

Saudi Supreme Court clarifies COVID-19 effects on contractual arrangements

COVID-19 has had a significant effect on construction projects around the world, delaying work and forcing many parties to go back to their contracts and examine whether there is scope for a claim, and Saudi Arabia was no exception.



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In December 2020, the General Assembly of the Saudi Supreme Court issued a decision setting out a series of legal principles in relation to COVID-19 and its effects on contractual commitments and obligations, granting courts the power to adapt contractual obligations, taking into account the circumstances resulting from the pandemic.

The Supreme Court issued its decision on December 23, 2020 following a request from the Royal Court and after consideration of, among other things, the relevant royal orders, ministerial decrees aiming at addressing the effects of the pandemic, related laws and Shari'a principles.

The court confirmed that the COVID-19 pandemic should be considered as an “emergency situation” when it is not possible to fulfill a commitment or implement a contractual obligation without incurring unusual losses. Alternatively, it can be considered as “force majeure” if the performance of the contract has become entirely impossible due to the pandemic.

Applying the effects of either an emergency situation or force majeure

to contracts and obligations is subject to five conditions. Firstly, the contract must have been concluded before the start of the precautionary measures relating to the pandemic, and the contract must have been continued after the measures were put in place.

Secondly, parties need to be able to prove the pandemic has directly impacted the contract in an unavoidable manner.

Thirdly, the parties must show that the direct impact of the pandemic on the performance of the contract is the “sole and independent cause” of the relevant impact.

Fourthly, the aggrieved party must not have waived or compromised its rights; and finally, for a claim to be brought, the effects and damages of the pandemic cannot be dealt with by a special law or by a decision of the competent authority.

The Supreme Court confirmed that, at the request of a party, Saudi courts have the power to amend contractual obligations that were impacted by the COVID-19 pandemic in order to achieve “justice.” It set out specific principles that apply to construction, supply and other related contracts, and to lease agreements.



The Saudi Supreme Court has ruled that the pandemic is to be considered “force majeure” or an “emergency situation” should the performance of the contract become entirely impossible due to COVID-19

Powers to adapt contracts

The Supreme Court explained that if the pandemic has resulted in an increase in the value of materials, manual labor, operation and so on for the contractor, then the court has the power to increase the contract price up to what would be considered an appropriate increase, and the employer has the right to seek termination of the contract due to the price increase.

If the increase in the price of materials is only temporary, then the court has the power to suspend the contractual performance for the relevant duration of the price increase.

If the pandemic has caused a shortage of commodities or goods in the market, then the court has the power to decrease the quantity of supply proportionally and to the extent it thinks is sufficient to mitigate the unusual harm.

In the event of the temporary unavailability of materials in the market due to COVID-19, the court has the power to suspend the relevant obligation for the temporary period, provided that the vendor does not suffer severe or unusual damage from the suspension. However, if the vendor does suffer such damage, then it has the right to seek termination of the contract.

Where the unavailability of materials is “absolute”, leading to the performance of all or some contractual obligations becoming impossible, then the court has the power to terminate the contract or annul the elements of the contract that cannot be performed, at the request of one of the parties.

If the contract imposes an obligation to perform works, such as in a construction contract, and the pandemic has caused a delay in these works, the court has the power to suspend temporarily the implementation of the employer’s corresponding remedies. However, if the employer suffers severe



The extent of the impact of the pandemic on the contract at issue must be considered based on the relevant business activity, and assessment of damages should not exceed the period of the pandemic’s impact on the contract



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The Supreme Court issued its decision on the effects of COVID-19 on contractual arrangements.

and unusual damage in such a case, it can request termination of the contract.

There are also certain conditions applying specifically to lease contracts. If, due to the pandemic, the lessee becomes totally or partially unable to benefit from the lease, the court has the power to deduct from the rent an amount proportional to the decrease in the intended benefit of the lease.

The lessor may not have the right to terminate the lease contract if the tenant is delayed in paying rent during the period in which the lessee was unable to make use of the property, in whole or in part, due to the pandemic.

Other pandemic-related considerations

The Supreme Court held that courts must consider the extent of the impact of the pandemic on the contract at issue based on the relevant business activity, and the extent and duration of the pandemic’s effect. Courts should only consider the disputed contract, and assessment of damages should not exceed the period of the pandemic’s impact on the contract. The assessment should be carried out by experts in the relevant field.

Courts should also consider dis-applying penalty or liquidated damages clauses or fines, in whole or in part, if there has been a delay due to the pandemic. Additionally, clauses limiting a party’s liability in case of an emergency situation or the event of force majeure will have no effect.

The party who has breached the relevant obligation will have to prove that the breach was caused by the pandemic.

The Supreme Court’s decision has provided useful clarity and guidance to the Saudi courts when considering claims arising out of contractual breaches due to the pandemic. However, courts still have a significant amount of discretion when considering issues, such as how to determine what is an “unusual loss”, how long a temporary effect may last for, and what the relevant business activity that needs to be taken into account is.

As a result, every situation will need to be considered on a case-by-case basis in order to determine the extent to which the principles laid out by the Supreme Court will apply.

