Contractor Withholding Your Tax Invoice? How UAE Courts Are Protecting Tax Refunds (Abu Dhabi Cassation Judgment No. 289 of 2026)

May 1, 2026

In the evolving legal landscape of the United Arab Emirates (UAE), the intersection between commercial construction disputes and tax compliance presents unique challenges for property owners. Often, contractors withhold essential documentation, particularly tax invoices, as leverage during payment disputes. However, these invoices are strictly required by the Federal Tax Authority (FTA) for taxpayers seeking Value Added Tax (VAT) refunds. A landmark ruling by the Abu Dhabi Court of Cassation in **Judgment No. 289 of 2026 (Commercial)**, issued on April 14, 2026, provides a masterclass on how UAE courts utilize the civil doctrine of specific performance to mandate the delivery of tax invoices, empowering taxpayers to strictly comply with FTA regulations.

The Factual Matrix and The Court's Ruling

The dispute in Judgment No. 289 of 2026 arose from a construction contract for a residential villa. The contractor (the Respondent) initiated a lawsuit against the project owner (the First Defendant), the financing bank (the Appellant), and the consultant.

The Court summarized the facts, noting that the contractor sought the remaining value of the project works and compensation after a breakdown in the relationship:

("By virtue of a contracting contract dated 20/07/2020 for the construction, completion, and maintenance of a residential villa… against a lump sum of 2,000,000 dirhams… however, following the connection of electricity… the first defendant, the employer, took possession of the villa and lived in it, and prevented the respondent's workers from entering the site to complete the remaining works and final finishes, in addition to retaining equipment, machinery, and cables belonging to the respondent inside the villa.")

During the proceedings, an engineering expert was appointed. Crucially, the expert assessed not only the financial dues but also the documentation necessary for tax compliance. The Court of Cassation highlighted this vital finding:

("The supervising judge appointed an engineering expert who deposited a report concluding that the remaining amount for the respondent is 360,577 dirhams… and that it is incumbent upon the contractor (the respondent) to deliver to the first defendant (the owner) the tax invoices in the amount of 85,577 dirhams so that he can recover the value-added tax.")

Recognizing the statutory necessity of these documents, the Court applied the principle of specific performance, upholding the lower court's ruling which strictly ordered:

("Compelling the respondent to deliver to the first defendant (the owner) all invoices and documents related to the project…")

The FTA's Position on Holding Compliant Tax Invoices

The project owner's demand for the tax invoices via a court order highlights the uncompromising administrative position of the Federal Tax Authority (FTA). Under UAE Federal Decree-Law No. 8 of 2017 on Value Added Tax, recovering input tax or claiming a refund, such as the special scheme for UAE Nationals building new residences under Article 61, is strictly conditional upon the taxpayer holding a valid,

compliant tax invoice.

The FTA operates on strict documentary compliance. It mandates that a tax invoice must meet all rigorous requirements set out in Article 59 of the Executive Regulations (e.g., displaying the words “Tax Invoice,” the supplier’s Tax Registration Number, a description of the goods or services, and the exact tax amount). A mere bank transfer receipt, a payment certificate, a contract, or even a court-appointed expert’s report establishing that VAT was paid is legally insufficient for the FTA.

Because the FTA acts as a strict gatekeeper, withholding refunds if compliant invoices are absent, a contractor’s refusal to issue or hand over a tax invoice causes direct, quantifiable financial harm. In this case, the owner stood to lose 85,577 AED in VAT refunds solely due to the lack of compliant invoices. Consequently, taxpayers must rely on specific performance to force counterparties to produce these mandatory documents.

Legal Principles Applied by the Court

The judgment is rich in its application of procedural and substantive legal principles. Beyond specific performance, the Court of Cassation addressed **Capacity or Legal Standing**.

The financing bank appealed the judgment, arguing it lacked capacity as it was merely a funder:

(“That its role was limited to financing the project only, without there being any direct or indirect relationship with the respondent…”)

The Court decisively rejected this, laying out a foundational legal principle regarding capacity:

(“A lawsuit is the right to resort to the judiciary to protect a claimed right or legal position; hence, substantive capacity

must exist for both parties… Capacity is met in the defendant if the right claimed in the lawsuit exists against him, considering him a concerned party and responsible for it if the plaintiff's entitlement is proven.")

Furthermore, the bank argued it could not disburse funds without the owner's written instructions. The Court established the vital principle of **Judicial Supremacy over Contractual Restraints**, stating:

("And that the judgment issued by the court to liquidate the account serves in place of the owner's written instructions and supersedes them, rendering unnecessary the existence of written instructions from the owner to the appellant to disburse the respondent's dues…")

Conclusion

Abu Dhabi Court of Cassation Judgment No. 289 of 2026 serves as an essential precedent for taxpayers navigating the intersection of contract law and VAT compliance. By affirming the order for specific performance to hand over tax invoices, the court recognized the functional reality of UAE tax law: without the physical tax invoice, the statutory right to a VAT refund is nullified. This judgment safeguards taxpayers, ensuring that the withholding of tax documentation cannot be weaponized in commercial disputes.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

Navigating Downstream Corporate Tax Liability in the UAE: An Analysis of Dubai Court of First Instance Judgment No. 1188 of 2025

May 1, 2026

Introduction

The introduction of the UAE Corporate Tax regime via Federal Decree-Law No. 47 of 2022 has fundamentally shifted the commercial landscape in the region. As businesses adapt to the new regulatory environment, a critical legal question has emerged: to what extent can a company unilaterally pass its corporate tax liabilities downstream to independent contractors, agents, or service providers? A recent judgment from the Dubai Court of First Instance (Case No. 1188 of 2025) provides vital clarity on this issue. By decisively ruling against unilateral tax deductions, the Court established clear tests and boundaries for corporate tax liability distribution, setting an essential precedent for future commercial disputes.

Overview of the Facts

The dispute arose from a real estate brokerage relationship. The Plaintiff, an independent real estate agent, successfully brokered the sale of a property unit for a total transaction value of AED 1,638,947. According to the agreement between the Plaintiff and the Defendant, a real estate brokerage company, the total 6% sales commission was to be split, with the Plaintiff receiving an 80% share, amounting to AED 78,669.47.

However, upon final settlement, the Defendant company remitted

only AED 71,589.22 to the Plaintiff, withholding a balance of AED 7,080.25. When the Plaintiff demanded the outstanding amount, the Defendant justified the withholding by claiming the deduction was necessary to cover its Corporate Tax and Value Added Tax (VAT) liabilities. Following unsuccessful attempts to resolve the matter amicably, the Plaintiff initiated legal proceedings to claim the withheld balance plus a statutory delay interest of 5%.

The Legal Arguments and Laws Cited

In its defense, the Defendant company relied heavily on the nascent tax legislation, specifically citing Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (referencing Articles 1, 2, 3, 11, and 12) and the applicable UAE Value Added Tax legislation (cited in the pleadings as Law No. 18 of 2022). The company argued that because taxes are imposed on corporate income and revenues at respective rates of 9% and 5%, the proportionate burden of these taxes should naturally be deducted from the commission paid out to the agent who generated that revenue.

The Court evaluated this premise by rooting its analysis in the UAE Civil Transactions Law. Citing the Law of Evidence (Article 1), which dictates that the burden of proof lies with the claimant, the Court examined the contractual nexus between the parties. It heavily referenced Article 243(2) of the Civil Transactions Law, which mandates that each contracting party must fulfill what the contract obliges them to do, and Article 246, which requires contracts to be executed in good faith and in accordance with their explicit terms. Furthermore, the Court invoked Article 272(1), emphasizing that if one party fails to perform their contractual obligations, the other party has the right to demand execution.

The Court’s Tests for Downstream Tax Liability

Upon reviewing the findings of a court-appointed accounting

expert, the Court laid down a definitive framework, effectively establishing key tests, to determine the ability or inability of a corporate entity to impose tax liabilities downstream onto service providers:

1. **The Statutory Burden Test (Who bears the legal incidence?):** The Court affirmed that the statutory burden of Corporate Tax and VAT inherently falls upon the taxable corporate entity that registers the revenue; in this case, the Defendant company. The legal framework establishes that the tax burden is placed on the company itself, rather than being an automatic obligation of the downstream service provider or commission earner. Absent any other legal or contractual mechanism, the entity legally defined as the taxable person under the prevailing tax laws must bear its own tax costs.

2. **The Express Contractual Agreement Test (Is there explicit consent?):** To shift or deduct this statutory tax burden from a downstream party's remuneration, the Court established a strict evidentiary threshold. There must be an express, written agreement between the parties authorizing such a deduction. The Court categorically stated that without a written contract explicitly permitting the company to deduct statutory taxes from the agent's commission, any such deduction is legally baseless and unsupported by documentary evidence. Because the Defendant could not produce a written agreement authorizing the tax deduction, the Court deemed the unilateral "tax sharing" an unlawful breach of contract.

Judgment and Strategic Implications

Applying these tests, the Court ruled in favor of the Plaintiff, ordering the Defendant to pay the withheld AED 7,080.25. Additionally, reflecting updated judicial precedent

from a 2021 directive of the General Assembly of the Dubai Court of Cassation, the Court awarded a 5% legal interest rate on the owed amount from the date of the judicial claim until full settlement, and ordered the Defendant to bear all legal fees and expenses.

This judgment serves as a strict warning to corporations in the UAE. Companies cannot use the introduction of Corporate Tax as a unilateral excuse to reduce payouts to contractors, freelancers, or agents. If a business intends to share its tax burden or calculate commissions on a post-tax basis, this mechanism must be explicitly drafted into written agreements. Moving forward, businesses should urgently audit and revise their independent contractor and brokerage agreements to ensure tax liability allocations are clearly defined, mutually agreed upon, and fully compliant with UAE contract law.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

War Series: Rogue Charterers, Vessel Misappropriation, and the Illusion of “Washed” Titles – Applying the 2001 UAE Supreme Court Gulf War

Precedent to GCC Maritime Logistics in the 2026 Iran War

May 1, 2026

Introduction: The Maritime Fog of War and the Weaponization of Charter Parties As the

2026 Iran War aggressively destabilizes the Middle East, the world's most critical maritime chokepoints, the Strait of Hormuz, the Arabian Gulf, and the Gulf of Oman, have been transformed into theaters of intense logistical paralysis. With naval blockades, soaring war risk premiums, and sweeping economic sanctions dominating the operational landscape, the global shipping industry finds its standard Charter Party Agreements (CPAs) fracturing under the pressure.

While much of the industry's focus is understandably directed toward the frustration of time charters, safe port warranties under standard BIMCO forms (such as CONWARTIME or VOYWAR), and off-hire disputes, a far more considerable legal crisis is emerging in the offshore sector: the outright misappropriation of vessels.

Operating under standard bareboat agreements (such as the BIMCO BARECON form), certain charterers are exploiting the geopolitical chaos by invoking the 2026 war not merely to excuse operational delays, but to entirely evade their absolute obligation to redeliver the vessel. Taking advantage of the "fog of war," these operators effectively hijack multi-million-dollar assets, sever communications, and attempt to "wash" the vessel's title through opaque judicial sales in peripheral jurisdictions, eventually re-flagging the ship and deploying it back into lucrative trade routes under a new

identity.

In standard peacetime practice, disputes arising from these CPAs are overwhelmingly directed to arbitration, most notably under the London Maritime Arbitrators Association (LMAA) Terms. However, an LMAA arbitral award is ultimately a contractual remedy; it cannot physically intercept a stolen ship. When a misappropriated vessel suddenly drops anchor in a GCC port, shipowners require immediate, coercive *in rem* action from local civil courts.

For maritime stakeholders navigating this crisis, the UAE Federal Supreme Court provides an effective blueprint for vessel recovery. By examining a landmark judgment (Federal Supreme Court Judgment No. 252 of 2001, Civil), which adjudicated a complex vessel misappropriation stemming from the Second Gulf War (the 1990 Iraq-Kuwait conflict), we can transpose these powerful jurisdictional precedents directly onto the maritime realities of the 2026 Iran War.

The Factual Matrix: Transposing the 1990 Gulf War Misappropriation

The factual matrix of UAE Supreme Court Judgment No. 252/2001 serves as a perfect analogue for the aggressive title disputes erupting today. The dispute originated in the shadows of the 1990 Gulf War and the subsequent international embargoes, mirroring the blockades and sanctions defining the 2026 conflict.

On March 27, 1990, the original shipowner (the First Respondent) leased their vessel, the *Arabian Sea* (registered in Basra), to a commercial operator (the Charterer) under a five-year bareboat charter. Shortly after the vessel was delivered, the geopolitical landscape violently collapsed. As the regional war escalated and sanctions isolated operations, the Charterer exploited the blackout. When the charter period expired, the Charterer flatly refused to redeliver the vessel

to the original owner, under the cover of wartime blockade and boycott.

Years later, the original owner tracked the vessel down. It had entered the territorial waters of the UAE and docked at the Port of Sharjah, flying the flag of Belize and operating under a new name, the *Baron*. Acting swiftly, the original owner petitioned the Sharjah Court of First Instance and successfully secured a conservatory arrest order (Attachment No. 4/1997), physically trapping the ship in port and demanding its delivery free of any encumbrances.

The legal battle escalated when a foreign corporate entity, Redcap Limited (the Intervener/Appellant), intervened in the lawsuit, demanding the arrest be lifted. Redcap claimed they were the new, legitimate owner of the vessel, having purchased it in 1996 for $1,700,000 USD through a formal judicial sale executed by the High Court in Kenya.

Relying on standard international maritime principles, Redcap argued that a judicial sale at public auction physically purges a vessel of all prior liens, encumbrances, and ownership claims. They asserted that if the original owner had a grievance regarding the stolen ship, their claim must be directed exclusively against the $1.7 million sale proceeds held in Kenya, not against the physical vessel itself. Furthermore, the Intervener launched a jurisdictional challenge, arguing that the UAE courts had no authority to adjudicate the ownership of a foreign-flagged vessel, owned by a foreign entity, that was merely passing through UAE waters “incidentally.”

Jurisdictional Supremacy: The “Asset in Port” Trap

In 2026, foreign shipowners, rogue charterers, and P&I Clubs frequently assume that because a CPA is governed by English law, or because a vessel flies a flag of convenience, GCC courts will decline jurisdiction over complex ownership

disputes. The UAE Supreme Court dismantled this assumption.

The Intervener argued that under the UAE Maritime Commercial Law, the vessel's presence in Sharjah was merely "incidental" and did not grant the civil courts substantive jurisdiction over an international ownership dispute.

The Supreme Court rejected this entirely, anchoring its ruling in the absolute sovereignty principles of the UAE Civil Procedure Code. The Court established a definitive rule: the physical presence of the asset dictates the jurisdiction.

("The original principle is regional judicial jurisdiction, and the administration of justice is a public interest exercised by the State within the limits that achieve this interest through its national judiciary… Therefore, the international jurisdiction vested in the national judiciary is, in this capacity, a matter of public policy linked to the sovereignty of the State.")

Applying Article 21 of the Civil Procedure Law, the Court held that UAE courts possess absolute jurisdiction over lawsuits filed against foreigners who have no domicile in the UAE, provided the lawsuit relates to "funds or property located within the State." The Court explicitly ruled:

("The reason for jurisdiction in that case goes back to the fact that the disputed property is located in its territory, which is an objective criterion based on the location of the property. If it is located there, jurisdiction is established for the State's courts, even if the source of the obligation did not arise there, or if the presence of the property was incidental.")

Furthermore, the Court harmonized this with Article 115 of the UAE Maritime Commercial Law applicable at the time, confirming that a dispute over the "ownership of a vessel" unequivocally constitutes a "maritime debt" justifying an immediate conservatory arrest. For 2026 rogue charterers hoping to use

UAE ports as temporary safe havens, the precedent is clear: the moment your hull crosses into UAE territorial waters, the protective veil of foreign jurisdictions is challengeable.

Piercing the "Cleansed Title" Myth: The Burden of Proving Foreign Law

The most considerable finding by the Supreme Court, and the most critical warning for the 2026 crisis, was its treatment of the Kenyan judicial sale. The Intervener believed that presenting a foreign court's auction decree would automatically force the UAE courts to recognize their clean title.

Under the GCC civil law framework, foreign law is not treated as binding legal authority that a judge must independently research; rather, it is treated purely as a "material fact." According to strict conflict of laws principles, the party relying on a foreign legal mechanism (such as the purging effect of a Kenyan judicial sale) bears the absolute burden of conclusively proving the existence, text, and application of that foreign law.

Because the Intervener merely alleged the effect of the foreign judicial sale in their memorandums but failed to formally, procedurally prove the foreign law to the standard required by UAE evidentiary rules, the Supreme Court upheld the lower courts' dismissal of the Kenyan sale entirely.

("Foreign law is a mere fact, the burden of proving which falls on the party invoking it, and the Appellant did not prove its existence.")

By invalidating the foreign judicial sale due to evidentiary failures, the Court retroactively erased the Intervener's title. The Supreme Court confirmed the original owner's absolute title to the vessel, solidifying the Sharjah arrest order and mandating the ship be handed over to them, completely free of any actions taken by the rogue charterer.

The Intervener, despite having paid $1.7 million, lost the ship.

Strategic Playbook for Maritime Logistics in the 2026 Crisis

For international shipowners, lessors, and maritime litigators attempting to secure assets in the chaotic theater of the 2026 Iran War, the 2001 UAE Supreme Court precedent dictates a highly determined, localized strategy.

Bypass LMAA Delays for Immediate Asset Recovery: While you must commence LMAA arbitration (if not modified) to resolve the underlying BARECON or NYPE breach regarding the unpaid hire or failure to redeliver, arbitration will not physically stop the ship from trading. Shipowners must utilize maritime intelligence to track misappropriated vessels. The moment a stolen vessel enters UAE or broader GCC waters (such as Jebel Ali, Fujairah, or Sharjah), owners must immediately file an *ex parte* application under local maritime law (e.g., UAE Maritime Law Art. 115) to arrest the vessel based on the ownership dispute. The local courts may assert jurisdiction strictly based on the physical presence of the hull.

Do Not Fear "Title Washing" or Flags of Convenience: If a rogue bareboat charterer has attempted to extinguish your title by routing the vessel through a dubious judicial sale in a peripheral jurisdiction, do not assume your claim is reduced to chasing the sale proceeds. As the precedent proves, UAE courts will heavily scrutinize foreign judicial sales. If the new "owner" cannot flawlessly prove the foreign law that allegedly purged your title, the UAE courts may disregard the foreign auction and return the physical asset to its original registered owner.

Strict Evidentiary Hygiene for Foreign Law: Conversely, if you are a legitimate buyer of a vessel that was lawfully auctioned during the 2026 conflict, and you face an arrest in the UAE from a disgruntled former owner, you cannot merely submit the

foreign court judgment. You must submit legally authenticated, translated copies of the foreign maritime legislation, supported by expert legal affidavits, to prove *as a matter of fact* that the foreign judicial sale extinguished all prior encumbrances. Relying on “general principles of international maritime law” may result in a fatal loss at the local courts.

Conclusion: Territorial Reality Over Contractual Illusion

The 2026 Iran War has created a highly volatile environment for wider international commercial operations, where severe disruptions in shipping lanes, banking, and port operations have catalyzed a surge in distressed asset scenarios, complex cross-border restructuring, and, in some instances, outright maritime opportunism. As international operators, distressed stakeholders, and occasional rogue charterers navigate these disruptions, whether to resolve legitimate operational disputes, execute complex foreign sales, or obscure vessel identities, the belief that standard LMAA arbitration clauses will keep procedures safely insulated in London while the physical ships continue to trade or seek refuge in the Middle East may not be the case.

UAE Federal Supreme Court Judgment No. 252/2001 provides clarity in this sense. The GCC civil law framework is often protective of its territorial sovereignty. When a maritime asset enters domestic waters, the state’s courts possess the jurisdiction to arrest it, adjudicate its true ownership, and strip away fraudulent or unproven foreign titles. For shipowners fighting to reclaim their fleets in the 2026 crisis, the message is clear: the most powerful weapon in your arsenal is not just the arbitration clause in your charter party, but the sovereign reach of the local port state.

Wasel & Wasel demonstrates extensive expertise in navigating complex maritime disputes, admiralty matters, and vessel arrests within the UAE courts and international arbitration forums. The firm has a proven track record of representing

maritime contractors in grievance proceedings before the UAE Federal Courts to challenge the precautionary seizure of vessels. Their capabilities include advising logistics companies on appealing vessel arrest orders and successfully obtaining stays of execution from the UAE Federal Supreme Court against lower court vessel seizure orders. Furthermore, Wasel & Wasel actively handles complex charter party disputes, recovers outstanding debts under SUPPLYTIME agreements , and represents international shipping companies in London-seated LMAA arbitration proceedings concerning vessel sales and management.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

Civilian Space Facilities in an Era of Armed Conflict: Dual Use Military Targets

May 1, 2026

The strikes conducted against the IRGC Aerospace Force Headquarters in Tehran in March 2026, followed days later by the bombing of a building at the Iran University of Science and Technology (“IUST”) on March 28, have introduced a crucial question for the global commercial space industry: at what point does a civilian aerospace facility lose the protection its designation is understood to afford it?

The answer, as these events demonstrate, carries direct and

immediate consequences for every private company, university research program, and commercial operator that shares infrastructure, personnel, or technology with a state-affiliated space program operating in a contested geopolitical environment.

The justification advanced for the Aerospace Headquarters strike was that the facility served simultaneously as a research center for civilian satellite operations and as a command-and-control node for military satellite programs, including those assessed to have provided surveillance and intelligence capabilities over a wide regional theater. The core assertion was function, not designation. Whether or not one accepts that characterization, the doctrinal logic underlying it is well-established: a facility’s protected status under international law is determined by what it does, not by how it is labeled. The moment a civilian asset makes an effective contribution to military action and its destruction offers a definite military advantage, its civilian character becomes legally contestable.

The IUST situation is more layered and, for the international academic and commercial space community, more immediately concerning. Founded in 1929 as Iran’s first institution to train engineers, IUST is a ranked technical university with thousands of students across dozens of fields of engineering and science; an institution whose civilian educational mission is not in reasonable dispute. Yet, the IUST faculty have conducted research with direct applications for unmanned aerial vehicles and, in 2022, the Japanese government listed the university as an entity of concern for proliferation relating to missiles and nuclear weapons. More concretely, the Zafar satellite project was developed by IUST in direct partnership with the Iranian Space Agency, a joint venture that exemplifies the close collaboration between Iran’s academic institutions and its governmental space bodies.

This is the dual-use problem made operational and inescapable.

The same department that produces graduate engineers for a country’s commercial aerospace sector also advances propulsion and systems research that feeds its state satellite program. The same laboratory that publishes peer-reviewed papers on orbital mechanics may contribute to launch vehicle development whose applications extend well beyond scientific inquiry. Civilian designation, in this context, functions as a starting presumption, rather than a permanent shield once thought to have existed.

The Chamran-1 satellite, launched in 2024 and developed at facilities that have since been destroyed, was characterized as a research and technology demonstration mission. The distinction between a research asset and an operational intelligence platform, it turns out, was one of framing rather than function. That gap, between what a facility or satellite is called and what it materially enables, is precisely where the commercial space industry’s legal exposure now lives.

The consequences are significant and practical. Export control regimes, from the U.S. International Traffic in Arms Regulations to the EU Dual-Use Regulation, already require licensing determinations that assess whether a given technology could serve military ends in the hands of the recipient state or institution. What the current conflict has demonstrated is that the same analysis must now be applied at the facility and institutional level. A ground station that processes both civilian and military satellite telemetry, a university department that collaborates with both private launch operators and a state defense ministry, and a space research center that hosts both commercial payload integration and command-and-control infrastructure for a state constellation are all, under the targeting logic now being applied in practice, facilities whose protected status is genuinely uncertain.

For commercial operators with supply chains, personnel exchanges, or data-sharing arrangements that touch state-

affiliated aerospace programs in conflict-prone jurisdictions, the exposure is a test. Insurance underwriters are already reviewing war-risk exclusion clauses in light of the recent strikes. Technology transfer counterparties face renewed scrutiny from export control authorities examining whether components supplied to ostensibly civilian programs ultimately served infrastructure now treated as a military objective. Foreign academic institutions that maintained research partnerships with IUST, a university that appears in multiple government proliferation-concern registries while simultaneously ranking among the top technical universities in Asia, now confront the uncomfortable possibility that their cooperation agreements linked them, however indirectly, to infrastructure that has been bombed.

The lesson the commercial space industry must draw from March 2026 is this: civilian designation is not self-executing. It must be earned, maintained, and verifiable through a facility's actual function, not merely its stated purpose. In a conflict environment where space is an active warfighting domain and dual-use infrastructure is a recognized and contested military objective, the burden of demonstrating civilian character has, in practice, shifted toward the operator. Companies, universities, and research institutions that have not yet audited their institutional relationships with state-affiliated space programs should do so now as a matter of legal caution and institutional survival.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

Geopolitical Tensions and Force Majeure in the Commercial Space Economy

May 1, 2026

The commercial space industry operates at the precise intersection of private enterprise and state sovereignty. It is therefore uniquely vulnerable when those sovereignties come into direct conflict. The escalating geopolitical tensions between the United States and the Islamic Republic of Iran present a case study in how diplomatic friction translates, with considerable legal consequence, into force majeure events across commercial space contracts. As practitioners advising operators, investors, and institutions in this sector, it is necessary to examine this phenomenon not as a distant geopolitical abstraction but as an active and pressing contractual reality.

The Legal Architecture of Force Majeure in Space Commerce

In commercial space agreements, force majeure clauses typically enumerate government actions, export license denials, sanctions regimes, and regulatory prohibitions as qualifying triggering events. The breadth of such clauses matters enormously, because in the space industry, performance is invariably conditioned upon a layered web of regulatory approvals.

The commercial space industry is structurally more susceptible to geopolitically induced force majeure than most other sectors, for three reasons. First, performance under space contracts requires regulatory approvals from multiple sovereign jurisdictions, any one of which may be revoked for reasons entirely unrelated to commercial conduct. Second, the

technology involved is dual-use by nature; the same propulsion system that services a commercial telecommunications satellite may fall within the scope of munitions controls. Third, insurance and financing arrangements in the sector are often conditioned on export compliance clearances, such that a sanctions escalation can trigger defaults across an entire capital structure simultaneously.

When geopolitical tensions intensify, as they have periodically, the United States government has expanded the scope of secondary sanctions, tightened technology transfer controls, and revoked or withheld export licenses for satellite components, launch services, and ground station technology.

The AsiaSat Precedent: Geopolitics as a Contractual Trigger

The most instructive case study currently before the industry is the AsiaSat dispute with India. India's National Space Promotion and Authorisation Centre decided to withdraw authorization for AsiaSat's AS-5 and AS-7 satellites beyond March 31, 2026, citing national security concerns stemming from AsiaSat's significant Chinese government ownership through CITIC Group Corporation. The decision was not a commercial judgment, but a sovereign geopolitical act directed at the ownership structure behind the operator.

The downstream contractual consequences were immediate. AsiaSat's current permission expires at the end of March, forcing broadcasters to migrate to other satellites or face channel blackouts. Without this approval, AsiaSat cannot legally provide satellite capacity in India, effectively forcing broadcasters to look for alternative transmission arrangements. Broadcasters including Zee Entertainment Enterprises and JioStar, part of Reliance Industries, must now move their services; Zee has already switched to Intelsat and ISRO's GSAT satellites.

The contractual dispute that followed is where the case becomes jurisprudentially significant. AsiaSat has issued a "trigger notice" to the Indian government under a bilateral investment treaty, formally signaling a potential legal challenge, and has simultaneously sent arbitration notices to broadcasters including JioStar and Zee, initiating dispute-resolution proceedings. AsiaSat's commercial position is that its agreements were not India-specific as its contracts were not limited to India and customers could continue to use the same bandwidth to provide services elsewhere. The broadcasters reject that framing entirely.

India's 2024 guidelines further require foreign satellite operators to operate through Indian entities and factor in geopolitical ties, while limiting service approvals to a satellite's operational life or five years, whichever is earlier. The regulatory architecture, in other words, was designed to give geopolitical considerations dispositive weight over commercial continuity. AsiaSat's decision to pursue a bilateral investment treaty claim presents a significant legal hurdle, as India does not have a direct BIT with Hong Kong for investment protection beyond tax matters, and enforcing BIT claims against governments is known to be difficult and lengthy.

The Iran Parallel: An Active and Unfolding Crisis

The AsiaSat dispute illustrates what happens when geopolitics terminates a satellite operator's market access. The U.S.-Iran tensions present the same structural risk, with broader contractual exposure across the entire space value chain.

Since the tensions between the U.S. and Iran commenced, a number of oil and commodities companies have invoked force majeure. QatarEnergy, which operates the world's largest liquefied natural gas export facility, declared force majeure to avoid penalties for missing contracted deliveries. Aluminium Bahrain similarly suspended deliveries to some

customers, citing risks of shipping through the Strait of Hormuz. The contractual mechanisms being invoked across these commodity sectors are identical to those embedded in commercial space agreements.

For the space industry specifically, the pathways of exposure are distinct from commodities but no less severe. U.S. export control law, principally the Export Administration Regulations and the International Traffic in Arms Regulations, imposes comprehensive restrictions on the transfer of space technology to designated adversary nations. Iran remains among the most heavily sanctioned jurisdictions globally. Common triggering events such as “acts of war,” may capture Iran-related disruptions, but the more difficult question will arise for supply chain failures that are not directly caused by war or government-mandated embargo but are instead the downstream economic consequence of regional conflict. Launch service agreements, satellite manufacturing contracts, spectrum coordination, and orbital insurance arrangements are all vulnerable to this secondary contagion.

Sanctions and export controls relating to the Iran conflict may independently prohibit performance and may or may not qualify as force majeure under the governing law. A sovereign ban that is itself a breach of sanctions does not automatically become force majeure. This creates a compounded risk for operators: the very act of attempting to invoke force majeure may expose them to sanctions liability if the performance they are excusing was already legally prohibited.

A deterioration of U.S.-Iran relations, whether manifesting as a military confrontation in the Persian Gulf, a further Iranian nuclear escalation, or a fresh round of maximum-pressure sanctions designations, would predictably generate force majeure claims across several categories of space commercial agreement: satellite manufacturing contracts involving Iranian-backed investment entities; launch services agreements where trajectories or ground stations fall within

OFAC-designated operational theaters; orbital slot licensing disputes where spectrum coordination through the International Telecommunication Union implicates sanctioned state entities; and, as the AsiaSat case demonstrates, capacity lease agreements where the nexus to a geopolitically disfavored ownership structure supplies the regulatory trigger.

Drafting Against Geopolitical Risk

Competent space counsel should treat geopolitical risk as a drafting imperative rather than a boilerplate contingency.

Force majeure clauses in commercial space agreements should specifically enumerate sanctions regime changes, export license revocations, and government-mandated service terminations as qualifying events, while simultaneously specifying the notice obligations, mitigation duties, and termination rights that flow from each. The AsiaSat dispute has illustrated that an operator's failure to anticipate and contractually allocate this risk can leave it in the position of asserting arbitration claims against counterparties who have no commercially viable choice but to comply with the regulatory mandate they have been issued.

The commercial space sector has long prided itself on its capacity to transcend political borders. The legal realities of geopolitics suggest that this aspiration, however worthy, must be balanced against rigorous contractual foresight.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

Universal Jurisdiction and the Situs of Centralized Digital Assets: An Analysis of Crypto Server Location in Iakovlev v. Epayments Systems Ltd. (Ontario Superior Court of Justice)

May 1, 2026

Introduction

In the rapidly expanding world of digital finance, courts face a novel challenge: determining the legal location, or *situs,* of supposedly borderless crypto assets. When a digital asset is lost or stolen on an international platform, where exactly does the legal harm occur? The Ontario Superior Court of Justice recently addressed this critical issue head-on in *Iakovlev v. Epayments Systems Ltd.*, 2026 ONSC 1296.

In a decision that will undoubtedly resonate across global legal frameworks, Associate Justice R. Frank granted a motion by the defendant, ePayments Systems Limited, “for an order dismissing the plaintiff’s claim as against it on the basis that this court has no jurisdiction over it.”

The ruling firmly rejects the notion that the residency of a crypto owner dictates the jurisdiction of the digital asset. More importantly, it tackles the technological realities of centralized crypto custody, providing much-needed clarity and a formidable defense against judicial overreach in cross-border crypto disputes.

The Dispute and the Question of *Situs*

In this action, “the plaintiff seeks damages for alleged misrepresentation and civil conspiracy,” claiming that “due to the bankruptcy of DSX Global, the plaintiff has been deprived of the six bitcoins he purchased.” The plaintiff attempted to establish assumed jurisdiction in Ontario by arguing that “his retirement savings, an Ontario-based asset, were the source of the funds invested on the platform,” and therefore, he suffered financial loss in his home province.

Under Canadian common law, “an actionable conspiracy occurs in the jurisdiction where the alleged harm is suffered, regardless of where the wrongful conduct occurred.” Therefore, the Court had to determine exactly where the legal harm involving the loss of the digital assets took place.

Paragraph 47: Defining the Location of Digital Assets

Associate Justice R. Frank systematically dismantled the plaintiff’s argument that localized financial impact equates to localized legal harm. In paragraph 47, the Court provided a profound analysis of the location of digital assets, prioritizing the physical infrastructure and the custodial entity over the domicile of the investor:

> *“[47] Further, even if some or all of the funds used by the plaintiff to purchase the allegedly lost crypto assets had originated in Ontario – which is not supported by the evidence – the plaintiff’s digital assets were held on servers in the European Union. Those crypto assets were never held on servers in Ontario or anywhere in Canada, nor were they held by or through an entity located in or with any connection to Ontario or Canada. As such, the alleged harm and loss did not occur in Ontario.”*

The Court highlighted the extreme danger of adopting the plaintiff’s logic, warning that it would effectively subject

global platforms to litigation everywhere simply because their users are distributed worldwide:

> *"If the plaintiff's position were accepted and taken to its logical conclusion, then damages would occur in Ontario whenever an Ontario resident suffers a loss of one of their assets located outside Ontario, regardless of whether the asset has any connection to Ontario other than its ownership by the Ontario resident. In my view, the fact that an Ontario resident suffers a loss of or damage to an asset located outside Ontario does not, on its own, mean that the harm occurs in Ontario. That would be akin to universal jurisdiction, a result that the Supreme Court has cautioned against in Van Breda."*

The Technical Reality vs. The "Borderless" Myth: Anchoring Crypto to Servers

To fully appreciate the weight of the Court's ruling, one must understand the technical tension at the heart of the digital asset industry. In the mainstream consciousness, cryptocurrencies like Bitcoin are frequently championed as strictly "borderless", built on decentralized, globally distributed public ledgers where the underlying assets theoretically exist everywhere and nowhere simultaneously.

However, *Iakovlev* introduces a vital technical distinction by piercing this "borderless" myth in the context of centralized platforms and payment gateways. When an investor purchases cryptocurrency on a centralized platform like DSX Global or uses a service like ePayments, they are not usually holding the private keys directly on the decentralized public blockchain. Instead, they hold a custodial right, an IOU, recorded on the platform's proprietary, centralized internal databases.

Justice Frank acutely recognized this technical reality. By explicitly observing that "the plaintiff's digital assets were

held on servers in the European Union" and "never held on servers in Ontario," the Court established a tangible, physical nexus based on the technological hardware managing the platform's internal database. The court brilliantly bridged the gap between decentralized technology and traditional legal geography by tethering the *situs* of the asset to these physical servers, and the fact that they were never "held by or through an entity located in" Ontario. It aligned legal jurisdiction with the technical reality of centralized digital asset custody infrastructure, rather than the abstract, borderless nature of the blockchain protocol.

Global Ramifications and Effects on Common Law Jurisdictions

The global ramifications of *Iakovlev* are immense. By ruling that a platform's "presence in Ontario was virtual only, and passive," and by anchoring the *situs* of digital assets to the jurisdiction where they are "held on servers" or "held by or through an entity," the Court has erected a powerful shield against forum shopping across the digital asset industry.

Because the legal geography of cryptocurrency is still actively being mapped, this physical infrastructure-based precedent will heavily influence other major common law and international financial hubs:

- **The United Kingdom (UK):** English courts have frequently grappled with the *lex situs* of crypto assets. In earlier rulings, UK courts have suggested that a crypto asset is legally located where its owner is domiciled. *Iakovlev* introduces a compelling counter-approach. By stating that "the fact that an Ontario resident suffers a loss… does not, on its own, mean that the harm occurs in Ontario," the Canadian court directly challenges the domicile-based model. UK litigators defending foreign Virtual Asset Service Providers (VASPs) will undoubtedly cite *Iakovlev* to argue that the true *situs* of custodial assets lies with the centralized server infrastructure

and the hosting entity, not the claimant's residence.

- **Singapore and Hong Kong:** As premier crypto hubs in Asia, Singapore and Hong Kong have definitively recognized cryptocurrencies as property capable of being held in trust. However, identifying the geographical nexus for cross-border torts remains highly contested. *Iakovlev* provides the legal certainty that centralized platforms operating in these regions desire. If an exchange incorporated in Singapore or Hong Kong stores client assets on local servers, *Iakovlev* provides highly persuasive authority that foreign plaintiffs cannot easily sue these exchanges in their home countries just because the "borderless" assets were accessed globally.

- **DIFC and ADGM (United Arab Emirates):** The Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM) operate under English common law principles and have enacted bespoke, entity-focused digital asset property laws to attract Web3 businesses. The *Iakovlev* judgment inherently strengthens their jurisdictional appeal. By reinforcing that digital assets are tied to where they are "held by or through an entity located in" a specific region, digital asset firms licensed within the DIFC or ADGM can be confident that international courts will respect these hardware and corporate boundaries, preventing foreign users from bypassing UAE forums based solely on localized economic harm.

- **Australia:** Australian courts apply strict "real and substantial connection" tests for assumed jurisdiction and are highly cautious regarding extraterritorial overreach. In dealing with class actions or individual claims against international crypto exchanges, Australian courts will find the *Iakovlev* reasoning highly persuasive. The judgment provides a technologically grounded metric, the location of the

servers, for dismissing claims where the only domestic connection is the plaintiff's residency, preventing Australian courts from exercising what "would be akin to universal jurisdiction."

Conclusion

Iakovlev v. Epayments Systems Ltd. represents a triumph of established jurisdictional principles and technological pragmatism in the face of decentralized finance. By decisively ruling that the physical location of servers and custodial entities dictates the legal location of digital assets, the Ontario Superior Court of Justice has successfully blocked a backdoor to "universal jurisdiction." As common law courts around the globe continue to navigate the complexities of the crypto industry, this judgment stands as a vital reminder: while the blockchain network may be borderless, the corporate infrastructure and servers that hold these assets remain firmly tethered to physical reality.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

War Series: The "Fix-It On-Site" Fallacy, Pre-Existing Breaches, and the Limits of

Force Majeure – Applying the Dubai Courts' Sudan War Jurisprudence to GCC Construction Logistics in the 2026 Iran War

May 1, 2026

Introduction: The Fog of War and the Shield of Convenience

As the 2026 Iran War aggressively reverberates across the Middle East, the Gulf Cooperation Council (GCC) finds its sprawling construction, engineering, and infrastructure sectors facing an unprecedented logistical paralysis. With military exclusion zones declared across critical maritime chokepoints in the Strait of Hormuz, the Arabian Gulf, and the Gulf of Oman, commercial ocean freight has been fundamentally disrupted. Simultaneously, abrupt civil aviation closures and sudden Notices to Air Missions (NOTAMs) have grounded the global airfreight corridors that traditionally sustain the rapid pace of regional development.

The movement of vital construction materials, ranging from pre-fabricated modular units and highly specialized electromechanical equipment to bespoke structural steel, has ground to a virtual halt.

In the immediate wake of these severe geopolitical disruptions, regional engineering, procurement, and construction (EPC) main contractors, alongside project owners and developers, are being inundated with *force majeure* notices from international manufacturers and regional logistics suppliers. The narrative presented in these notices is nearly

universal: suppliers claim that the sudden, violent escalation of the 2026 Iran War constitutes an insurmountable, unforeseeable sovereign event that absolutely prevents them from fulfilling their supply chains. Consequently, they argue, this geopolitical crisis shields them from contractual liability, insulates them from delay penalties, and, most crucially, allows them to retain massive, unamortized advance payments without delivering the contracted goods.

However, a critical and highly contentious legal dilemma arises when the fog of war is utilized to mask pre-existing corporate failures. What happens when a supplier or logistics provider was already in fundamental breach of their contractual obligations, such as manufacturing defective, non-conforming materials, or missing crucial pre-war shipping deadlines, *before* the first military shot was fired? Can a supplier legitimately use an active regional war as a legal shield to excuse a failure that is entirely rooted in their own prior engineering incompetence or manufacturing negligence?

For construction executives, procurement directors, and logistics heads navigating the intense commercial complexities of the 2026 crisis, the GCC civil law framework provides a highly unforgiving answer to this question. By examining a landmark, highly detailed judgment from the Dubai Court of First Instance (Judgment No. 695/2023 Commercial Banking, issued on April 29, 2025), which adjudicated a multimillion-dollar construction supply dispute violently disrupted by the sudden outbreak of the 2023 war in Sudan, we can transpose these vital legal precedents directly onto the current logistical realities of the Iran War.

This definitive precedent establishes a foundational rule of wartime commerce across the Arabian Peninsula: *Force majeure* cannot cure a pre-existing breach, and an armed conflict cannot be weaponized to camouflage manufacturing defects.

The 2026 Construction Logistics Landscape in the GCC

To fully comprehend the gravity and utility of this judicial precedent, one must first recognize the sheer scale and vulnerability of the supply chain mechanisms currently keeping GCC gigaprojects afloat. From the colossal Vision 2030 developments in the Kingdom of Saudi Arabia (KSA), such as NEOM, the Red Sea Project, and Qiddiya, to massive infrastructure upgrades, desalination plants, and transit networks in the United Arab Emirates (UAE) and Qatar, project owners rely overwhelmingly on highly synchronized, cross-border international supply contracts.

These procurement contracts are defined by rigid technical specifications, strict Factory Acceptance Tests (FAT), mandatory third-party quality inspections (executed by global entities such as SGS, TUV, or Bureau Veritas), and massive upfront capital injections. Advance payments in the GCC construction sector frequently range from 20% to 30% of the total contract value. These multi-million-dollar transfers are systematically secured by unconditional bank guarantees (Advance Payment Bonds) and Performance Bonds, which are intended to act as liquid, on-demand safety nets for the contractor.

In the wartime reality of 2026, this logistical chain is fracturing under extreme military strain. If a supplier in Asia or Europe has manufactured flawless equipment destined for a site in Riyadh, Abu Dhabi, or Doha, and those materials are genuinely trapped in a transit port due to a naval blockade, the doctrine of *force majeure* legitimately applies. The law recognizes the impossibility of performance caused by sovereign military intervention.

However, a far more insidious and financially devastating scenario is currently playing out across the industry: suppliers who failed their FAT inspections weeks or months ago, and who were struggling to rectify profound engineering

defects, are now pointing to the Iran War as the exclusive "reason" they cannot deliver.

In peacetime, the construction industry frequently operates on a "fix-it-on-site" gentleman's agreement. When materials arrive with minor dimensional discrepancies or manufacturing flaws, the supplier promises to fly a team of specialized technicians to the GCC project site to weld extensions, modify components, or rectify the defects during the final installation phase. But in the 2026 Iran War, borders are restricted, visas are suspended, and flights are canceled. The supplier's technicians cannot travel. Consequently, suppliers are attempting to freeze the contracts in place, arguing that the war physically prevented their contractual right to cure the defects, and demanding they be allowed to keep the massive advance payments to cover their sunken manufacturing costs.

The Factual Matrix: Transposing the 2023 Sudan War Dispute

The factual matrix of Dubai Court Judgment No. 695/2023 serves as a flawless, highly granular analogue for the supply chain disputes erupting today. While the geographical focal point of the conflict in the precedent was the Republic of Sudan rather than the current theater of Iran, the legal, logistical, and contractual mechanics are absolutely identical to the 2026 crisis.

On August 10, 2022, a major regional contracting company (the "Contractor" or "Buyer", acting as the original Defendant and Counter-Claimant in the suit) entered into a high-value commercial supply contract with a UAE-based general trading and manufacturing entity (the "Supplier" or "Original Plaintiff"). The contract, valued at a substantial $4,259,400, demanded the highly specified offshore manufacture, supply, and logistical delivery of critical water infrastructure materials. Specifically, the Supplier was tasked with fabricating eighty 50-cubic-meter ($50m^3$) steel water tanks, massive supporting steel structural towers, and hundreds of

associated livestock drinking troughs. These materials were destined for an ongoing, highly sensitive 500-well infrastructure mega-project overseen by the Ministry of Irrigation and Water Resources in the Republic of Sudan.

Following standard GCC construction logistics protocols, the Contractor executed a 30% advance payment amounting to $1,277,832 on January 8, 2023. In return, the Supplier was obligated to provide unconditional bank guarantees issued by a recognized financial institution for the advance payment, alongside a 10% performance bond valued at $425,944. The contract rigorously stipulated that the materials could not be shipped until they passed an independent third-party inspection and subsequently received a formal “Shipping Release Note” directly from the end-client (the Ministry).

By early March 2023, the Supplier had fabricated the first major batch of materials in their offshore facilities, comprising 80 massive water tanks and hundreds of structural accessories, and generated a commercial freight invoice for $1,190,880. Anticipating delivery, the materials were subjected to an independent inspection by SGS on March 10, 2023.

The resulting inspection report was a failure for the Supplier. The materials materially and dangerously failed to meet the agreed-upon engineering specifications. The defects flagged by SGS were not merely cosmetic; they were highly specific to structural engineering and posed severe risks:

1. **Critical Dimensional Deficits:** The structural steel loading columns (the foundational legs supporting the massive water tanks) were contractually required by the purchase order to be exactly 6 meters long. The manufactured columns measured less than 5.5 meters, representing a massive half-meter deficit.
2. **Structural Integrity Failures:** The thickness of the internal steel supports within the tanks was

substantially less than the load-bearing thickness mandated by the contract, threatening a total structural collapse under the weight of 50 tons of water.

3. **Life Safety Hazards:** The fall-prevention safety barriers, located on service platforms at a height of over 6 meters, were severely reduced in height in violation of HSE specifications. Furthermore, the service ladders were fundamentally too short, creating what the inspection noted as severe occupational safety risks of fatal falls for future maintenance operators.

Following a rigorous review of this inspection report, the Sudanese Ministry of Irrigation and Water Resources officially and categorically rejected the materials on April 13, 2023. Exercising their contractual rights, the Contractor subsequently issued a formal Notice of Breach to the Supplier on April 20, 2023, demanding immediate rectification of the life-safety and structural defects within an aggressive 48-hour window, as per Clause 10.2 of their agreement.

The Outbreak of War and the Force Majeure Shield

Faced with a formal breach notice and fundamentally non-conforming materials, the Supplier engaged in the classic “fix-it-on-site” strategy. They argued to the Contractor that the materials were “98% compliant” and that the structural defects were minor and easily rectified. Regarding the missing half-meter on the steel columns, the Supplier proposed a radical site-based engineering workaround: they suggested simply increasing the height of the concrete foundation bases poured on-site by the Contractor to compensate for the short steel.

To execute this highly irregular compromise, which would require altering the civil works for 500 separate well foundations, the Supplier and the Contractor tentatively agreed to fly their respective executives and lead engineers to Khartoum on April 17, 2023. The goal was to meet directly

with the Ministry, inspect similar projects, and authorize the on-site structural correction.

Then, geopolitics violently intervened. On April 15, 2023, just two days before the critical site visit, the devastating Sudanese Civil War abruptly erupted. Khartoum International Airport was attacked and shut down, commercial flights were globally canceled, and a state of intense armed conflict engulfed the delivery destination.

Recognizing the contractual peril they were in, the Supplier immediately pivoted their legal strategy. They filed a preemptive lawsuit against the Contractor and the issuing Islamic bank in the Dubai Courts. The Supplier sought a judicial decree to enforce the continuation of the contract, or, in the alternative, to formally terminate the contract under the exclusive doctrine of *force majeure* (relying on Clause 7 of the contract concerning armed conflict and exceptional events).

Crucially, the Supplier argued that the sudden outbreak of war was a legally recognized “exceptional, unforeseeable event” that made it physically impossible for their engineering teams to travel to Sudan to fix the defects, negotiate the concrete workaround, or complete the final delivery. Therefore, they demanded a mutual liquidation of accounts wherein they would retain the massive $1.27 million advance payment (as it was roughly equivalent to the value of the goods they had manufactured), while simultaneously seeking a judicial injunction to block the Contractor from liquidating the $1.7 million in bank guarantees.

The Contractor filed a fierce and comprehensive Counterclaim. They argued that the contract must be terminated not out of mutual wartime sympathy or *force majeure*, but strictly because of the Supplier’s gross, pre-existing breach of contract. They demanded the full refund of their $1,277,832 advance payment, plus statutory interest and compensatory damages, noting

unequivocally that the Supplier's failure to adhere to the FAT specifications occurred entirely before the war broke out, and that proposing to pour extra concrete to cover up a manufacturing error was not a contractual right.

The Judicial Framework: UAE Civil Law on Contracts and Breach

Before dissecting the timeline of the wartime disruption, the Dubai Court of First Instance grounded its ruling in the fundamental bedrock of the UAE Civil Transactions Law (Federal Law No. 5 of 1985). For logistics managers, corporate counsel, and procurement directors operating in 2026, understanding these statutory definitions is paramount when negotiating and enforcing supply contracts.

The Court explicitly defined the absolute, uncompromising nature of contractual obligations, quoting Article 125 of the Civil Transactions Law:

("A contract is the connection of an offer issued by one of the contracting parties with the acceptance of the other, aligning in a way that establishes its effect on the subject matter, and results in the obligation of each of them to fulfill what is owed to the other.")

The Court further cemented the absolute duty of performance by citing Article 243(2) of the Civil Transactions Law, which strips away the flexibility often assumed in construction logistics:

("Each of the contracting parties must fulfill what the contract obliges them to do. The contract must be executed according to what it contains and in a manner consistent with what good faith requires.")

Focusing specifically on the logistics and manufacturing sector, the Court relied on the overarching principles established by the UAE Court of Cassation (Judgment No. 887/2022 Commercial Appeal) regarding the exact legal nature

of Supply Contracts. The Supreme Court previously ruled that in a supply contract, the manufacturer is absolutely bound to provide goods meeting exact standards:

(“A supply contract is a contract in which a merchant or manufacturer commits to supply or provide the buyer with goods or services from their production or the production of others, according to specifications agreed upon between the parties, in specified quantities, and at specified times, to be delivered to the latter at the agreed-upon location… and the buyer has no right to withhold the price under the pretext of non-conformity of some of the supplied items unless the claimed defect is proven.”)

In this case, the defect was not merely claimed by the Contractor; it was conclusively, objectively proven by the independent third-party SGS inspection report and the end-client’s formal rejection letter. This rigid legal framework establishes that a supplier’s core obligation is an “obligation of result”, they must achieve the exact, specified engineering result, defect-free. Supplying a 5.5-meter column when a 6-meter column was ordered is a fundamental failure of that result.

The Court’s Findings: Severing the Force Majeure Camouflage

The crux of the Dubai Court’s masterful judgment lies in its forensic dissection of the project timeline. The Supplier attempted to blur the lines between their manufacturing failures and the sudden outbreak of the war, utilizing the military closure of the Khartoum airport as an impenetrable excuse for their non-performance.

The Court fundamentally rejected this conflation. By appointing a specialized Tripartite Expert Committee consisting of forensic accounting and banking experts, the Court established a bright-line rule that is directly applicable to the 2026 Iran War: **A subsequent wartime *force***

***majeure* event cannot cure, excuse, or erase a pre-existing contractual breach.**

The Court found that the Supplier had already fundamentally breached the contract the moment the SGS inspection report confirmed the life-threatening deviations in the steel columns on March 10, 2023. This breach materialized fully when the end-client rejected the materials on April 13, 2023. The fact that the war broke out on April 15, physically preventing the Supplier from traveling to the site to attempt a highly irregular, ad-hoc "workaround" (altering the concrete foundations to hide the steel deficit), was legally irrelevant to the initial breach. The Supplier had no contractual right to demand that the Contractor alter civil works to accommodate a manufacturing error.

Delivering a decisive and overwhelming victory for the Contractor, the Court severed the Supplier's *force majeure* defense from their pre-existing manufacturing failure. The Court issued a verbatim judgment that resonates powerfully for 2026 logistics disputes:

("The matter from which the Court concludes is that the Original Claimant [The Supplier] breached its contractual obligations to supply the agreed-upon materials as they were not conforming to the specifications according to the report issued by the General Directorate of Groundwater and Wadis at the Ministry of Irrigation and Water Resources in the Republic of Sudan.

This is not negated by the Plaintiff's defense that it was unable to take corrective measures due to the war in Sudan.

Accordingly, the Court rules that the Counter-Claimant [The Contractor] is entitled to what it demands in its counterclaim regarding the rescission of the supply contract subject to the dispute and the recovery of the value of the advance payment it had paid, by obligating the First Defendant in the

Counterclaim (the Original Claimant) to pay the Counter-Claimant the sum of 1,277,832 US Dollars (equivalent to 4,693,476.94 Dirhams).")

By isolating the Supplier's technical failure from the broader geopolitical conflict, the Court stripped away the *force majeure* camouflage. The contract was formally rescinded under Article 272(1) of the Civil Transactions Law, and the Supplier was ordered to refund the massive advance payment in full, leaving the Supplier to absorb the total financial loss of the defective steel.

Bank Guarantees, Bad Faith, and Financial Restitution

Beyond the termination of the contract, the judgment provides critical guidance on the mechanics of Bank Guarantees and financial restitution during wartime disputes. In an attempt to block the Contractor from liquidating the guarantees, the Supplier introduced a highly technical banking defense. They argued that the guarantees were never formally "activated" because the Contractor had erroneously wired the $1.27 million advance payment to the Supplier's Bank of China account, rather than the specific Abu Dhabi Islamic Bank (ADIB) account explicitly stipulated in the guarantee draft.

The Court and the appointed banking expert thoroughly rejected this deflection. The evidentiary record demonstrated that the Supplier had specifically issued an official commercial invoice requesting the funds be sent directly to their Bank of China account. The Court viewed the Supplier's attempt to use their own contradictory banking instructions to invalidate the guarantees as an act of profound "bad faith", violating the good faith mandate of Civil Code Article 243.

The Court exonerated the issuing bank, relying on Cassation No. 724/2020, which affirms the strict independence of bank guarantees:

("A bank guarantee is a pledge by the bank to pay the client's

debt to a third party according to the agreed conditions… The bank issuing the guarantee is obligated to pay its value to the beneficiary upon demand during its validity without needing the client's approval once the condition of entitlement is met.")

Because the strict condition (payment to the ADIB account) was technically not met, the Bank was cleared. However, the Court ultimately bypassed the dormant guarantee and ordered the Supplier to refund the money directly through the substantive lawsuit. For logistics managers in 2026, this serves as a dire warning: you must rigorously ensure that advance payments are routed precisely to the accounts stipulated in the Bank Guarantees. A simple administrative wiring error can leave millions of dollars unsecured, forcing a company to fight a lengthy court battle for restitution rather than simply calling the bond.

Furthermore, the Court addressed the financial penalty for withholding these funds. Historically, UAE courts awarded a 9% statutory interest rate in commercial disputes. However, referencing a landmark macroeconomic directive from the General Assembly of the Court of Cassation (Decision No. 1/2021), the Court noted that the fluctuating economic climate required a downward adjustment:

("The General Assembly of the Court of Cassation deemed it appropriate, by unanimous consensus, to reduce the interest rate in both its legal and delay forms, in the absence of an agreement thereon, to a rate of (5%) annually until full payment.")

Aligning with Articles 84 through 87 of the Commercial Transactions Law, the Court ordered the Supplier to pay a 5% annual delay interest on the $1.27 million, calculated from the date of the judicial claim until the debt is fully extinguished. For 2026 contractors seeking restitution from defaulting suppliers, this 5% metric serves as the reliable

benchmark for calculating the time-value loss of tied-up capital.

It is vital to note that the Court rejected the Contractor’s claim for *additional* unspecified damages. Citing Cassation No. 352/2015 Civil, the Court reiterated that contractual liability requires three distinct elements: fault, damage, and a causal link. Because the Contractor failed to explicitly quantify and prove the specific financial harm suffered beyond the loss of the advance payment, the additional compensation claim was dismissed, a harsh reminder for 2026 contractors that wartime damages must be meticulously documented by financial experts, not merely alleged.

Wider GCC Implications: A Unified Legal Stance

While Judgment 695/2023 originates from the Dubai Courts in the UAE, its jurisprudential DNA is universally applicable across the entire Gulf Cooperation Council. The legal doctrine preventing a defaulting party from hiding behind a subsequent *force majeure* event is deeply entrenched in the civil law systems of the region, which are heavily influenced by the Egyptian Civil Code and traditional Islamic jurisprudence.

In the Kingdom of Saudi Arabia, where gigaprojects require a continuous, uninterrupted flow of international logistics, the principles of this ruling align perfectly with the newly codified KSA Civil Transactions Law (enacted by Royal Decree M/191 in 2023). Under Saudi law, the doctrine of *force majeure* strictly requires that the event be the *sole* cause of the failure. If an international supplier ships non-conforming structural steel to Jeddah Islamic Port, and the port is subsequently closed due to the 2026 conflict, the supplier’s fault broke the chain of causation long before the military event did. The supplier may be in material breach under Article 107 of the KSA Civil Code, and the later intervention of war does not retroactively cleanse their liability.

Similarly, the Qatari Civil Code (Law No. 22 of 2004) and the Omani Civil Transactions Law (Royal Decree 29/2013) view construction supply contracts as rigid obligations of result. Across the entire GCC, courts uniformly reject the concept of "concurrent excuse" when one of the causes is a pre-existing material breach. If you failed to build the steel tower correctly in March, you cannot blame an Iranian naval blockade or airspace closure in April for your failure to deliver.

Strategic Playbook for Construction Logistics in the 2026 Crisis

For construction conglomerates, EPC contractors, offshore manufacturers, and logistics providers currently battling the commercial fallout of the 2026 Iran War, the Dubai Court precedent offers a harsh but brilliantly clear roadmap for survival and risk mitigation.

1. **Eradicate the "Fix-It On-Site" Culture During Crises:** In standard times, a supplier might manufacture a slightly defective product and promise to "send a team to fix it on-site" to save shipping costs or maintain schedules. In the 2026 wartime environment, accepting this premise is a fatal misallocation of risk. As the precedent shows, if airspace closes and the supplier's engineers cannot travel, the project is left with defective, unusable materials. Contractors must draft clauses that strictly prohibit shipping non-conforming goods under the promise of future on-site rectification. Acceptance must be explicitly tied to absolute conformity *prior* to embarkation.
2. **Elevate the Role of Factory Acceptance Testing (FAT) as Your Primary Legal Shield:** The Dubai Court's ruling hinged entirely on the independent SGS inspection report dated a month before the war broke out. In the rush of 2026 wartime logistics, contractors must never allow suppliers to ship materials blindly to beat port closures. Mandate strict Third-Party Inspections at the

point of origin (e.g., in China, India, or Europe). If the report identifies defects, the supplier is in breach at the factory level. If a war subsequently breaks out, the financial loss falls squarely on the supplier, as their prior breach legally severs their access to a *force majeure* defense.

3. **Issue Immediate Notices of Breach (The 48-Hour Rule):** Timing is the difference between a total loss and a full refund. In the precedent case, the Contractor issued an official “Notice of Breach” directly citing the owner’s rejection, perfectly bracketing the outbreak of the war. In 2026, logistics managers cannot afford to be passive. If a logistical or manufacturing failure is detected, formal legal notices under Article 272 must be dispatched immediately via registered channels. Do not engage in prolonged, informal “workaround” discussions over WhatsApp while a geopolitical crisis escalates. Paper the breach before the fog of war obscures the facts.
4. **Strict Contractual Hygiene Regarding Bank Guarantees:** The massive administrative error made by the Contractor in the 2023 case, wiring funds to the Bank of China instead of ADIB, thereby failing to activate the guarantees, is a profound cautionary tale. Finance departments operating in the 2026 conflict must meticulously read the exact SWIFT text of the guarantees. If a guarantee requires funds to be deposited into a specific branch or IBAN to become effective, this must be executed flawlessly. Attempting to claw back a $5 million advance payment through a multi-year court battle during the 2026 liquidity crunch, simply because of a payment routing error, is a path to corporate insolvency.
5. **Draft “Pre-Existing Breach” Carve-Outs in Contracts:** For all new contracts being negotiated in the shadow of the ongoing 2026 conflict, legal counsels must draft explicit carve-outs in their *force majeure* clauses such

as: *“Under no circumstances shall the Supplier be entitled to invoke Force Majeure to excuse a delay, non-conformity, or breach that originated or occurred prior to the onset of the Force Majeure event. The Supplier remains strictly liable for the refund of all advance payments if the materials fail third-party inspection, regardless of subsequent sovereign or military interventions.”*

Conclusion: Absolute Performance Over Corporate Sympathy

The escalation of the 2026 Iran War has plunged the GCC construction and logistics sectors into a prolonged state of emergency. As shipping lanes are heavily militarized and flights are grounded, the temptation for failing suppliers to hide their manufacturing errors and supply chain mismanagement behind the fog of war is immense.

However, as conclusively established by the Dubai Courts, regional jurisprudence sees entirely through this illusion. The civil law framework prioritizes the absolute obligation to deliver conforming, safe, and precisely engineered materials. A war is a tragedy, but in the eyes of the law, it is not an eraser.

The judicial mandate is unrelenting: *“This is not affected by the plaintiff’s defense that it was unable to take corrective measures due to the war.”*

To survive the logistical siege of the 2026 Iran War, project owners and contractors must shift their focus from the battlefield back to the factory floor. By wielding their inspection reports, enforcing rapid default notices, and ensuring their financial guarantees are flawlessly activated, the industry can protect its capital and ensure that the ultimate financial risk of non-conformity remains exactly where it belongs: with the defaulting supplier.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

War Series: Force Majeure, Civil Aviation Disruption, and the Allocation of Wartime Risk – Applying the 2017 UAE Courts Yemen War Precedents to GCC Airspace in the 2026 Iran War

May 1, 2026

The escalation of the 2026 Iran War has profoundly disrupted civil aviation and logistics networks across the Gulf Cooperation Council (GCC). As military commands issue sudden Notices to Air Missions (NOTAMs) and civil aviation authorities abruptly close air corridors to commercial traffic, aviation operators and freight forwarders find themselves trapped in a web of unfulfilled contracts.

When a chartered flight or logistics operation is abruptly grounded by military directive, a critical legal and financial dilemma arises: Who bears the cost of the canceled service? Aviation operators frequently invoke *force majeure* to shield themselves from liability, arguing that sovereign airspace closures absolve them from refunding clients, especially when

the operator has already incurred massive, non-refundable sunk costs for aircraft leasing, ground handling, and routing permits.

However, GCC civil law frameworks place strict boundaries on the use of *force majeure* during active conflicts. A landmark triad of Dubai Court judgments, Primary, Appeal, and Cassation, issued in 2017, which adjudicated a private aviation dispute stemming from the sudden closure of Saudi airspace during the Yemen War, provides definitive guidance on how regional courts allocate risk and mandate restitution during the current 2026 crisis.

The Factual Matrix: The 2015 Yemen War Airspace Closure

To understand the direct application of this precedent to the 2026 conflict, one must examine the factual matrix of the dispute, which mirrors the logistical disruptions currently plaguing operators.

In April 2015, following the outbreak of the Yemen War, a plaintiff contracted a UAE-based aviation company to charter a private jet to transport his deceased father's remains from Berlin, Germany, to Jizan, Saudi Arabia (near the Yemeni border). The plaintiff paid $88,000 upfront. To execute the mission, the aviation operator subsequently leased an aircraft from a Turkish carrier for $65,000 and paid an additional $20,000 for ground services and permits.

Mere hours before the scheduled departure, the Saudi General Authority of Civil Aviation (GACA) abruptly canceled the flight and closed Jizan's airspace based on explicit orders from the Joint Coalition Forces operating in Yemen. When the plaintiff demanded a refund, the aviation company refused. The company argued that the military airspace closure was an unforeseeable *force majeure* event, and that it had already lost its out-of-pocket expenses to the Turkish supplier who refused a refund due to the short-notice cancellation.

The Primary and Appeal Courts: "Obligations of Result" and the Foreseeability Trap

The Dubai Court of First Instance (Judgment No. 2618/2016 Commercial Partial) firmly rejected the aviation company's defense, a ruling that was entirely upheld by the Dubai Court of Appeal (Judgment No. 442/2017 Commercial Appeal).

Rooting their decisions in the legislative basis of the UAE Civil Transactions Law (Articles 272, 273, and 274), the lower courts first clarified the contractual nature of civil aviation. The Primary Court ruled that the operator's duty to provide the aircraft was an **"obligation to achieve a result", not an "obligation to exercise care".** Because the operator failed to deliver the final result, they were in breach.

Crucially, both courts dismantled the aviation company's *force majeure* defense by focusing on the concept of "foreseeability." For an event to qualify as a contract-nullifying *force majeure*, it must be unexpected at the time of contracting. The Primary Court held that entering into a contract *during* an active regional war severely limits this defense:

"The force majeure circumstances claimed by the Defendant, which is the war in Yemen, were present during its contracting with the Plaintiff, and the cancellation of the flight due to those circumstances was expected… The Defendant… should have studied all circumstances and expectations regarding the completion rates of the contracted mission."

Addressing the operator's unrecoverable sunk costs paid to third parties, the Court held that these amounts were due to the operator's *"negligence and failure to exercise the necessary care in studying the situation, the specific circumstances of the destination airport, and the security conditions in that region, and the Plaintiff cannot bear the result of that negligence."* Consequently, the Court ordered a

full refund of $88,000 plus a 9% statutory interest pursuant to the Commercial Transactions Law.

The Court of Cassation: Automatic Rescission and the Burden of Risk

The aviation company escalated the matter to the Dubai Court of Cassation (Judgment No. 713/2017 Commercial Cassation), arguing that the sudden sovereign military directive decisively severed the chain of liability, constituting an insurmountable “foreign cause” beyond its control.

The Court of Cassation upheld the rulings against the aviation operator but refined the legal rationale. Shifting the judicial focus away from the debate over “foreseeability” or the operator’s “negligence,” the Supreme Court anchored its decision entirely on the absolute doctrine of impossibility and automatic contract dissolution.

The Cassation Court established a bright-line rule for commercial contracts rendered impossible by sovereign or military intervention:

“The contract is inevitably and automatically rescinded due to the impossibility of executing the obligation of one of the contracting parties for a foreign cause, regardless of whether the impossibility is due to his fault or not. The rescission of the contract results in… the demise of the contract and the dissolution of the contractual bond with a retroactive effect to the time of its conclusion… and the contracting parties are returned to the state they were in before its existence, so each of them is obligated to return what they had received in execution of the contract.”

Addressing the severe financial loss faced by the aviation company, which was legally forced to refund the client despite having irreversibly paid out $85,000, the Court of Cassation applied the strict civil law principle of risk allocation. In bilateral contracts, who bears the burden when a military

order renders performance impossible?

“The debtor of the obligation that has become impossible to execute bears the risk of the impossibility, pursuant to the principle of bearing the risk in mutually binding contracts.”

Because the aviation company was the “debtor” of the impossible flight service, it was required to bear the total financial risk of the contract’s dissolution. The Court dismissed the debate over whether the military closure technically qualified as an unforeseeable *force majeure*, deeming the argument “ineffective” since the rule of automatic dissolution mandates absolute mutual restitution regardless.

Application to Contracts in the 2026 Iran War

For airlines, charter brokers, and logistics providers navigating the 2026 Iran War, the 2017 Dubai Court trilogy delivers highly actionable, albeit sobering, precedents regarding wartime contract issues:

– **Ongoing Conflicts Negate “Surprise” Defenses:** A vital lesson from the lower courts is the treatment of foreseeability. Companies entering into new aviation or freight contracts *while* the 2026 Iran War is ongoing will find it immensely difficult to rely on *force majeure* to escape liability. Courts view wartime disruptions, such as sudden NOTAMs or airspace closures, as foreseeable operational risks that professional entities are expected to anticipate and price into their services.

– **The “Obligation of Result” Trumps Best Efforts:** In the GCC civil law framework, transportation and logistics are strictly construed as obligations to achieve a result. Procuring permits and leasing aircraft are merely preparatory steps. If military action blocks the final execution, the operator has failed its core obligation, triggering immediate restitution.

– **Sunk Costs Rest with the Service Provider:** As established by

the Cassation Court, an operator cannot pass its sunk costs onto the end-consumer under the default civil law framework simply because a military order intervened. The impossibility of performance legally and automatically dissolves the contract. The operator is legally required to return the client’s advance payments in full, absorbing any out-of-pocket upstream losses internally.

– **The Absolute Necessity of Wartime Contractual Drafting:** Because the courts place the absolute burden of impossibility on the “debtor of the obligation,” commercial entities in 2026 must proactively contract out of this default position. Providers must integrate bespoke, explicitly drafted “military disruption” clauses, expressly categorizing advance payments as non-refundable in the event of sovereign airspace closures, and explicitly shifting the financial risk of third-party sunk costs onto the client.

Conclusion

As the 2026 Iran War triggers sweeping military instructions and civil aviation closures, GCC operators must recognize that civil courts prioritize absolute performance and mutual restitution over corporate sympathy. The 2017 UAE jurisprudence establishes that when the fog of war makes commercial transport impossible, the contract is retroactively erased, and the service provider is left holding the financial burden. To survive the current geopolitical shock, aviation and logistics providers must rely not on the statutory excuse of *force majeure*, but on ironclad, crisis-specific contractual risk allocation.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

War Series: Wartime Economic Hardship and Lender Liability – Applying the 2006 UAE Supreme Court Gulf War Precedent to GCC Markets in the 2026 Iran War

May 1, 2026

The ongoing 2026 Iran War has introduced significant macroeconomic disruptions across the Gulf Cooperation Council (GCC). As supply chains constrict, project timelines extend, and operational costs rise, many regional commercial entities are turning to their financial institutions for vital liquidity and forbearance. Simultaneously, banks may activate stringent risk management protocols, such as freezing credit facilities or demanding enhanced collateral.

When these financial lifelines are restricted, corporate borrowers would look to the courts. A common legal strategy in GCC civil law jurisdictions is to allege that a bank's sudden refusal to extend credit during a regional conflict constitutes an "abuse of right". Corporate plaintiffs argue that lenders have a customary duty to bear elevated risks and support long-standing clients through macroeconomic crises.

Because GCC states share highly intertwined civil law frameworks, heavily influenced by the Egyptian Sanhuri model, and frequently rely on cross-jurisdictional case law, historical jurisprudence offers critical guidance for these

current disputes. UAE Federal Supreme Court Judgment No. 377 of 2006 (Civil), which adjudicated a banking dispute shaped by the economic aftermath of the Second Gulf War, provides an authoritative and straightforward framework for balancing a bank's legal rights against a borrower's wartime distress.

The "Second Gulf War" Defense: Analyzing the Appellant's Argument

To understand the judgment's direct application to the 2026 conflict, it is necessary to examine the specific arguments advanced by the distressed borrower in 2006, as detailed in the Court's ruling.

The case involved an international commercial group whose bank halted its credit facilities after a twelve-year relationship. The lower courts ruled in favor of the bank, noting that the company suffered a structural deficit exceeding 7.1 million Dirhams (excluding over 5 million Dirhams in existing bank debt and interest), that it had closed its Abu Dhabi offices, and that the requested funds were intended for *new* projects rather than existing ones.

Seeking cassation, the appellants argued that the bank's strict adherence to formal collateral demands during a period of crisis constituted an actionable abuse of right. They attempted to use the prevailing regional instability as a legal shield. Drawing from the Supreme Court's summary of their appeal, the appellants argued that they had provided sufficient guarantees and that the closure of their offices only occurred:

"…after negotiations regarding the real estate guarantees faltered, and due to the bank's insistence on mortgaging the real estate first before considering the request for new facilities, despite the fact that the bank had previously granted it facilities exceeding the guarantees provided."

Crucially, the appellants explicitly linked their demand for

banking leniency to the geopolitical climate. They argued that the bank’s rigidity definitively proved its arbitrariness and abuse of right because it violated:

“…banking customs which require the bank to bear the risks of the profession and to stand by its clients out of concern for its funds with them so that they can continue their operations, ***especially in light of the difficult economic conditions the world went through following the events of the Second Gulf War.”***

This argument is highly analogous to the legal posture considered to be adopted by GCC companies that may be distressed today that the macroeconomic shock of the Iran War legally obligates financial institutions to demonstrate leniency, waive strict collateral prerequisites, and prioritize corporate survival over standard risk metrics.

The Court’s Rationale: Banking Custom During a Crisis

The UAE Supreme Court firmly rejected the premise that the macroeconomic hardship of the Second Gulf War compelled the bank to abandon its standard risk parameters or absorb the borrower’s commercial deficit.

Applying Articles 104 and 106 of the UAE Civil Transactions Law, the Court clarified the boundaries of an “abuse of right.” The Court acknowledged that while banking custom generally encourages assisting a client in distress, this duty is not absolute and is strictly governed by commercial viability:

“While it is established in banking customs that a bank must assist its client who is in a difficult position, considering this assistance as one of the functions of the bank, the prerequisite for this is that the goal must be to rescue the client from their crisis, ***and not to prolong their death throes or conceal their hopeless condition****. If the requested facilities, in terms of their size, nature, or duration, will*

not result in saving the client, then there is no blame on the bank if it refuses to grant them."

Addressing the appellant's invocation of the Second Gulf War, the Court shifted the judicial focus away from the overarching geopolitical crisis and onto the micro-economic realities of the borrower's balance sheet and operational intent. The Court validated the lower court's findings that the company's financial position had "reached a critical stage," that real estate guarantees were not practically placed at the bank's disposal due to valuation disputes, and that the requested facilities were to finance new, unproven projects.

Dispensing with the notion that wartime conditions require banks to act as economic shock absorbers, the Court affirmed the bank's right to prioritize its institutional stability:

"The bank, like any creditor, has the right to think of its own interest and the interest of its shareholders. ***For it is not a charitable institution*** *… What the bank undertook was to preserve its funds and the funds of its shareholders, and this does not violate or contradict banking customs, public order, or morals."*

Application to GCC Industries in the 2026 Conflict

The legal precedent set by Judgment 377 of 2006 offers practical, immediate clarity for key industries navigating the current 2026 conflict:

1. **Collateral Negotiations and Historical Leniency:** Companies currently attempting to renegotiate credit terms must consider the 2006 authority that arguing a bank's demand to "mortgage the real estate first" violated custom, especially during the post-Gulf War downturn. The Supreme Court had rejected this, establishing that past leniency does not legally mandate future unsecured exposure. In 2026, banks may be protected if they demand strict, perfected security

interests prior to disbursing wartime liquidity.

2. **Financing Strategic Pivots (Construction & Logistics):** As supply chains are rerouted and domestic infrastructure projects are potentially delayed by the 2026 conflict, firms may seek capital to pivot toward new ventures. The 2006 appellants similarly requested funds for "financing new projects rather than existing ones." The judgment explicitly protects banks that refuse to finance such endeavors when a client's core financial position is already deteriorating. A bank is not legally obligated to fund a corporate pivot if its feasibility is uncertain, and withholding such funds does not constitute an abuse of right.
3. **Macroeconomic Shocks Do Not Absolve Obligations:** A highly resonant lesson of the judgment is its treatment of the "Second Gulf War" defense. Regional instability does not suspend fundamental commercial obligations. The Court upheld the imposition of a 9% delay interest on the company's outstanding balances, affirming that a debtor's failure to pay a known sum obligates compensation, regardless of the overarching geopolitical difficulties.

Conclusion

As the 2026 Iran War continues to test the commercial resilience of companies, UAE Supreme Court Judgment No. 377 of 2006 serves as a stabilizing jurisprudential anchor. While the invocation of "difficult economic conditions" caused by regional conflict may frame a compelling plea for financial forbearance, regional courts apply a strict standard of commercial pragmatism. The law recognizes that a bank's primary duty is the prudential management of capital. In times of severe geopolitical crisis, civil courts will safeguard a financial institution's right to manage its risk, ensuring that the banking sector is not legally forced to absorb terminal commercial liabilities under the guise of customary

support.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com

UAE Crypto Litigation: When War Doesn't Excuse Crypto Losses – A Dubai Court Judgment on Force Majeure, War, and the 2026 Iran War

May 1, 2026

The following is an excerpted analysis of topics discussed in the book '[UAE Crypto Litigation](#)', a treatise on the judicial evolution of digital asset disputes in the United Arab Emirates, [available at www.uaecryptolitigation.com](#).

In the immediate aftermath of a geopolitical shock, such as the escalating conflict involving Iran, a frantic period of market panic and informal crisis management sometimes occurs. It is not uncommon that asset managers and OTC brokers trade WhatsApp messages with anxious clients, cite global instability, and may freeze withdrawals to avoid unforeseen losses. For the investor or legal practitioner, these crisis-driven communications present a complex contractual challenge: when does wartime market volatility excuse non-performance under the doctrine of *force majeure*, and when is it superseded

by an informal guarantee?

The UAE courts have adopted a rigorous stance on this issue, prioritizing the specific substance of the parties' communications over sweeping macroeconomic excuses. While traditional commercial contracts might readily invoke wartime disruption as an act of God, the digital asset sector faces a different legal reality. A landmark judgment from the Dubai Court of Appeal (Case No. 406 of 2023) provides a definitive blueprint for how the judiciary approaches geopolitical market instability. In a dispute involving a massive informal digital currency investment, the defendant failed to return investor funds following a severe market crash. Attempting to shield himself from liability, the defendant invoked *force majeure*, attributing the impossibility of performance to the extreme market volatility precipitated by the outbreak of the Russian-Ukrainian war; a defense mirrors the potential arguments of citing the Iran conflict.

However, the courts are nuanced when a party has made absolute promises outside of a formalized risk allocation structure. The true battleground in such disputes is rarely the macroeconomic impact of the conflict, but rather the defendant's own digital breadcrumbs. In assessing the aforementioned case, the court relied heavily on a court-appointed expert's forensic analysis of the parties' emails and messaging apps to pierce the veil of the informal arrangement. The evidentiary record revealed that the defendant had aggressively induced the claimants, affirming in writing that the investment was "100% guaranteed" and that the principal could be recovered "immediately upon request." The defendant tried to sever his liability by pointing to a global conflict, hoping the court would ignore his own unqualified assurances.

The court refused to allow this *force majeure* defense. It held that by explicitly guaranteeing the return of funds "at any time," the defendant had contractually assumed the risk of

market volatility. Extreme price fluctuation, even when catalyzed by a major regional war, is an inherent and foreseeable feature of cryptocurrency markets; not an unforeseeable external event. Consequently, the burden of the market crash remained entirely on the defendant, transforming what might have been a speculative investment into an unconditional debt obligation. This serves as a stark warning to market participants and informal asset managers: you cannot weaponize the theater of war to excuse market losses if your communications vacant clear contractual exclusions have already guaranteed the preservation of your investors' principal.

For a detailed guide on managing force majeure claims, implementing objective "Market Disruption Event" clauses, and navigating VARA's strict prohibitions on guaranteed returns, see more in the contractual risk analysis in 'UAE Crypto Litigation'.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com