



**Behnam Khatami**  
Managing Partner

+98 21 2240 0434  
[behnam.khatami@namiassociates.com](mailto:behnam.khatami@namiassociates.com)



**Mansour Vesali**  
Senior Associate

+98 21 2240 0434  
[mansour.vesali@namiassociates.com](mailto:mansour.vesali@namiassociates.com)

## **Force Majeure in Iran: Wartime Considerations for Cross-Border Contracts**

11 April 2026

### **Background**

Geopolitical tensions in the Middle East have reached unprecedented levels following the US-Israeli armed conflict against Iran, now in its fourth week. The ongoing military operations have also created exceptional conditions in the Strait of Hormuz, where oil tankers and vessels traffic was disrupted shortly after hostilities began.

These developments have triggered profound effects on global trade in goods and commodities. Disruptions to petroleum operations in the region, stemming from military actions, have compounded the issue. As these challenges have unfolded since the war's outset, parties to international contracts may now turn to force majeure clauses, often overlooked during negotiations alongside other boilerplate provisions.

The fallout from military operations and Hormuz transit disruptions impacts a broad spectrum of transactions, from one-off sales agreements to long-term petroleum development and gas sales contracts. Media reports suggest some affected energy firms are considering invoking force majeure in gas sales agreements. International shipping faces similar hurdles, given its role in most goods transactions involving shipping and delivery terms. Ultimately, these interruptions are impacting global supply chains across multiple industries.

If the ongoing situation prevents either party from fulfilling contractual obligations, it could activate force majeure provisions, with outcomes varying by contract nature and duration. Parties to business transactions are likely feeling the strain of these events on performance.

Against this backdrop, this article briefly examines force majeure criteria under Iranian law and practical steps for invoking such clauses amid the current armed conflict.

### **Force Majeure as a Contract Law Concept**

The ongoing conflict and its implication for international commercial transactions raises the question of the law applicable to the contract so as to determine the law that the parties must

look to when the force majeure events come into play. By assuming that this clause most probably will not be of use, it is sometimes neglected or poorly dealt with when negotiating certain international contracts, particularly short-term ones or one-off sales and purchases. Absent a specific provision in the contract, the applicable law of the contract will typically recognise a doctrine of force majeure. That said, it is more common for parties to long-term contracts to negotiate over this clause to tailor it to their needs.

Contract is often viewed as a risk allocation tool between parties: in particular, force majeure clause is the tool for allocation of the risk of misprediction, which is particularly acute in long-term deals such as petroleum agreements.<sup>1</sup> In any event, force majeure or equivalent concepts have been developed across nearly all legal systems around the world, which govern the unforeseen hindrance if the parties have not explicitly addressed it in the contract.

From a practical perspective, it is believed that a well-drafted force majeure clause should (i) define force majeure, (ii) clarify how force majeure will affect a claiming party, and (iii) specify the available relief for the claiming party. In a long-term contract, the available relief usually involves suspension of the duty of the claiming party to perform their obligations.<sup>2</sup>

Under Iranian law, commentators and courts have often cited Articles 227<sup>3</sup> and 229<sup>4</sup> of the Civil Code 1928 (**Civil Code**) as the legal basis for force majeure, which precludes the obligor from having to pay damages. Consequently, regardless of the distinction some authors have made between obligations of means and obligations of result, exemption from contractual liability in most common cases is only possible through establishing the occurrence of a force majeure event.

The above-mentioned Articles of the Civil Code set forth conditions for force majeure without distinguishing the source of circumstances leading to force majeure. Therefore, war outbreaks can qualify as long as all criteria are met. Under the said Articles of the Civil Code and the established courts' precedents, force majeure conditions are as follows:

- (a) Non-performance must be due to external factors, beyond the obligor's control, which cannot be attributed to them.
- (b) The obstacle must be insurmountable. Mere hardship does not preclude liability, and it must be unavoidable. Whether the test for this condition is subjective or objective depends on the case-specific circumstances.

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<sup>1</sup> Claude Duval et al., *International Petroleum Exploration and Exploitation Agreements: Legal, Economic and Policy Aspects*, 2<sup>nd</sup> edition, Barrows Company Inc., New York, 2009, p. 322.

<sup>2</sup> *Ibid.*, P. 323.

<sup>3</sup> Article 227 of the Civil Code: "*The party in breach of an obligation will be adjudged to pay damages only if they fail to prove that the non-performance was due to an external cause that cannot be attributed to them.*"

<sup>4</sup> Article 229 of the Civil Code: "*If the obligor is unable to perform his obligation due to an event that is beyond their ability to overcome, they shall not be adjudged to pay damages.*"

- (c) Although not expressly stated in the Civil Code, unforeseeability is also required. This condition can sometimes be contentious when it comes to assessing war outbreaks as force majeure. Nevertheless, the test for this condition can be held to be an objective one.

In any force majeure situation, all these conditions must be satisfied for force majeure effect to apply. Depending on each specific obligation as well as contractual provisions, force majeure may permanently or temporarily discharge parties from obligations without having to pay damages for non-performance.

### **War Outbreaks as Force Majeure**

The conditions for characterising an event as force majeure for the purpose of discharging from contractual liability are the ones outlined above. In case the parties have not stipulated whether a given situation will qualify as force majeure, the dispute would be decided by the competent dispute settlement body. The specific characteristics of the obligation in each case and its individual circumstances will be examined to assess whether a party is entitled to invoke force majeure. Courts will normally enforce the detailed agreement of the parties as to what will qualify as force majeure.

A review of Iranian courts' precedents and arbitral tribunals' practice deciding on the basis of Iranian law generally demonstrates that views on whether in case involving similar set of facts conditions of force majeure have been met. This approach exhaustively enumerating the force majeure events, the Civil Code has defined conditions for it so that individual circumstances of each case determine the outcome rather so that the law does not interfere excessively with contractual relationships. This will preserve flexibility for courts and parties to maintain control over their commercial relationship.

While no recent publicly reported case addresses characterisation of war as force majeure, there are cases in which Iranian courts have ruled on force majeure conditions. A striking example of the occasions where Iranian courts have pronounced on the force majeure event is the US economic sanctions against Iran, which heavily impacted business relationships. Courts have differing findings on characterising sanctions as force majeure in different cases based on individual circumstances. For instance, courts have different perceptions of unforeseeability of sanctions when assessing the facts of each case.

Parties affected by the current situation should be aware that contracts often require serving force majeure notices within a defined timeframe from the occurrence of the force majeure event. Failure to send such notices could bar invocation of the clause, leading to adverse business consequences, even if the clause might otherwise apply.

Based on the foregoing, parties should note that that not every force majeure claim will succeed under Iranian law. Assessments remain case-by-case, with no automatic qualification for non-performance tied to armed conflict.

Notably, after the June 2025 war against Iran, the Tehran Chamber of Commerce, Industries, Mines and Agriculture (**Tehran Chamber**) submitted an inquiry, asking whether a general declaration of force majeure could be issued to all state entities. In response to the Tehran Chamber's inquiry, the president office's legal deputy stated that Article 277 and 229 of the Civil Code, constitute the statutory foundation of force majeure in Iran's legal system: if the obligor proves that the damage or non-performance of contractual obligations is attributable to an event that is unforeseeable, unavoidable and entirely outside the will, control or actions of the obligor, the causal link between the breach and the harmful act is severed, releasing the obligor from liability.

Although not being a binding legal opinion, this is in line with the general stance of Iranian law on this matter. As a result, invoking an armed conflict alone will not suffice to trigger force majeure effects.

### **Final Remarks**

While the significance of force majeure clauses is very often overlooked, the frequent instances giving rise to their triggering in recent years, such as wars, pandemics, etc., highlight the necessity for the parties to pay close attention to them. They have far-reaching consequences for the parties' contractual rights and remedies. Parties may draft such clauses by carefully considering their positions and interests at stake to hedge the adverse effects they may face by the application of the otherwise applicable law.

When facing a force majeure situation, the parties must, depending on their contractual position, serve notices or demand them from their counterparty. Most importantly, however, they will need to carefully assess relevant facts and legal relations before taking measures as any determination of the force majeure event under Iranian law is made on a case-by-case basis.

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**Nami Associates Law Firm**

37 Asef (Ejazi) Street, Unit 4 South  
Zafaraniyeh, Tehran 1988893433, Iran

+98 21 2240 0434 +98 21 2241 8899

[info@namiassociates.com](mailto:info@namiassociates.com)

[www.namiassociates.com](http://www.namiassociates.com)

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