12. Sources folder: 06-Australia/07, 06-Australia/10, 06-Australia/09, 06-Australia/08.
<https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-1978-105>

THE COMPARISON: THE SAME FACTS UNDER SIX LAWS

99. The table below takes eight recurring situations and states, in a line each, what I think a court or tribunal applying each law is likely to conclude. It is a summary of the analysis above and is subject to the words of the particular contract in every case.

Situation	England (and ADGM)	UAE onshore	DIFC	Saudi Arabia	Singapore	Australia
Costs double (freight, premium, feedstock) but performance is possible	No relief without a clause that “plainly” contracts for commercial impossibility	Hardship (art 224) if general, unforeseeable and threatening grave loss: court may reduce the obligation or (new Code only, see para 50(a)) cancel; cannot be excluded	No relief: no hardship rule; art 84(b) only bars specific performance	Hardship (art 97) if general, unforeseeable and causing heavy loss: must invite negotiation promptly and keep performing; court may reduce, suspend or raise the price (Explanation); cannot be excluded	No relief; “astronomical” increase left open	No relief; courts “have no power to make such adjustments”
Gulf load port closed to the buyer’s ships; seller ready	FOB: loading not prevented (Tsakiroglou); buyer’s failure to bring a ship is its breach unless its clause covers it; CIF/DES: seller’s carriage prevented; MUR: no duty to accept a substitute port	Temporary partial impossibility: old art 273(2) gives the creditor an option to cancel; new art 236(2) –(3) lets either party seek cancellation or modification; FOB buyer bears cost and risk after the shipping period (CTL art 136)	Art 82 excuses the affected party’s non-monetary obligation for a reasonable period; payment not excused	Art 110(2): affected liftings extinguished, not suspended (Explanation); creditor may seek termination unless insignificant	Clause; frustration by failure of a contemplated source (Alliance Concrete) if the closure is treated as cutting off the source	Clause; “prevented” requires impossibility (Hyundai)
Supplier declares FM to some customers and serves others	“Hinder” clause may cover shortage (Tennants); “prevent” clause does not; frustration defeated by election (Super Servant Two)	Sole-cause requirement (Cassation COVID cases, reported) makes selective performance hard to defend	Art 82 requires the impediment to be beyond control; selective performance undermines that (no authority)	Sole-cause condition in the COVID principles, likely to be applied by analogy; art 97 renegotiation	RDC [74]: diversion to higher payers “unacceptable”	Yara: must prove no alternative source; Woodside if the clause has an internal commercial standard

Situation	England (and ADGM)	UAE onshore	DIFC	Saudi Arabia	Singapore	Australia
Counterparty's FM declaration passed down the chain	Own clause must reach supplier failure (BP "provided in fact the sources of supply"); own notice; "but for" causation (Classic Maritime)	Sole cause; must show how performance became impossible	Art 82 or clause; own proof	Arts 110, 125: cause beyond control must be proved for this contract	Magenta: degree of tracing depends on the event	Alumina: clause drafted by "result" is engaged by the refusal; Yara otherwise
Contract made after 2 March 2026	FM clause: irrelevant unless the clause has an "unforeseeable" limb (ADM v Inerco); war clause on 2004 wording: accepted-risk rule (Product Star, The Polar) absent qualitative change; 2013/2025 wording: applies regardless; frustration: strong inference of assumed risk	Art 224 tests foreseeability "at the time of contracting" ; conflict priced in	Art 82: party "could ... reasonably be expected to have taken the impediment into account"	Art 97 and art 471(3) require unforeseeability at contracting	Glahe: continuum already under way	West End Landco: pre-existing state not an event "during the Term" (where the clause so requires)
Clause makes the seller bear the risk of war	Enforced as written	Enforceable as to impossibility and exoneration, subject to good faith (art 221) and abuse of rights (art 106); void insofar as it excludes art 224	Enforceable (art 11)	Enforceable (art 174), read narrowly and in the debtor's favour (Explanation), subject to art 173 (no exclusion for fraud or gross error); void insofar as it excludes art 97	Enforced as written	Enforced as written
Late or defective FM notice	Condition precedent where the clause says so ("provided that"), with no prejudice gloss (ADM v Inerco)	Contractual notice conditions "will usually be upheld" (reported); statutory rules need no notice	Art 82(3): damages for late notice; contractual conditions enforced (Rohan)	Clause governs (art 174); art 97 requires "without undue delay"	Certificate read practically (Magenta CA); construction-form time limits reported as conditions precedent (secondary)	"Without delay" strict (AGL Sales)

Situation	England (and ADGM)	UAE onshore	DIFC	Saudi Arabia	Singapore	Australia
Vessel trapped in the Gulf under a time charter	Hire continues (off-hire: club guidance only); war-risk clause governs; frustration only after “wait and see”	Where the Maritime Law governs (flag law by default, art 130(2)): art 153, hire not due while idle by FM; contrary agreement void	English-law charters usual; art 82 if DIFC law	Art 110(2) temporary impossibility; Saudi maritime legislation not researched	Hire continues (no authority found)	Hire continues (no authority found)
Interest on sums withheld	Recoverable	Not researched	Recoverable (art 82(4))	Not awarded; severed at enforcement as riba (reported)	Recoverable	Recoverable

100. Five features of that detailed comparison deserve emphasis.

- (a) The hardship rules of the UAE and Saudi Arabia are the single largest difference. They are mandatory; and they give a court a discretion to rewrite the bargain which no common-law court has. A Gulf-law contract is therefore more forgiving of the party whose costs have risen and less predictable for the party expecting strict performance.
- (b) The Saudi duty to negotiate and prohibition on stopping performance (Article 97(1)–(2)) has no counterpart in any other law considered in this paper and will catch a party which reads “**hardship**” as a licence to suspend. The Explanation adds that a party which delays in inviting negotiation weakens its own case.
- (c) The DIFC stands apart from both its onshore neighbour and England: a statutory excuse without a clause, no hardship rule, and, on the Court of Appeal’s view, no apparent principle of frustration.
- (d) On the questions that common lawyers argue about most (verb, causation, mitigation, notice), England, Singapore and Australia are aligned, and a Singapore or Australian tribunal will cite **MUR Shipping**, **Classic Maritime** and **Tennants** alongside its own authorities.
- (e) The other four GCC codes (paragraphs 73 to 85) show that the UAE and Saudi position is the Gulf norm, not a peculiarity. A party that has contracted under any onshore GCC law must assume that a court can adjust the price or the obligation; in Kuwait and Bahrain the court can expressly increase the price, and on the Explanation a Saudi court can do so too.

THE STANDARD FORMS

101. Most of the contracts affected by the crisis are on standard terms, and the terms have been drafted with wars, blockades and closed straits in mind. I take shipping first, then the crude oil general terms, LNG, construction, the ICC clauses and GAFTA. I have quoted only from texts I have opened; where a form is licensed and I have relied on a reproduction, I say so.

Charterparties: the BIMCO war-risks clauses

102. BIMCO's CONWARTIME (time charters) and VOYWAR (voyage charters) exist in 2004, 2013 and 2025 editions, and all three are in use. Their structure is the same: a wide definition of **"War Risks"**; a liberty for the owner not to proceed where, in the master's or owner's reasonable judgment, the vessel may be exposed; machinery for nominating an alternative port; reimbursement of additional premium and crew bonus by the charterer; liberties to comply with the orders of governments and war-risk underwriters; and a deeming provision that anything done under the clause is **"due fulfilment"** and not deviation.²⁰⁰

103. The differences between editions matter in 2026.

- (a) The test. 2004: **"may be, or are likely to be, exposed"**, construed in **The Triton Lark** (on the identical 1993 wording) as a **"real likelihood ... in the sense of a real danger"**. 2013 and 2025: **"may be exposed"**, with BIMCO explaining that the reference point is now **"whether an area is dangerous"** rather than **"complex analysis of degree of risk"**.²⁰¹ The Swedish Club and Skuld doubt that the change makes much practical difference, and BIMCO's 2025 notes say the earlier case law is **"maintained"**.²⁰²

200 BIMCO CONWARTIME 2004 cll (a)(ii), (b), (d); CONWARTIME 2013 cll (a)(ii), (b), (d), (e), (h), (j); CONWARTIME 2025 cll (a)–(i); VOYWAR 2004, 2013 and 2025 (all from bimco.org with explanatory notes). Sources folder: 07-Forms/14, 07-Forms/02, 07-Forms/04, 07-Forms/10, 07-Forms/03, 07-Forms/05.

https://www.bimco.org/contractual-affairs/bimco-clauses/current-clauses/war_risks_clause_for_time_charters_2025/

201 CONWARTIME 2013, BIMCO Special Circular No. 5 (16 July 2013), explanatory notes on **The Triton Lark** and **The Paiwan Wisdom**. Sources folder: 07-Forms/02.

https://www.bimco.org/contractual-affairs/bimco-clauses/earlier-clauses-list/war_risks_clause_for_time_charters_2013/

202 Swedish Club (with Adams & Moore), "War Risks Clauses in Charter Parties", July 2025; Skuld (Veal and Winter), "Iran-Israel conflict and the Strait of Hormuz: Charterparty implications", 18 June 2025 (both secondary); CONWARTIME 2025 explanatory notes. Sources folder: 07-Forms/30, 07-Forms/19, 07-Forms/04. <https://www.swedishclub.com/uploads/2025/07/Forward-Defence-War-risks-clauses-in-charter-parties.pdf>

- (b) Pre-existing risk. 2013 and 2025 CONWARTIME apply **“whether such risk existed at the time of entering into this Charter Party or occurred thereafter”**; VOYWAR acquired equivalent words only in 2025.²⁰³ On those words an owner who fixed in April 2026 for Gulf trading may still refuse in September. Whether the words protect an owner who fixed intending to use the clause **“as a device to obtain a financial gain”** is untested; I think The Triton Lark’s good-faith requirement will be the control.²⁰⁴ On the 2004 wording, and on BPVOY4 clause 39, the Product Star principle applies to an owner who accepted the Gulf risk by **“always allowed”** words or a Gulf premium clause, if the fixture contains them. One club note says that VOYWAR 2013 requires a material increase in risk since the fixture; the clause contains no such words, and BIMCO’s own notes record that the **“whether such risk existed”** wording was added to VOYWAR only in 2025, so for VOYWAR 2013 the Product Star and Paiwan Wisdom analysis governs.²⁰⁵
- (c) Premium. 2004: charterers reimburse premiums for areas entered **“pursuant to the Charterers’ orders”**. 2013: **“any additional premiums required by the Owners’ insurers and the costs of any additional insurances that the Owners reasonably require”**, which BIMCO says includes war loss-of-hire and kidnap-and-ransom cover. 2025: defined **“Insurance Costs”**, reimbursed for a vessel that proceeds **“to or through or remains in”** an Area (the trapped-ship case), **“actually incurred”**, **“net of any applicable discount or benefit received for that voyage (such as any no claims bonus)”**, with the owner obliged on request to **“demonstrate that they have used reasonable endeavours to obtain appropriate cover and terms (including premium)”** and to notify costs **“if possible, before the Vessel enters an Area”**.²⁰⁶ With

203 CONWARTIME 2013 cl (b); CONWARTIME 2025 cl (b); VOYWAR 2025 cl (f)(vi) and explanatory notes. Sources folder: 07-Forms/02, 07-Forms/04, 07-Forms/05.

https://www.bimco.org/contractual-affairs/bimco-clauses/current-clauses/war_risks_clause_for_voyage_charter_parties_2025/

204 Swedish Club, July 2025 (“That wording has not yet been tested by the courts”). Sources folder: 07-Forms/30. <https://www.swedishclub.com/uploads/2025/07/Forward-Defence-War-risks-clauses-in-charter-parties.pdf>

205 Japan P&I Club, “Navigating the Chaos”, 15 April 2026 (secondary); VOYWAR 2013 cl (b)–(d); VOYWAR 2025 explanatory notes on cl (f)(vi). Sources folder: 07-Forms/22, 07-Forms/03, 07-Forms/05. <https://www.piclub.or.jp/en/news/44073>

206 CONWARTIME 2004 cl (d)(ii); CONWARTIME 2013 cl (d); CONWARTIME 2025 cl (a)(ii), (d) and explanatory notes. Sources folder: 07-Forms/14, 07-Forms/02, 07-Forms/04. <https://www.bimco.org/contractual-affairs/bimco-clauses/current-clauses/>

premiums having moved from about 0.1 per cent to between 3 and 10 per cent of hull value, the 2025 transparency duty will be the focus of charterers' challenges.

- (d) Alternative discharge and re-routing. Since 2013 **“All costs, risk and expenses for the alternative discharge shall be for the Charterers’ account”**. VOYWAR 2013 gives the owner additional freight pro rata where an alternative route adds more than 100 miles; VOYWAR 2025 replaces that with freight **“adjusted based on the estimated time and/or expenses incurred or saved ... as documented by the Owners”**, extends the route-change right to **“before, during or after loading”** (drafted with the Red Sea in mind), lengthens nomination windows from 48 to 72 hours, and gives the owner a lien for the adjusted freight.²⁰⁷
- (e) Cancellation. VOYWAR lets the owner cancel before loading if performance **“may expose”** the vessel, subject to the charterer’s right to nominate another port within the agreed range. CONWARTIME contains no cancellation right for war as such. The BIMCO War Cancellation Clause 2004 allows either party to cancel on war **“between any two or more of”** the United States, Russia, the United Kingdom, France and China, or countries the parties insert; a US–Iran war qualifies only if Iran was inserted.²⁰⁸ Shelltime 4 clause 33 lists the United States, the USSR, China, the United Kingdom and the Netherlands, with the same result.²⁰⁹

104. BIMCO’s own note of 3 March 2026 warns that its Force Majeure Clause 2022 **“is not designed to function as a general ‘risk allocation tool,’ and it does not automatically excuse performance merely because operating in a region becomes riskier, more expensive or commercially undesirable. Increased risk of attacks, security incidents or geopolitical volatility in the Persian/Arabian Gulf ... may not**

[war_risks_clause_for_time_charters_2025/](#)

207 CONWARTIME 2013 cl (h); VOYWAR 2013 cl (d); VOYWAR 2025 cll (b)–(d) and explanatory notes. Sources folder: 07-Forms/02, 07-Forms/03, 07-Forms/05. https://www.bimco.org/contractual-affairs/bimco-clauses/current-clauses/war_risks_clause_for_voyage_charter_parties_2025/

208 VOYWAR 2013 cl (b); VOYWAR 2025 cl (b); BIMCO War Cancellation Clause 2004; NorthStandard, “Persian Gulf Hostilities – Charterparty FAQs”, 2 April 2026 (“Contracts should be checked carefully to see if they list, e.g. USA, Israel, Iran”). Sources folder: 07-Forms/03, 07-Forms/05, 07-Forms/06, 07-Forms/20. https://www.bimco.org/contractual-affairs/bimco-clauses/current-clauses/war_cancellation_clause_2004/

209 SHELLTIME 4 (December 1984), cl 33, as reproduced in an executed charter filed with the US SEC (Exhibit 10.4, Granite Shipping/Frontline, 1 January 2004). Sources folder: 07-Forms/28. https://www.sec.gov/Archives/edgar/data/1289877/000104746904018082/a2135540zex-10_4.htm

in itself constitute a force majeure event.”²¹⁰ That is right. The Force Majeure Clause 2022 requires the affected party to prove a listed event (which includes **“blockade”**, **“act of government”** and **“obstruction of waterways”**) that **“prevents”** performance, that it was beyond reasonable control, **“could not reasonably have been foreseen at the time of the conclusion of the contract”** and could not reasonably be avoided; relief runs only from a valid notice; payment obligations continue unless directly affected; and termination requires performance to have become **“impossible, illegal or radically different”** or a filled-in long-stop period.²¹¹ An owner who declines to enter the Gulf is not **“prevented”**; it chooses. The war clause is its provision. The force majeure clause is the charterer’s, where the cargo cannot be supplied because the terminal is shut.

The tanker forms

105. The forms used by the oil majors (perhaps unsurprisingly) have their own war clauses and allocate premium differently from BIMCO.

- (a) SHELLVOY 6 clause 34: the owner pays the annual and voyage additional premium on the hull value fixed at the charter date and the crew war bonus for the first 14 days in a war zone; **“any increase or decrease in voyage additional war risk premium and any period in excess of the first fourteen days shall be for Charterers’ account”**; discounts are passed on; and **“any premiums, and increase thereto, attributable to closure insurance (i.e. blocking and trapping) shall be for Owners’ account”**. If the first or only load port is affected and no orders are given within 48 hours, **“this Charter shall terminate forthwith”**.²¹² On 2026 rates the **“increase”** limb moves almost the whole cost to charterers, while a VLCC trapped inside the Gulf leaves its blocking-and-trapping premium with the owner.

210 BIMCO News, “Remember the BIMCO War Risks Clauses”, 3 March 2026. Sources folder: 07-Forms/23. <https://www.bimco.org/news-insights/bimco-news/2026/03/03-war-risks/>

211 BIMCO Force Majeure Clause 2022, cll (a), (b)(i)–(vii), (c)(i), (e), (f), (g), with explanatory notes (the “generally imposed trading restrictions” limb “not intended to cover sanctions”; “obstruction of waterways” aimed at the Ever Given; termination limb “mimics the English law ‘doctrine of frustration’”; “Caution is urged when including the clause in a period time charter party with a broad trading area”). Sources folder: 07-Forms/01. <https://www.bimco.org/contractual-affairs/bimco-clauses/current-clauses/force-majeure-clause-2022/>

212 SHELLVOY 6 (March 2005), Part II, cll 32, 34(1)–(5) (BIMCO idea print, third-party hosted copy). Sources folder: 07-Forms/29. <https://shippingforum.wordpress.com/wp-content/uploads/2012/08/shellvoy6-part-ii.pdf>

- (b) SHELLTIME 4 clause 34: charterers reimburse additional premium, crew bonus and other expenses **“provided that Charterers are given notice of such expenses as soon as practicable and in any event before such expenses are incurred, and provided further that Owners obtain from their insurers a waiver of any subrogated rights against Charterers”**.²¹³ That waiver is precisely the express no-recourse provision which The Polar says parties must include if they want one.
- (c) BPVOY4 clause 39 (the wording in The Polar) follows the 2004 test (**“may be, or are likely to be, exposed”**), allows cancellation before loading, refusal after loading with 48 hours to nominate and discharge **“in complete fulfilment”**, an alternative route beyond 100 miles at charterers’ expense less savings, and, in the fixture before the Supreme Court, a rider making premium for **“excluded areas not covered by owner’s basic war risk insurance”** for charterers’ account.²¹⁴ BPVOY5 I have not been able to open.
- (d) ASBATANKVOY (1977) has a mutual exception in clause 19 for **“act of war ... act of public enemies ... arrest or restraint of princes, rulers or people”** and a war clause in clause 20(vi) under which, if a port is blockaded or the master or owners **“in his or their discretion”** consider entry **“dangerous or prohibited”**, the charterers may re-nominate within the range and the owners may otherwise discharge at a safe port of their choice **“in due fulfilment”**; there is no cancellation right and no premium provision. ASBATANKVOY 2025 (December 2025) keeps clause 19 and incorporates VOYWAR 2025.²¹⁵

Crude oil general terms

- 106. Three Gulf and international producers publish their terms. Saudi Aramco does not. The published clauses are seller-friendly and drafted for this event.

213 SHELLTIME 4, cll 27, 33, 34, 35(a)–(c). Sources folder: 07-Forms/28.

https://www.sec.gov/Archives/edgar/data/1289877/000104746904018082/a2135540zex-10_4.htm

214 BPVOY4 cl 39 and the bespoke “War Risk Clause” and “Gulf of Aden Clause”, as reproduced in the Annex to The Polar [2024] UKSC 2. Sources folder: 07-Forms/18.

<https://caselaw.nationalarchives.gov.uk/uksc/2024/2>

215 ASBATANKVOY (October 1977), Part II cll 19, 20(a), 20(vi)(a)–(c), 24; Penningtons Manches Cooper, “ASBATANKVOY 2025 – rejuvenated after 48 years”, 16 December 2025 (secondary; the 2025 form not opened). Sources folder: 07-Forms/26, 07-Forms/27.

<https://www.petrogas.es/TransporteATK/pdf/ASBATANKVOY.pdf>

- (a) ADNOC (January 2021). Article 14 excuses performance **“prevented, hindered or delayed as a direct result of any event or combination of events which is beyond the reasonable control of such Party”**, conditional on notice and mitigation. The list includes **“war (whether declared or undeclared), blockade, acts of piracy, terrorist acts, seizure or act of sabotage, imposition of sanctions, embargo”**, closure of ports and, for the seller only, **“a change in the production policies or sales policies of the Emirate of Abu Dhabi”** and **“any declared force majeure event affecting any of Seller’s suppliers”**. The remedy: if the seller is the non-affected party it **“may immediately terminate the affected Shipment(s) without liability”**; otherwise relief runs until the earlier of the end of the event or the expiry of the loading range, after which **“the affected Shipment(s) shall be deemed terminated without liability”**. Force majeure does not excuse failure to pay **“(other than as to any specified means, currency or place of payment)”**, changes in market conditions or prices, or **“financial hardship or the inability of the Affected Party to make a profit”**. Frustration is preserved. Compliance with the destination rules is **“a condition of the Contract”**. English law; ICC arbitration in London.²¹⁶
- (b) QatarEnergy (QPSPP FOB terms, January 2019). Clause 15 excuses events **“beyond the reasonable control of the affected Party to avoid, prevent or overcome”**, excluding payment, security and documentation; the list includes **“war (declared or undeclared), embargoes, blockades”** and **“closing or restrictions on the use of harbours, pipelines or any applicable Loading Port”**. On force majeure **“the Seller shall be entitled to allocate its available supplies of Oil from any source at its sole and absolute discretion”**, **“shall not be obliged to purchase Oil to supply the shortfall”**, the buyer **“shall be free to purchase any Oil from other parties”**, the shortfall is deducted, the term is not extended, and neither party may cancel until delay exceeds three consecutive months. English law.²¹⁷

216 ADNOC Crude, Condensate and LPG General Terms and Conditions (January 2021), arts 12.2, 14.1, 14.2(b), 14.2(h), 14.3(a)–(c), 14.9, 14.12, 16.1, 17.2. Sources folder: 07-Forms/36.

<https://www.adnoc.ae/-/media/adnoc-v2/files/gtcs/adnoc-crude-condensate-and-lpg-general-terms-and-conditions-january-2021-edition.ashx>

217 QatarEnergy (Qatar Petroleum for the Sale of Petroleum Products Co Ltd), General Terms and Conditions for FOB Sale and Purchase of Bulk Oil (1 January 2019), cll 14.1, 15.1, 15.1(g), (k), 15.4, 15.6, 16.1. Sources

- (c) BP (2015 edition, version 1.2). Section 65 excuses a party who **“proves that the failure was due to an impediment beyond its control”**, the non-exhaustive list led by **“war, whether declared or not, civil war, riots and revolutions, acts of piracy, acts of sabotage”**, and including destruction of **“tankage, pipelines, of refineries or terminals”**, curtailment of supply **“from any of the Seller’s or the Seller’s suppliers’ sources of supply ... (provided in fact the sources of supply are for the purposes of the Agreement)”**, and compliance with the orders of any authority **“including the International Energy Agency”**. Lack of funds is excluded.
107. Under the BP terms late notice does not lose the relief but may sound in damages. Impossibility terminates the delivery obligation at once; delay or hindrance postpones it to the end of the laydays, after which either party may terminate; the seller **“shall not be obliged to purchase afloat”**. Frustration is preserved. Section 12.3 passes any additional or war-risk premium, crew bonus and security cost incurred under the charter to the CIF or CFR buyer **“in addition to the price”**. Section 61 makes destination compliance a condition; section 71 suspends or releases obligations that would **“be in violation of, inconsistent with, or expose such party to punitive measures under”** listed trade restrictions.²¹⁸ BP’s terms are widely incorporated by others.²¹⁹
108. The following points follow:
- (a) On the ADNOC and QatarEnergy terms a cancelled September cargo is a shortfall the buyer absorbs; its remedy is to buy elsewhere, not damages. Whether Aramco’s unpublished terms are to the same effect I cannot say. The press does not disclose whether Aramco served force majeure notices or cancelled under an allocation right, for September or for the October allocations it withheld from European buyers and then restored for November (paragraph 71), and the difference matters.

folder: 07-Forms/37.

<https://www.qatarenergy.qa/en/MarketingAndTrading/Documents/QPSPP%20General%20Terms%20and%20Conditions%20for%20Bulk%20Oil%20-%20Jan%202019.pdf>

218 BP Oil International Ltd, General Terms and Conditions for Sales and Purchases of Crude Oil and Petroleum Products (2015 edition, v1.2), ss 12.2.2, 12.3.1, 61.1, 65.1–65.5, 71.1.2, 71.2. Sources folder: 07-Forms/39. <https://www.bp.com/content/dam/bp/business-sites/en/global/bp-supply-trading-and-shipping/documents/bp-oil-gtc-2015-version-1.2.pdf>

219 Maersk Oil Trading, FOB Cargo Sales Terms (incorporating the BP GTCs 2015 v1.2 and cross-referring to ss 71–72). Sources folder: 08-Insurance/41. https://www.maersk.com/~media_sc9/maersk/campaigns/maersk-oil-trading/mot-fob-cargo-sales-terms.pdf

- (b) A reseller such as Shell will be excused only if its own clause reaches supplier failure. BP's proviso, **"provided in fact the sources of supply are for the purposes of the Agreement"**, is where the argument will be: was Qatari LNG in fact the source for this sale, or was it one of several the seller could have used? That is the Classic Maritime **"but for"** question and the Yara alternative-source question in contractual form.
- (c) Payment is never excused. Every published form carves it out (ADNOC excepting only **"any specified means, currency or place of payment"**), and Litasco shows that even a **"hinder"** clause will not suspend an accrued debt short of near-impossibility.

LNG sale and purchase agreements

109. The model LNG agreements are not public. Two long-term agreements filed with the US Securities and Exchange Commission, however, give some publicly available information regarding standard market wording. Under an ex-ship agreement the seller is excused where fulfilment **"has been delayed, interfered with or prevented by Force Majeure, which shall be defined as any circumstance whatsoever that is beyond the reasonable control of the Party affected"**, including for the seller **"any circumstances relating to the loading of the LNG Ship at the Loading Port and/or the Seller's Facilities or relating to the transport of the LNG"**, and the seller is deemed to control the ship's owner, operator and charterer.²²⁰ Under a master agreement providing for both delivery bases, **"war (whether declared or undeclared), riot, civil war, blockade, insurrection"** is a listed event, market and price changes are excluded, the seller's transporter is within the seller's sphere for DES deliveries and the buyer's transporter within the buyer's for FOB, an event continuing for more than 120 days entitles the unaffected party to cancel the cargo, and **"Seller shall not be required to deliver make-up cargoes"**.²²¹ That is the background to QatarEnergy's notices to buyers whose cargoes had loaded but not yet sailed through the Strait (Argus reported that its early letters to buyers whose cargoes had not yet been disrupted were **"not**

220 Master Ex-Ship LNG Sales Agreement, Cheniere Marketing Inc / Gaz de France International Trading SAS (SEC Exhibit 10.2, 2007), cll 13(1)(d), 13(3). Sources folder: 07-Forms/31.
<https://sec.gov/Archives/edgar/data/3570/000119312507106384/dex102.htm>

221 Master LNG Sale and Purchase Agreement, Centrica LNG Company Ltd / NFE North Trading Ltd, 20 December 2016 (SEC Exhibit 10.16), ss 11.2(a)(ii), 11.7, 11.8. Sources folder: 07-Forms/32.
https://www.sec.gov/Archives/edgar/data/1749723/000114036119000862/s002392x10_ex10-16.htm

official force majeure notices”, a formality point of the kind discussed at paragraph 29); to Edison, with 29 cargoes cancelled by August, replacing 21 of them in the market, and 35 for the whole period to early December, after the further extension notified on 28 September; and to Petronet’s statement that its 56 affected cargoes can be delivered by April 2028 under its agreement. The delivery basis of any given contract decides which side of the line it falls: a seller who delivers ex-ship carries the transit risk; an FOB seller does not.²²²

Construction and EPC in the Gulf

110. FIDIC 1999 (clause 19) and 2017 (clause 18) use the same four-limb definition: an exceptional event or circumstance **“beyond a Party’s control”**, which the party **“could not reasonably have provided against before entering into the Contract”**, **“could not reasonably have avoided or overcome”**, and **“is not substantially attributable to the other Party”**. The listed kinds begin with **“war, hostilities (whether war be declared or not), invasion, act of foreign enemies”** and include **“munitions of war”**. Relief is excuse from performance and an extension of time for all kinds, and Cost only for the man-made kinds, some of them only if they occur **“in the Country”**; termination follows 84 continuous or 140 aggregate days’ prevention of **“substantially all the Works”**; and a separate sub-clause releases the parties where performance becomes **“impossible or unlawful”**.²²³ A contractor at Ras Tanura, Ras Laffan or Yanbu whose site is struck is within the paradigm compensable event: under the 1999 form Cost for war, hostilities and acts of foreign enemies is payable wherever they occur, while for the other man-made kinds it is payable only if they occur **“in the Country”**, and a drone launched from Iraq at a Saudi site is **“war, hostilities ... act of foreign enemies”** on any view. A contractor whose materials cannot transit Hormuz is in the harder case:

222 Argus, 3 March 2026 (Petronet’s “Disha”, loaded 1 March, “still waiting near the terminal”; letters to other buyers “are not official force majeure notices”); Euronews, 31 August 2026 (Edison: 29 cargoes affected, 21 replaced; Qatar exported 18 cargoes in six months against 509); Business Standard, 13 August 2026 (Petronet); Teleborsa (Edison statement), 28 September 2026 (six further cargoes; force majeure period early April to early December; 35 cargoes, about 4.6 bcm). Sources folder: 07-Forms/33, 07-Forms/35, 01-Facts/53, 12-Update/38. <https://www.euronews.com/business/2026/08/31/qatarenergy-extends-lng-cancellations-into-november-as-hormuz-disruption-drags-on>

223 FIDIC, “COVID-19 Guidance Memorandum to Users of FIDIC Standard Forms of Works Contract”, April 2020 (the four-limb test; “Performance of obligations is more difficult, onerous or disrupted, but not necessarily prevented”); FIDIC 1999 cll 19.1, 19.4, 19.6, 19.7 as reproduced in Quinn Emanuel, “FIDIC Terms in the Context of COVID-19” (2020) (secondary reproduction of licensed text); Clarke, “Covid-19 and FIDIC contracts”, Construction Law International (2020) (28-day continuing notices under 2017 cl 18.2). Sources folder: 07-Forms/41, 07-Forms/42, 07-Forms/40. <https://fidic.org/sites/default/files/COVID%2019%20Guidance%20Memorandum%20-%20PDF.pdf>

FIDIC's own guidance says that performance which is **“more difficult, onerous or disrupted, but not necessarily prevented”** fails the test. In the Kingdom the mandatory hardship rule and Article 471(3) sit behind the contract; in the Emirates Articles 224 and 829(3) do, the latter subject to contracting-out.

111. NEC4 clause 60.1(19) is a compensation event (time and money) where an event **“stops the Contractor completing the whole of the works”** or completing by the planned date, **“which neither Party could prevent”** and which **“an experienced contractor would have judged at the Contract Date to have such small chance of occurring that it would have been unreasonable to have allowed for it”**; the eight-week notification bar applies.²²⁴ For a contract let after 28 February 2026 the **“small chance”** limb will be contested. JCT gives time only for undefined **“force majeure”**.²²⁵

The ICC clauses and GAFTA

112. The ICC Force Majeure Clause 2020 is the model many bespoke contracts copy. The affected party must prove that the impediment is beyond its reasonable control, **“could not reasonably have been foreseen at the time of the conclusion of the contract”**, and could not reasonably have been avoided; listed **“Presumed Force Majeure Events”**, including **“war (whether declared or not), hostilities”**, **“currency and trade restriction, embargo, sanction”** and **“act of authority”**, are presumed to satisfy the first two limbs; relief runs from the impediment if notice is given without delay and otherwise from receipt; and either party may terminate where the duration **“substantially depriv[es]”** it of what it was entitled to expect, and in any event after 120 days. The companion Hardship Clause requires renegotiation where performance **“has become excessively onerous”** and offers three options for what follows.²²⁶
113. GAFTA's consolidated **“Prevention of Shipment”** clause is the commodity-trade model of the automatic-cancellation type: an **“Event of Force Majeure”** includes **“prohibition of export”**, **“blockade”**, **“hostilities”** and **“unforeseeable and**

224 NEC, “Covid-19 risks and NEC4 ECC contracts – a legal perspective”, 15 June 2020 (cl 60.1(19) text; cl 61.3). Sources folder: 07-Forms/44. <https://www.neccontract.com/news/covid-19-risks-and-nec4-ecc-contracts-%E2%80%93-a-legal-perspective>

225 Construction Management (CIOB), “How JCT contracts are affected by the coronavirus” (2020), on JCT Design and Build 2016 cl 2.26.14 (secondary; JCT text not opened). Sources folder: 07-Forms/45. <https://constructionmanagement.co.uk/coronavirus-dealing-it-under-jct/>

226 ICC, “ICC Force Majeure and Hardship Clauses”, March 2020, Force Majeure Clause paras 1, 3, 8; Hardship Clause para 2 and options 3A–3C. Sources folder: 07-Forms/46. <https://iccwbo.org/wp-content/uploads/sites/3/2020/03/icc-forcemajeure-hardship-clauses-march2020.pdf>

unavoidable impediments to transportation or navigation"; the seller must serve notice within seven days of the occurrence or not later than 21 days before the shipment period; performance is suspended; the buyer may cancel if the event continues 21 days after the end of the shipment period; and the unfulfilled part is **"automatically cancelled"** after a further 14 days. War and strike premium above 0.50 per cent is for the buyer under the CIF insurance clause.²²⁷ It is this family of clause that **ADM v Inerco** and **Bunge v Nidera** construe. Two further decisions say what has to be proved under it when a government restricts exports: an act **"restricting"** export suffices, but the seller must show that the restriction caused its inability to perform, and the act must be **"in the nature of"** a formal restriction on exports, such clauses being construed narrowly against the party relying on them.²²⁸

227 GAFTA Contract No. 24 (effective 1 October 2025), cl 22 and Insurance cl (h) (gafta.com). GAFTA 100 itself was not opened. Sources folder: 07-Forms/48. https://www.gafta.com/media/iszjjwfx/24_2025.pdf

228 **Public Company Rise v Nibulon SA** [2015] EWHC 684 (Comm) at ¶¶36–37, 53 (Hamblen J); **Seagrain LLC v Glencore Grain BV** [2013] EWCA Civ 1627 at ¶¶27–29 (Beatson LJ). Sources folder: 02-England/26, 02-England/37. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2015/684>

114. The table below compares the principal features.

Form	Trigger	Standard	Notice	Cost and premium allocation	Termination
BIMCO FM Clause 2022	Listed events incl. blockade, act of government, obstruction of waterways; must “prevent”	Party proves event, beyond control, unforeseeable, unavoidable	“Without delay” ; relief from valid notice	Payment continues; hire and laytime per charter	Impossible, illegal or radically different; or blank long-stop
CONWARTIME 2004 / VOYWAR 2004	“War Risks” incl. blockades (all or selective)	“May be, or are likely to be, exposed” : real likelihood, real danger (Triton Lark); no express pre-existing-risk words (Paiwan Wisdom; Product Star)	Inform immediately; 48h to nominate	Charterers reimburse premiums for areas entered “pursuant to the Charterers’ orders” ; VOYWAR: pro-rata freight over 100 miles	VOYWAR: owner may cancel before loading
CONWARTIME 2013 / 2025	As above	Reasonable judgment that vessel “may be exposed” ; applies whether or not the risk existed at fixing	Immediate; 48h (72h in 2025) to nominate	Charterers: additional premiums (2025: “Insurance Costs” , net, actually incurred, owner shows reasonable endeavours, vessel that “remains in” an Area covered); alternative discharge at charterers’ cost	Owner refuses or leaves; no cancellation right
VOYWAR 2013 / 2025	As above	“May expose” ; 2025 adds pre-existing-risk words	Notice of alternative route; range nomination window (48h; 72h in 2025)	Owner: own war-risks cover (2025: “annual premiums”); charterers: voyage additional premium; 2013 pro-rata freight over 100 miles, 2025 documented adjustment with lien	Owner may cancel before loading after the nomination window

Form	Trigger	Standard	Notice	Cost and premium allocation	Termination
SHELLVOY 6 cl 32, 34	Cl 32 mutual exceptions (act of war, restraint of princes); cl 34 blockade, or war etc. making port “dangerous or prohibited”	Master’s or owners’ discretion	48h	Owner: annual and first 14 days’ voyage premium at fixture value, blocking and trapping; charterers: increases and time beyond 14 days	Terminates forthwith if first load port affected and no orders in 48h
SHELLTIME 4 cl 33–35	War between listed powers (cl 33); “place of peril” (cl 35)	Master’s reasonable opinion	Immediate; 48h	Charterers reimburse premium if notified before incurred and owners obtain subrogation waiver	Either party may cancel on listed-powers war
ADNOC GTC art 14	Beyond reasonable control incl. war, blockade, sanctions, port closure, Abu Dhabi policy change	“Prevented, hindered or delayed as a direct result” ; burden on affected party; payment (save means, currency or place), market changes and financial hardship excluded (art 14.3)	As soon as practicable; late notice gives relief only from notice	No extension of term	Seller (if non-affected) may terminate shipment at once; otherwise shipment deemed terminated after loading range
QatarEnergy FOB GTC cl 15	Beyond reasonable control incl. war, blockade, port and pipeline closure	Party must be unable “to avoid, prevent or overcome” ; payment, security and documentation excluded	Prompt, with estimate	Seller allocates at sole discretion; no buy-in; shortfall deducted	Only after 3 months’ delay, on 30 days’ notice
BP GTC 2015 s 65	“Impediment beyond its control” incl. war, terminal destruction, supplier curtailment, IEA orders	Party proves; lack of funds excluded	As soon as practicable; late notice sounds in damages only	s 12.3: charter war premium passed to CIF buyer; seller need not buy afloat	Impossibility: immediate; delay: after laydays, either party
Saudi Aramco crude GTC	Not published	Not published	Not published	Not published	Not published
LNG MSPA (Centrica/NFE, a filed contract, not a model)	Beyond reasonable control incl. war, blockade; market changes excluded	Reasonable and Prudent Person; DES seller’s transporter / FOB buyer’s transporter	Prompt with details and updates	No make-up cargoes	Cargo cancellable after 120 days
FIDIC 2017 cl 18	Exceptional Event incl. war, hostilities, munitions of war	Four limbs; must be “prevented”	Notice within the stated period; 28-day updates (secondary)	EOT for all; Cost for man-made kinds (some only in the Country)	84 / 140 days; release for impossibility or unlawfulness

Form	Trigger	Standard	Notice	Cost and premium allocation	Termination
ICC FM Clause 2020	Presumed events incl. war, sanction, act of authority	Party proves three limbs; presumption for listed events	Without delay	Other party may suspend its own performance	Substantial deprivation; 120 days
GAFTA 24 cl 22 (verified from GAFTA 24; GAFTA 100 not opened)	Prohibition, blockade, hostilities, unforeseeable impediments to navigation	Seller's performance "prevented"	7 days of occurrence or 21 days before shipment	War premium above 0.5% for buyer	Buyer's option after 21 days; automatic after further 14

WAR-RISK INSURANCE, P&I AND SANCTIONS

What happened to cover in March 2026

115. Press reports suggest that insurers have “**pulled**” war cover. That is only partly right: three different things happened within 72 hours of 28 February.

- (a) Hull war policies were not cancelled. The Joint War Committee extended its Listed Areas on 3 March (JWLA-033), adding Bahrain, Djibouti, Kuwait, Oman and Qatar and redrawing the Gulf polygon.²²⁹ Each policy then operated by its own machinery: a notice of cancellation of the trading warranties (seven days under the Institute clauses; the Swedish Club’s ran from 3 to 8 March), and reinstatement on amended terms, with declaration before entry and additional premium quoted at reporting.²³⁰ The JWC’s own page says: “**Despite some regrettably incorrect reporting about cancellation, hull war insurance cover remains in place and available in the London market**”; a Howden broker said “**We are not aware of any underwriter anywhere that has not reinstated cover**”.²³¹
- (b) Fixed-premium and non-poolable liability covers (charterers’ liability, fixed P&I, ancillary extensions) were cancelled for the Gulf on 72 hours’ notice because commercial reinsurers withdrew, and buy-backs at sub-limits followed within days.²³²

229 Joint War Committee Circular JWLA-033, 3 March 2026 (“The application of this list on individual contracts will be a matter for specific negotiation”). Sources folder: 08-Insurance/01. https://lmalloyds.com/wp-content/uploads/2026/03/JWLA-033_Iran.pdf

230 Institute War and Strikes Clauses Hulls-Time 1/11/95 (CL281), cl 6.1; The Swedish Club, War Risk Circular No. 450/2026, 3 March 2026 (notice of cancellation effective 00:01 GMT 8 March 2026; cover “reinstated subject to the following amendments”). Sources folder: 08-Insurance/08, 08-Insurance/11. <https://www.swedishclub.com/uploads/2026/03/450-2026-War-Risk-Insurance-2026-Notice-of-Cancellation-03-March-2026-2.pdf>

231 LMA, Joint War Committee page (“Gulf conflict”); Howden, “Strait of Hormuz: marine war market offering cover for vessels in high-risk areas”, 19 March 2026. Sources folder: 08-Insurance/14, 08-Insurance/27. <https://lmalloyds.com/committee/joint-war-committee/>

232 Skuld, General Notice of Cancellation, 1 March 2026 (effective 5 March; buy-back from 9 March); Steamship Mutual, “War Risks Cover: FAQs”, 4 March 2026 (sub-limits US\$250m Gulf, US\$200m Red Sea); UK P&I Club Circular 14/26, 12 August 2026 (Red Sea). Sources folder: 08-Insurance/18, 08-Insurance/19, 08-Insurance/22. <https://www.steamshipmutual.com/publications/articles/war-risks-cover-faqs>

(c) Mutual P&I and the International Group's US\$500 million excess war P&I cover were untouched throughout.²³³

116. What did change, however, was price. Transit premiums rose from about 0.1 to 0.125 per cent of hull value before the war to 2 to 3 per cent in March, about 5 per cent by 19 March, and between 3 and 10 per cent after the July re-escalation; a \$100 million tanker that paid \$250,000 for a Gulf transit now pays \$3 to \$10 million; stranded tankers paid up to 10 per cent in mid-March; and cover is written voyage by voyage.²³⁴ On 29 July JWLA-034 listed the whole of Saudi Arabia, moved the Red Sea line north to 25.5°N (placing Yanbu inside) and deleted Pakistan, after the Houthi **“embargo of all Saudi ports”**.²³⁵ JWLA-035 of 16 September 2026 changed only the Black Sea listing, and the Gulf and Red Sea areas remain as JWLA-034 left them. On 10 October the JWC's page still gave JWLA-035 as the current list and said that the committee **“last reviewed the areas in September 2026”**.²³⁶ At the end of September Reuters reported quoted rates of between 6 and 9 per cent of vessel value for a Hormuz transit; about 3 per cent for Saudi-linked tankers calling at Yanbu, against less than 1 per cent in early July; up to 7 per cent for ports south of Yanbu; and 0.2 to 0.3 per cent for Red Sea tankers with no Saudi connection. Reuters noted that **“There is no public data for agreed rates in the marine insurance market”**. The gap between Saudi-linked and other Red Sea tonnage shows that the risk being priced is aimed at the Saudi cargo interest rather than at the sea area. The Secretary General of the International Union of Marine Insurance put the market's Hormuz losses at **“somewhere around two billion US dollars”** and

233 UK P&I Club Circular 02/26, 9 February 2026 (US\$500m excess war cover; bio-chem sub-limit US\$30m); Steamship Mutual FAQs, 4 March 2026; Howden Re, 27 March 2026, p 11. Sources folder: 08-Insurance/21, 08-Insurance/19, 08-Insurance/16.

[https://www.ukpandi.com/fileadmin/uploads/ukpandi/00_Documents/Circulars/2026/Circular_2.26 - War Risk Supplementary Bio Circular February 2026_2_.pdf](https://www.ukpandi.com/fileadmin/uploads/ukpandi/00_Documents/Circulars/2026/Circular_2.26_-_War_Risk_Supplementary_Bio_Circular_February_2026_2_.pdf)

234 Howden Re, Strait of Hormuz report, 27 March 2026, pp 11–14 (Lloyd's CEO: “~5% of vessel value, roughly five times the level seen in the earliest days of the war”); S&P Global Commodity Insights, 30 March 2026 (2.5 per cent per seven-day period at the peak; stranded tankers up to 10 per cent; a laden Suezmax paying \$7.5m against \$6.5m freight); The National, 17 July 2026 (Marsh: 3 to 10 per cent). Sources folder: 08-Insurance/16, 08-Insurance/37, 08-Insurance/15.

https://www.howdenre.com/sites/howdenre.howdenprod.com/files/2026-03/HowdenRe_Strait_of_Hormuz_report_March272026.pdf

235 Joint War Committee Circular JWLA-034, 29 July 2026; LMA JWC page (“The JWC has adjusted the Red Sea notification line northwards to reflect this development”). Sources folder: 08-Insurance/02, 08-Insurance/14. <https://lmalloyds.com/wp-content/uploads/2025/06/JWLA-034-Saudi-Arabia.pdf>

236 Joint War Committee Circular JWLA-035, 16 September 2026; LMA, Joint War Committee page, accessed 10 October 2026. Sources folder: 10-Update/24, 12-Update/63. <https://lmalloyds.com/wp-content/uploads/2026/09/JWLA-035-Black-Sea.pdf>

the report adds that marine insurers **“have kept offering war coverage through the crisis”**.²³⁷ That is further evidence against any plea that cover was unavailable.

Which policy responds to which loss?

117. A missile or drone strike on a tanker falls under the hull war perils (**“war ... or any hostile act by or against a belligerent power”; “any terrorist or any person acting maliciously or from a political motive”**), not the marine hull policy, from which war is excluded; owners’ P&I liabilities from such a strike fall on the hull war P&I layer up to the insured value and then on the Group excess war cover.²³⁸ A vessel trapped in the Gulf is covered for physical loss but not delay (**“any claim for expenses arising from delay”** is excluded), and becomes a constructive total loss under the detainment clause only after **“a continuous period of 12 months”** of lost **“free use and disposal”** caused by **“capture seizure arrest restraint detainment confiscation or expropriation”**.²³⁹ The market anticipated the point: in July 2026 the Swedish Club amended its war cover so that any blocking-and-trapping deemed-total-loss provision **“shall apply only where such circumstance has continued without interruption for a period of at least twelve (12) consecutive months”**.²⁴⁰
118. The earliest such claims for vessels trapped since 2 March 2026 would fall to be assessed from March 2027. Whether a ship which stays because leaving is dangerous, rather than because it is physically prevented, has been **“restrained”** or **“detained”** was litigated over the vessels trapped in the Shatt al-Arab in the 1980s; I have not opened those reports and no 2026 decision has yet revisited the point.
119. The five-powers clause has not been engaged. Hull war cover terminates automatically only on war **“between any of the following countries: United Kingdom, United States of America, France, the Russian Federation, the People’s**

237 Reuters (J Saul) via Insurance Journal, 25 September 2026; S&P Global Platts interview with Lars Lange (IUMI) via Hellenic Shipping News, 25 September 2026. I have found no reported premium figure for 1–10 October, when the attacks were at their highest. Sources folder: 12-Update/78, 12-Update/75.

<https://www.insurancejournal.com/news/international/2026/09/25/886769.htm>

238 IWSC Hulls-Time 1/11/95, cl 1.1, 1.5; Gard Rule 58 (P&I war exclusion, mirroring ITC Hulls 1/10/83 cl 23); Steamship Mutual FAQs, 4 March 2026. Sources folder: 08-Insurance/08, 08-Insurance/17, 08-Insurance/19. <https://gard.no/rules-statutes-and-guidances/document/limitations-etc-on-p-i-cover-rule-58-war-risks/>

239 IWSC Hulls-Time 1/11/95, cll 3, 5.5. Sources folder: 08-Insurance/08.

<https://under-tech.com/wp-content/uploads/2020/12/cl281-war-strikes-hulls-time-1995.pdf>

240 The Swedish Club, War Risk Circular No. 451/2026, 31 July 2026, para 3 (“Blocking & Trapping”). Sources folder: 08-Insurance/12. <https://www.swedishclub.com/news/circulars/war-risk-insurance-2026-notice-of-cancellation-31-july-2026/>

Republic of China"; a US–Iran war is outside it, but a US–Russia or US–China incident in the Gulf would end every hull war and Group excess war cover at once.²⁴¹

120. Cargo is more exposed than hull. War cover under the Institute War Clauses (Cargo) attaches only when the goods are loaded on the overseas vessel and ends **“on expiry of 15 days counting from midnight of the day of arrival of the vessel at the final port or place of discharge”**, or at a substituted port if the contract voyage is terminated elsewhere, with reattachment only on notice and additional premium; delay and **“frustration of the voyage or adventure”** are excluded.²⁴² The Joint Cargo Committee has warned publicly that **“there may be some assureds who could potentially find themselves off risk for war perils as many policies have a 15-day limit”**.²⁴³ Under the Institute Bulk Oil Clauses war is excluded altogether unless the war clauses are added, and under BP’s terms a CIF seller buys war cover only if the buyer asks two business days before loading and pays the London rate.²⁴⁴ Oil sitting on a tanker at anchor inside the Gulf for weeks is at real risk of being uninsured against the very peril that keeps it there.

Who bears the premium along the chain

121. The charterparty clauses discussed above put the additional premium on the time or voyage charterer, with SHELLVOY 6’s split and SHELLTIME 4’s subrogation-waiver condition as the variants.²⁴⁵ BP’s terms then pass the charterer’s premium, crew bonus and security costs to the CIF or CFR buyer **“in addition to the price”**, and give the seller a right to refuse to direct the vessel into waters **“where there is war (de facto or**

241 IWSC Hulls-Time 1/11/95, cl 5.1.1, 6.2.1; The Swedish Club, Clauses for War Risk 2026, W.1.4 cl 2.1; Steamship Mutual FAQs (Rule 21 iii b); Kilpatrick, “Revisiting the Five Powers War Risk Exclusion”, NUS CML WP 24/01 (2024). Sources folder: 08-Insurance/08, 08-Insurance/13, 08-Insurance/19, 08-Insurance/09. <https://law.nus.edu.sg/wp-content/uploads/2024/01/CML-WPS-2401.pdf>

242 Institute War Clauses (Cargo) 1/1/09 (CL385), cl 1, 3.5, 3.7, 5.1–5.3, 5.5, 7. Sources folder: 08-Insurance/23. <https://insurance.archgroup.com/wp-content/uploads/sites/2/Institute-War-Clauses-Cargo-1-01-09-CL385.pdf>

243 LMA, Joint Cargo Committee page, “Conflict in the Gulf”. Sources folder: 08-Insurance/26. <https://lmalloyds.com/committee/joint-cargo-committee/>

244 Institute Bulk Oil Clauses (CI 273, 1/2/83), cl 6; BP GTC 2015, s 12.2.2. Sources folder: 08-Insurance/25, 08-Insurance/42. <https://www.marsh.com/content/dam/marsh/Documents/PDF/dk/da/Institute%20Clauses%20and%20Joint%20Cargo%20Clauses.pdf>

245 See paragraphs 103(c) and 105 above; CONWARTIME 2013 cl (d); VOYWAR 2013 cl (e)(ii) (premium after discharge “until the Vessel leaves such area”); SHELLVOY 6 cl 34(5); SHELLTIME 4 cl 34. Sources folder: 07-Forms/02, 07-Forms/03, 07-Forms/29, 07-Forms/28. https://www.bimco.org/contractual-affairs/bimco-clauses/earlier-clauses-list/war_risks_clause_for_voyage_chartering_2013/

de jure) or threat thereof".²⁴⁶ So, on BP-form sales, the Hormuz premium ends with the end-buyer; on FOB sales it stays with the buyer's charter. And, after **The Polar**, none of those payments buys the payer immunity from the owner's claims in general average or otherwise.

Sanctions

122. Payment of a transit **"toll"**. OFAC's FAQ 1249 of 28 April 2026 states that payments to, and guarantees from, the Government of Iran or the IRGC for safe passage **"would not be authorized for U.S. persons"**, that US persons may not receive Iranian safe-passage services even without payment, and that such dealings **"create significant sanctions exposure for non-U.S. persons"**; OFAC designated the **"Persian Gulf Strait Authority"** on 27 May 2026 and the Persian Gulf Marine Insurance Company and **"HormuzSafe"** on 29 July, and warns that non-US persons **"could face civil and criminal enforcement liability should such payments cause U.S. persons, such as insurers, reinsurers, and financial institutions, to violate sanctions"**.²⁴⁷ The EU extended its Iran framework to freedom of navigation on 22 May and listed the IRGC Navy's Hormozgan Provincial Command on 8 June; the United Kingdom designated the IRGC under the National Security (State Threats) Act 2026 in July.²⁴⁸ OFAC tightened further in September. From 10 September it applies **"a presumption of denial"** to Iran-related specific licence applications, and on 14 September it designated VTB Bank under the Iran programme, subject to secondary sanctions, warning that **"any entity facilitating money laundering or sanctions evasion on behalf of Iran risks being cut off from the U.S. financial system"**.²⁴⁹ The first is relevant to any argument that a licence could have been obtained (paragraph 24). The second is relevant to letters of credit and payment chains that pass through Russian banks. The pace has

246 BP GTC 2015, ss 12.3.1, 12.3.2(a)(ii). Sources folder: 08-Insurance/42.

<https://www.bp.com/content/dam/bp/business-sites/en/global/bp-supply-trading-and-shipping/documents/bp-oil-gtc-2015-version-1.2.pdf>

247 OFAC FAQ 1249 (28 April 2026, updated 29 May 2026); OFAC Alert, "Sanctions Risks of Iranian Demands for Strait of Hormuz Passage", updated 24 August 2026; US Treasury press release, 27 May 2026. Sources folder: 08-Insurance/06, 08-Insurance/07, 08-Insurance/31. <https://ofac.treasury.gov/faqs/1249>

248 Council of the EU press releases, 22 May and 8 June 2026 (text obtained via a summariser; re-check before quoting); HM Government, "Support for IRGC outlawed in crackdown on foreign state proxies", 13 July 2026; LMA Sanctions and Terrorism Tables, 23 July 2026 (the UK has designated but not proscribed the IRGC). Sources folder: 08-Insurance/36, 08-Insurance/34, 08-Insurance/05.

<https://www.gov.uk/government/news/support-for-irgc-outlawed-in-crackdown-on-foreign-state-proxies>

249 OFAC, Recent Actions, 10 September 2026; US Treasury press release sb0629, 14 September 2026. Sources folder: 10-Update/25, 10-Update/26. <https://home.treasury.gov/news/press-releases/sb0629>

since increased. On 1 October OFAC extended its sector sanctions to Iran's automotive and rail sectors, Treasury saying that Iran's oil revenues were falling **"to zero"** under the blockade; on 5 October it issued an alert that foreign banks continuing to deal with sanctioned Iranian banks **"could be targeted at any time without advance notification"**; and on 8 October it added 22 tankers to the SDN List, 17 of them under a Treasury action said to neutralise **"the vast majority of Iran's remaining shadow fleet network"**, and OFAC issued a licence to 23 October for winding down dealings with one of the newly designated companies, Samudra Marine Services.²⁵⁰ For a bank in a letter-of-credit chain, the alert is the strongest statement yet of the risk, and I think a bank that refuses to pay will plead illegality or a sanctions clause rather than force majeure. In the United Kingdom, HM Treasury announced on 23 September that licence applications by five designated Iranian banks will be presumed refused, and that General Licence INT/2025/7628424 **"will not be renewed when it expires on 22 October 2026"**.²⁵¹ Nothing in the period touched the Hormuz toll guidance, which remains as stated above.

123. The London market's response was the Strait of Hormuz Transit Fee Condition (LMA5708, 23 July 2026), which makes it **"a condition of this (re)insurance that no transit fee, toll or charge, or other consideration, including any non-financial consideration ... to pass through the territorial waters of the Islamic Republic of Iran or otherwise to transit the Strait of Hormuz shall be paid or given"**; on breach the insurers are **"irrevocably discharged of all obligations ... in connection with any vessel(s) in respect of which any such transit fee ... has been paid"**. The accompanying guidance records that reimbursing a toll **"would be illegal"**, that the condition works **"in tandem with"** the LMA3100A or LMA3200 sanctions clause, and that OFAC's position is that **"if an owner pays a toll or other consideration, the insurance cover for the relevant vessel should cease from that point onwards"**.²⁵² An owner who refuses to pay or to submit PGSA forms in order to preserve cover is

²⁵⁰ US Treasury press release sb0643 and E.O. 13902 sector determinations, 1 October 2026; OFAC Alert, "Notice to Foreign Financial Institutions Conducting Business with Iran", 5 October 2026; US Treasury press release sb0653, 8 October 2026, OFAC Recent Actions, 8 October 2026, and General License EE. Sources folder: 12-Update/61, 12-Update/60, 12-Update/59, 12-Update/58.
<https://ofac.treasury.gov/media/937091/download?inline>

²⁵¹ HM Treasury/OFSL, "Presumption of denial of licence applications for designated Iranian banks", 23 September 2026, and UK Financial Sanctions FAQ 204. Sources folder: 12-Update/67.
<https://www.gov.uk/government/publications/hmt-licensing-guidance-presumption-of-denial-of-licence-applications-for-designated-iranian-banks/presumption-of-denial-of-licence-applications-for-designated-iranian-banks>

acting within the express charterparty liberty to comply with the requirements of its war-risk insurers, and a charterer's order to transit by the PGSA route is arguably an order for a **"Sanctioned Activity"** which the owner may refuse under the BIMCO Sanctions Clause 2020, keeping the vessel on hire.²⁵³

124. Iranian-origin oil. OFAC's General License X of 21 June 2026, issued under the MoU, briefly authorised US-nexus dealings in Iranian crude and products; General License X1 of 7 July revoked it, with a wind-down to 17 July and no authority for **"purchases or loading of such products on or after July 7, 2026"**.²⁵⁴ Since 29 September 2026, when they came into force, the Iran (Sanctions) (Amendment) Regulations 2026 have prohibited the import into the United Kingdom of oil and petroleum products consigned from or originating in Iran, their acquisition, their supply or delivery from Iran to a third country, and related financial services; prohibit the provision of insurance or reinsurance to a person **"connected with Iran"**, with grandfathering for agreements concluded before 8 September 2026 and a carve-out for directions given **"for any purpose in connection with the safe transit of the ship ... in the territorial sea adjacent to Iran"**; and prohibited brokering, chartering, crew, operating, financial and technical services in relation to specified ships. So far as the FCDO's notices page shows, no ship had been specified by 10 October.²⁵⁵
125. Any term contract for Iranian barrels concluded in the June window is now a textbook **"Sanctions Change"** for clauses of the Litasco type, under which the parties **"are taken to have assessed the position at the date of the Contract"** and only later changes give relief, and a **"Trade Restriction"** for BP's section 71, though the 2015

252 LMA5708, Strait of Hormuz Transit Fee Condition, 23 July 2026, paras 1–3; LMA Guidance Note, 23 July 2026, paras 2–5, 8. Sources folder: 08-Insurance/03, 08-Insurance/04.

<https://lmalloyds.com/wp-content/uploads/2026/07/Strait-of-Hormuz-Transit-Fee-Condition.pdf>

253 BIMCO Sanctions Clause for Time Charter Parties 2020, cll (a), (e)–(f); Voyage version, cl (e); NorthStandard FAQs, 2 April 2026; Steamship Mutual (Barnes), "Strait of Hormuz: Sanctions Considerations", 14 May 2026 (club cover ceases where employment becomes "prohibited, unlawful or sanctionable"). Sources folder: 08-Insurance/47, 08-Insurance/48, 07-Forms/20, 08-Insurance/20. https://www.bimco.org/contractual-affairs/bimco-clauses/current-clauses/sanctions_clause_for_time_charter_parties_2020/

254 OFAC, Recent Action 7 July 2026 and Iran General License X1; Clyde & Co, 8 July 2026 (secondary). Sources folder: 08-Insurance/32, 08-Insurance/33. <https://ofac.treasury.gov/recent-actions/20260707>

255 The Iran (Sanctions) (Amendment) Regulations 2026, SI 2026/983 (made 7 September 2026; reg 1(2) in force 29 September 2026), inserting regs 17C, 31J, 31K(1), 31L(1), 31N(1), 33E(1) into the Iran (Sanctions) (Nuclear) (EU Exit) Regulations 2019 (Part 2 of the amending SI); Explanatory Note; HM Government, Notice to Exporters 2026/18, 8 September 2026 (confirming commencement on 29 September 2026); FCDO, "Iran: list of designations and sanctions notices" (last updated 13 July 2026, accessed 10 October 2026; the UK Sanctions List itself was not searched). Sources folder: 08-Insurance/54, 10-Update/28, 12-Update/64, 12-Update/66. <https://www.legislation.gov.uk/uksi/2026/983/made>

BP text lists only the EU, its member states, the UN and the United States and will need special provision to catch the UK regulations.

126. Insurance sanctions clauses. Under LMA3100 an insurer is not liable **“to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction”**; Mamancochet holds that **“would expose”** requires that payment be actually prohibited, not merely at risk, and that the effect is suspension, not extinction. LMA3200 makes the suspension express; the Swedish Club’s 2026 wording and the Transit Fee Condition use **“may expose”** and termination.²⁵⁶

Trade finance and governmental measures

127. UCP 600 Article 36 protects the bank against **“the consequences arising out of the interruption of its business by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism ... or any other causes beyond its control”**; it is not a force majeure clause for the beneficiary, and the ICC Banking Commission’s Technical Advisory Briefing No. 15 of 27 July 2026 confirms, as reported, that **“transport disruption, reduced operational capacity, or wider market difficulties that surface while banks remain open for business do not qualify”**.²⁵⁷ Where a bank’s own obligation is caught by sanctions, Celestial v UniCredit shows that the obligation is suspended pending a licence, and that a bank which makes no reasonable effort to obtain one cannot rely on foreign illegality.²⁵⁸
128. The IEA’s 400 million barrel collective action of 11 March 2026 and the US Department of Energy’s 172 million barrel SPR exchange are supply-side relief, not restrictions; they bear on mitigation (was substitute supply available?) and, under BP’s section 65.2.1(f), a governmental **“request”** to draw stocks or restrain demand is itself a listed impediment.²⁵⁹ The G7’s release of 100 million barrels agreed on 2 October, and the IEA’s decision of 7 October to speed up the March releases and put diesel first,

256 LMA3100 and LMA3200 as quoted by DAC Beachcroft, 18 October 2023 (secondary; the LMA wordings are login-protected); Mamancochet Mining Ltd v Aegis Managing Agency Ltd [2018] EWHC 2643 (Comm) at ¶¶47, 50, 77 (Teare J); The Swedish Club, Clauses for War Risk 2026, W.10. Sources folder: 08-Insurance/52, 08-Insurance/53, 08-Insurance/13. <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2018/2643>

257 UCP 600, art 36, and ICC Banking Commission Technical Advisory Briefing No. 15 (27 July 2026), as reported by Documentary Credit World (Byrnes), 12 August 2026 (secondary; the Briefing itself not opened). Sources folder: 08-Insurance/30. <https://www.doccredit.world/icc-issues-tab-on-force-majeure-under-ucp/>

258 Celestial Aviation Services Ltd v UniCredit Bank GmbH [2024] EWCA Civ 628 at ¶¶4, 66, 68, 103, 105–106. Sources folder: 08-Insurance/29. <https://caselaw.nationalarchives.gov.uk/ewca/civ/2024/628>

are of the same kind (paragraph 12(c)). The fuel export bans imposed by China (12 March, and again for October), Thailand, Russia and others are “**prohibition of export**” events in the classic sense, and each needs its own primary citation before it is pleaded; the GAFTA cases discussed at paragraph 113 say what a seller relying on such a ban must prove.²⁶⁰

259 IEA press releases, 11 and 15 March 2026 (text via summariser); US DOE press releases, 13 March and 30 April 2026. Sources folder: 08-Insurance/38, 08-Insurance/40. <https://www.energy.gov/articles/energy-department-initiates-strategic-petroleum-reserve-emergency-exchange-stabilize>

260 OPIS, “FACTBOX: Countries Impose Fuel Export Restrictions During Global Energy Crisis”, 15 July 2026 (secondary). Sources folder: 08-Insurance/39. <https://www.opis.com/resources/energy-market-news-from-opis/factbox-countries-impose-fuel-export-restrictions-during-global-energy-crisis/>

PRACTICAL GUIDANCE

129. Drawing the threads together, I would suggest the following:

- (a) Start with the seven questions I identify at the start of this paper. The governing law, the obligation, the event, the verb, the date, the notice and the remedy decide most cases before any doctrine is reached.
- (b) Treat a counterparty's force majeure declaration as a fact to be tested, not a conclusion to be accepted. Ask which event is relied on, whether it was the sole cause, whether the declarant could have performed from another source or by another contractual route, whether it served notice in time and in the required form, and whether it would have performed anyway. Under English, Singapore and Australian law an unjustified declaration may be treated as a repudiation, and under an excusing clause it carries full damages.
- (c) Do not pass a declaration down the chain reflexively. A reseller's own clause must reach supplier failure (BP's **"provided in fact the sources of supply are for the purposes of the Agreement"** is the model), its own notice must be served in time, and its own causation must be proved. Letters of credit and accrued payment obligations survive.
- (d) Under UAE and Saudi law, and under the other GCC codes, do not stop performing on hardship grounds. Serve the hardship invitation (Saudi Article 97 requires it **"without undue delay"**, and the Saudi Explanation treats unjustified delay as evidence that there was no exceptional circumstance), keep performing, document the cumulative cost, and go to court or tribunal for rebalancing. A party that suspends for hardship alone is in breach. A Saudi-law buyer should expect a court to be able to raise its price, and should know that it may then choose to terminate rather than pay.
- (e) Check the date of the contract against the timeline in paragraph 11. Contracts made after 2 March 2020, and again after 11 July, will be treated as having priced the war in wherever foreseeability is part of the test: the UAE, Saudi and other GCC hardship articles, clauses with an **"unforeseeable"** limb (GAFTA, ICC, BIMCO 2022, FIDIC), frustration, and the accepted-risk principle for war clauses on the 2004 wording; **"always allowed"** words agreed after those dates bind the owner.

- (f) For charterparties, identify the edition of the war clause. The 2013 and 2025 CONWARTIME wordings apply regardless of pre-existing risk; the 2004 wording and the tanker forms invite the **Product Star** argument. Under the 2025 wording owners should assemble the evidence of **“reasonable endeavours to obtain appropriate cover and terms”** before invoicing the premium.
- (g) Keep a contemporaneous record of the risk assessment on which any refusal to proceed is based: the joint industry transit guidance, the UKMTO and JMIC advisories, the JWC circulars and the P&I circulars. **The Triton Lark** requires a good-faith and objectively reasonable judgment, and the record proves it.
- (h) Do not pay a toll and do not accept Iranian safe-passage services. The consequences are loss of hull war cover for the vessel, sanctions exposure across the chain, and a probable breach of the BIMCO Sanctions Clause.
- (i) Check cargo war cover for goods on trapped tonnage against the 15-day limit, and hull war cover against the 12-month detainment rule.
- (j) For a contractor on a Saudi public contract, look first at the new Article 113 of the procurement regulations (paragraph 65(g)): a price rise of more than 3 per cent of the contract cost is compensable without proving exceptional circumstances, but the claim must be made before final acceptance. For a Saudi works contract, assume that a clause excluding Article 471(3) is void. For a contract governed by Qatari, Kuwaiti, Bahraini or Omani law, assume that the hardship article applies whatever the contract says. A Kuwaiti or Bahraini court may increase the price; an Omani buyer faced with a long temporary impossibility may terminate on notice under Article 172.
- (k) For new contracts: state the loading range expressly (Yanbu in or out); say whether force majeure covers supplier failure and on what proof; state an allocation rule; state whether **“hinder”** or **“prevent”** is intended and define the operative word (the Singapore Court of Appeal said in **Holcim** that the clause **“was phrased too generally”** and that a definition of **“disrupted”** would have avoided the dispute²⁶¹); say whether payment in a different currency or through a different channel is contractual performance; fix a long-stop; carve out

261 **Holcim** [2011] SGCA 1 at [101]. Sources folder: 05-Singapore/02.
https://www.elitigation.sg/gd/s/2011_SGCA_1

payment; add a sanctions clause that lists the United Kingdom; and, for Gulf-law contracts, accept that the hardship articles cannot be excluded and draft the price-review and change-in-law mechanisms so that a court has less reason to intervene.

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