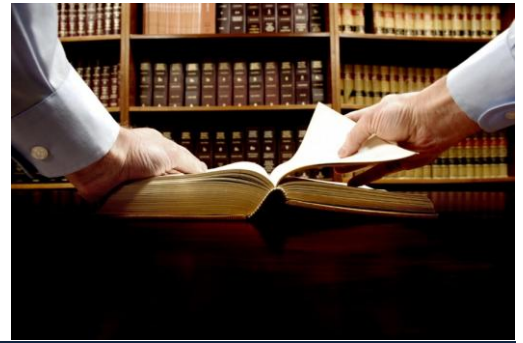


inBrief

**The New UAE Civil Code: Force Majeure and Hardship**

By Chatura Randeniya, Mevan Bandara, Lee Schama, Noran Al Mekhlafi and Tanya Garg
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Federal Decree-Law 25/2025 Issuing the Civil Transactions Law (the **New Code**) came into force on 1 June 2026. It replaced Federal Law 5/1985 Concerning the Issuance of the Civil Transactions Law (the **Old Code**).

This inBrief forms part of a series examining the changes introduced by the New Code, and deals with the provisions governing force majeure and hardship.

Unlike common law jurisdictions, force majeure and hardship find statutory expression in the UAE. Force majeure refers to unforeseeable events beyond the parties' control which renders performance impossible, while the doctrine of hardship refers to exceptional circumstances where performance remains possible but becomes more onerous or radically different than originally contemplated by the parties.

While these doctrines were recognised under the Old Code, the New Code makes the remedies clearer, more flexible, and more commercially usable.

1. What was the position under the Old Code?

The Old Code contained a framework governing force majeure, including partial and temporary impossibility, and hardship in contractual and non-contractual obligations.

(i) Force majeure

Article 273 of the Old Code addressed the consequences of force majeure, including total, partial and temporary impossibility of performance.

- Total impossibility: If force majeure rendered performance impossible, the corresponding obligation ceased and the contract was automatically cancelled.
- Partial and temporary impossibility: Where performance became partially or temporarily impossible, the impossible part (*i.e.*, the corresponding obligation) was extinguished. In both cases, the obligor (*i.e.*, the party which owed performance) could cancel the contract, provided the party to whom performance was owed to was notified of the impossibility.

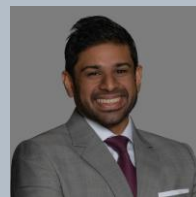
(ii) Hardship

Article 249 of the Old Code empowered a court to reduce or adjust a burdensome obligation to a reasonable level while having regard to the interests of both parties, where exceptional circumstances of a public nature arose that could not have been foreseen at the time of entering into the contract, which rendered performance burdensome and threatened the obligor with grave loss. Any agreement to the contrary was void.

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2. What are the changes introduced under the New Code?

The New Code retains the underlying principles of force majeure and hardship, and expands the reliefs that may be sought.

(i) Force majeure

Article 236 of the New Code retains the position under the Old Code in cases of total impossibility, *i.e.*, if force majeure renders performance impossible, corresponding obligations cease, and the contract is cancelled automatically. The principal changes concern the treatment of partial and temporary impossibility.

- Partial impossibility: Where performance is partially impossible, either party, not just the obligor (as was the case under the Old Code), may seek discharge from the corresponding obligation(s), or apply to the court for rescission of the contract.
- Temporary impossibility: Similar to the remedy for partial impossibility, where impossibility is temporary in a continuing contract, either party may seek discharge from the corresponding obligation(s), apply to the court for rescission, and/or additionally, seek modification of the contract.
- Loans for specific things (العارية): The New Code also addresses circumstances in which a borrower may remain liable despite force majeure. Article 804(2) provides that a borrower may remain liable for the loss or destruction of a borrowed item where the loss could have been avoided by sacrificing the borrower's own property, or where the borrower chose to save their own property instead (Article 804(2)).

(ii) Hardship

The New Code more clearly articulates the range of remedies available to the court. Where the commercial bargain can sensibly be saved, the court may adjust it; and if it cannot, the court may order rescission. Under the Old Code, the court only modify the terms of the contract, and could not order rescission.

3. Why the change matters?

(i) Commercial and contractual impact

- Real disruption resulting from a force majeure or hardship event rarely fits neatly into legal boxes. A supply chain disruption, regulatory change, labour shortage or geopolitical event may affect contractual performance in different ways and to different degrees. The New Code recognises this reality and makes clear that both parties may seek relief, while granting the courts broader remedial powers that are no longer limited to cancellation, as was the position under the Old Code.

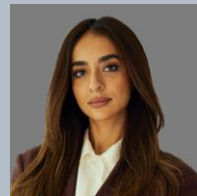
Force Majeure

- By way of example, where a force majeure event temporarily reduces a supplier's production capacity, the New Code allows the contract to be preserved, through temporary adjustments to the parties' obligations. This is commercially significant as the focus shifts from an all-or-nothing outcome towards preserving a commercially workable arrangement, where possible.



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- The amendments are likely to be particularly significant in the context of long-term commercial relationships, including supply, infrastructure, logistics, outsourcing and distribution arrangements, where temporary disruption may not justify termination of the contractual relationship, but equally may require the parties' obligations to be adjusted to reflect changed circumstances.

Hardship

- The New Code does not permit contracts to be revisited merely because a party has made an unfavorable bargain, which was also the case under the Old Code. However, where exceptional and unforeseeable circumstances render performance excessively onerous, the court is empowered to rescind the contract as well to adjust the obligations of the parties.
- This is significant because hardship cases often fall between two unsatisfactory outcomes. While strict enforcement of the contract may become excessively onerous, cancellation may be commercially wasteful. The New Code makes the middle ground easier to identify and ensures that parties will focus less on artificial labels and more on the remedy that best fits the disruption.

(ii) Litigation impact

- The practical shift under the New Code is that parties are likely to spend less time debating rigid classifications and more time addressing the consequences of the disruption itself. That is the practical shift: the New Code makes it plain that both parties can seek remedies, and that the court has a wider remedial toolkit. The emphasis therefore moves away from a narrow argument about classification and towards the practical question: what remedy fits the disruption?
- This may be particularly important in disputes where the parties agree that an external event has affected performance but disagree as to the appropriate response. The New Code provides clearer statutory mechanisms for preserving, modifying or terminating contractual relationships depending on the circumstances.

4. Practical takeaways

Dos

- **Address remedies and consequences at the drafting stage:** Parties should decide in the contract what happens if performance becomes impossible, partially impossible, temporarily impossible or exceptionally onerous. The key question is not just whether a force majeure or hardship event has occurred, but what contractual consequences and remedies should follow.
- **Use bespoke force majeure and hardship clauses and define assumed risks clearly:** A generic force majeure or hardship clause may not be sufficient. If inflation, sanctions, war, shipping disruption, labour shortages, currency movement, material shortages or regulatory delay are intended to sit with one party, say so expressly.
- **Decide in advance what follows from the disruption:** The clause should also address notice requirements, mitigation measures, suspension rights, partial performance, temporary modification, extension of time, price adjustment, cost-sharing, renegotiation procedures, and termination rights.
- **Build in a process for preserving the contract:** Parties should consider including contractual mechanisms designed to preserve the relationship during periods of disruption, where disruption occurs but continuation of the contractual relationship remains commercially viable.
- **Consider the wider range of judicial remedies available:** The New Code provides clearer statutory mechanisms through which parties may seek judicial relief, including preservation, modification, or rescission of contractual obligations where the statutory requirements are satisfied. A party resisting relief may still argue that the relevant risk was foreseeable, assumed, insured against or allocated by the contract.
- **Comply strictly with any contractual notice requirements (where applicable):** Delayed or inadequate notice may prejudice a party's ability to rely on force majeure or hardship provisions.

Don'ts

- **Do not confuse commercial difficulty with hardship:** Every increase in cost, reduction in profitability or commercial inconvenience may not constitute hardship.
- **Do not assume that force majeure automatically leads to termination:** The appropriate remedy will depend on whether the impossibility is total, partial or temporary and the circumstances of the case. A party will not automatically be entitled to terminate the contract.
- **Do not exclusively rely on the remedies contained in the New Code:** Seek legal advice and incorporate contractual provisions to clearly allocate risk and prescribe the consequences of disruption.

- **Do not wait for a dispute before exploring solutions:** Parties should consider at an early stage whether contractual performance can be modified, suspended or otherwise preserved before a dispute arises. ■

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