SQUIRE PATTON BOGGS

LNG Supply Disruption

Understanding how *force majeure* affects your contracts

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On Saturday 28 February 2026, the US and Israel launched large-scale coordinated attacks on Iran. Iran responded with missile and drone strikes across the Gulf region, including targeting locations in Saudi Arabia, Qatar, Bahrain, Kuwait and the UAE.

The situation is rapidly evolving, with global consequences including (i) QatarEnergy's decision to cease production of LNG and associated products at its facilities in Ras Laffan after military attack on its operating facilities; and (ii) Iran's Islamic Revolutionary Guard Corp's effective shutdown of the Strait of Hormuz, a critical transit route for world oil and LNG shipments.

Most gas and LNG agreements contain contractual provisions addressing events of *force majeure*. These clauses typically provide that a party shall be relieved from a contractual liability that might otherwise arise consequent upon a failure to perform where there is an act, event or circumstance that (i) is beyond the control of the party affected by it, and (ii) prevents that party from performing some or all of its contractual obligations (or, in other iterations of such clauses, which prevents, hinders, impedes or delays that party from performing its full contractual obligations).

The critical components of a *force majeure* provision therefore include (but are not limited to) (i) identifying the qualifying factors, such as any acts, events or circumstances that are intended to give rise to *force majeure* and excluding those that the parties have agreed do not give rise to *force majeure*; (ii) establishing the notice requirements that a party must comply with in order to be entitled to claim *force majeure* relief; (*iii*) prescribing any mitigation measures, including the potential resumption of normal performance; and (*iv*) stipulating the consequences of an event of *force majeure* on the performance of the contract.

Traditionally, *force majeure* clauses often fall into the "boilerplate" nonnegotiated category of contractual terms. This is due to the provision's limited (or nil) impact on the more heavily negotiated contractual terms underpinning the commercial bargain – such as price, source or flexibility. This can be a perfectly fine state of affairs until, all of a sudden, it is not. When issues pertaining to *force majeure* arise, they are rarely straightforward, and, by definition, they are unexpected and often unplanned for. There may be numerous legal and factual complications depending on the actual circumstances in question, as well as on the potential applicability of other clauses in any particular contract and how they are meant to interact with the *force majeure* clause in any particular situation.

Quite often, parties are left without clear answer as to whether the *force majeure* clause in question will apply, and, regardless of whether it does or not, their respective obligations in relation to it. This is where disputes inevitably arise.

Crucially, the application of *force majeure* clauses will depend on the specific contractual language and the applicable governing law of the agreement in question. Where there is a valid declaration of *force majeure*, an affected party's nonperformance may be excused, meaning that the normal penalty payment or compensation cost element for any failure to perform falls away. From a monetary perspective in the current LNG market, this can equate to millions of dollars spent or saved, as the case may be.

While there is a tendency for *force majeure* clauses to sometimes be treated as boilerplate provisions, there are certain important drafting considerations for parties to take into account at this challenging time:

- The clause should provide that a qualifying act, event or circumstance (as specified in the clause) must have occurred that causes the inability (or delay/hindrance etc.) of one party to perform its obligations under the agreement. The crucial element here is the nexus between the qualifying act, event, or circumstance and actual performance. Typically, parties do not like to include drafting that suggests that a situation of *force majeure* may arise where performance has simply become more problematic or expensive. Rather, parties prefer to have clear language establishing that performance must not be possible as contracted for as a result of the act, event or circumstance in question. This point can be spelled out in the provision. For example:
  - Although certain *force majeure* provisions discuss a "failure to perform", parties may wish to consider developing this wording to specify an "inability" to perform. This will help to clarify and distinguish situations where a party simply fails to perform (for example, where it has elected to not perform), from one where that party physically or legally could not have performed as it contracted to do.
  - The *force majeure* provision may expressly exclude certain acts, events or circumstances from giving rise to *force majeure*, such as market price increases, economic impracticability or economic hardship.

- Linked to the first point, does the *force majeure* clause provide any flexibility to the affected party with regard to the impact of the qualifying act, event, or circumstance on its performance? For example, does the language in the relevant clause contemplate performance being delayed, hindered or impeded, or does it excuse liability only where performance is "prevented"? This is often a key battleground between parties when interpreting these provisions, in particular under English law, where the word "prevent" has been interpreted by English courts to have a narrower meaning than "hinder" or "delay". The fundamental question for the parties is whether they are looking to excuse performance only where performance is impossible or whether they seek to do so when circumstances fundamentally change the complexion of the contractual obligation.
- It is important to consider the balance between specificity and certainty. Sometimes, parties try to be as specific as possible in articulating the act, events or circumstances that they consider could amount to *force majeure*. The *force majeure* clause could reflect this by identifying a veritable laundry list of specific acts, events or circumstances, with the idea that more specificity brings greater clarity. However, the very nature of *force majeure* under most legal systems is that an unforeseen act, event, or circumstance has prevented a party from performing as it was supposed to do under the contract. Consequently, this may involve acts, events or circumstances that were never contemplated and therefore are not on the specific list or those that are almost (but not quite) identical to those listed in the *force majeure* clause. As with many things that end in arbitration, the devil is in the details.
  - If the purpose behind the *force majeure* clause is simply to excuse performance where an unanticipated act, event or circumstance has made performance impossible, it may be better for a party to keep things as simple as that. Often, this is done by framing the list of acts, events or circumstances intended to give rise to *force majeure* in nonexclusive terms, to avoid any implication that a disruptive event that is not specifically mentioned is not *force majeure*.
  - This means that, in the event of a *force majeure* declaration, instead of focusing on whether or not something falls precisely within the list of events itself, the proper focus will be on the more pertinent issues: was the act, event or circumstance unforeseen and did it prevent the affected party from performing its obligations under the contract?
- The clause may require the affected party to actually substantiate with evidence (rather than simply assert) (i) the existence of the act, event or circumstance underpinning its declaration of *force majeure*; and (ii) that its failure to perform (or perform on time) was as a result of circumstances beyond its control.
- In terms of the disruption, the provision may require the affected party to show (i) that there were no reasonable steps that it could have taken to mitigate or avoid the act, event or circumstance in question or its consequences; and (ii) that it has taken reasonable steps to mitigate or overcome the effects of the *force majeure* in order to resume normal performance as soon as possible. In an LNG context, this may be done, for example, by obliging a party to take steps to bring the *force majeure* to an end, including, in certain instances, instructing the affected party to try to seek alternative supplies (perhaps from a variety of sources, not just its own export facility) or other means of contractual performance.
- Where a contract provides that the parties shall use reasonable endeavours to resume normal performance after the occurrence of a *force majeure* event, the governing law of the contract will have a bearing on what is required.
  - For example, under contracts governed by English law, the English courts have suggested that, generally speaking, a "reasonable endeavours" obligation is less stringent than requiring a party to take "all reasonable endeavours" or use "best endeavours".
  - Further, in the context of *force majeure*, a reasonable endeavours obligation will only be linked to the performance of a specific obligation in a contract and will not require the nonaffected party to accept offers of noncontractual performance, even in circumstances where doing so would overcome the impact of the *force majeure*.

Ultimately, what is required (or not required) by a *force majeure* is a fact-dependent exercise. For this reason, it is very important that as soon as events or circumstances arise that impede a party's performance, that party keep clear documentation of the events and its responses.

If you have any questions on the subject matter of this piece, please contact the authors. The views expressed in this piece are those of the authors and not the firm or any of its clients.

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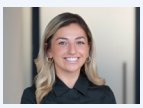

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