

Client Alert

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COVID-19: Critical Update on Iraqi Operations

On 22 March 2020, the **Iraqi Government Crisis Cell** took the unusual measure of issuing an [announcement](#) declaring the COVID-19 crisis as an event of "*force majeure*".

This blanket declaration will have a significant impact on companies operating in Iraq, potentially triggering contractual force majeure provisions and those imposed under the Iraqi regulatory framework, regardless of whether parties are actually prevented from carrying out their obligations.

Set out below is a summary of the current approach to force majeure under both Iraqi and English law - the two most common governing laws in the State - and the possible impact this declaration may have.

Force Majeure and Contracts Governed under Iraqi Law

Although the Iraqi Civil Code acknowledges the notion of force majeure and generally regulates it, the law does not clearly define what qualifies as an event of force majeure. Instead, it simply regulates the obligations of parties, following the determination of the relevant event as one of "*force majeure*".

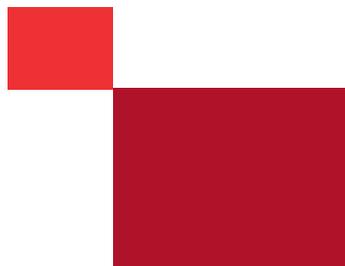
In many civil law jurisdictions in the Middle East, whether COVID-19 would qualify as an event of force majeure would be subject to the party alleging that it rendered the performance of the contract impossible. However, one possible and likely impact of the Crisis Cell's announcement is that the courts no longer need to assess whether COVID-19 qualifies as a force majeure event. It appears that a party could willingly (and possibly unnecessarily) default on its obligations and/or even fail to properly mitigate its circumstances, whilst successfully relying on the argument of "*force majeure*".

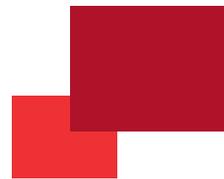
Force Majeure and Contracts Governed under English Law

In light of the Crisis Cell's announcement, there are two distinct lines of argument that ought to be considered when it comes to contracts governed under English law, with a nexus to the Republic of Iraq - whether the performance (or part of the performance) of the contract is in Iraq, or whether a party to an English law governed contract is located in Iraq.

Specifically, parties to an Iraqi contract governed by English law need to consider whether:

- (i) English common law applies to the notion of force majeure, which limits its application to contractual force majeure provisions and the court's opinion on applicability. This is because English law does not regulate or provide a definition for what qualifies as "*force majeure*"; or
- (ii) Iraqi regulations - in this instance - prevail, given the exceptional circumstances the country is under and more importantly the way in





which this announcement was made. It is plausible that the announcement will be characterized as one that relates to "*public order*". If this is the case, then any order issued under foreign law by any foreign court risks being nullified at the level of enforcement in Iraq.

For further guidance on the **Iraqi Government Crisis Cell's announcement**, please do not hesitate to contact us on the details set out in this client alert.