War Series: Paper Barrels and Physical Constraints – The Limits of Force Majeure in the 2026 GCC Energy Shock

September 27, 2026

"In the inevitable collision between paper contracts and physical supply chains, physical reality ultimately dictates the terms."

The Divergence of Paper and Physical Energy A recurring theme in macroeconomic and energy analysis is the fundamental disconnect between financial abstractions and physical reality. The modern economy operates on the assumption of uninterrupted primary energy flows. As the 2026 Iran War destabilizes the Arabian Gulf, the region is experiencing a severe, real-world stress test of that assumption.

While the Gulf Cooperation Council (GCC) remains the undisputed epicenter of global hydrocarbon production, the intense militarization of shipping lanes and sudden refining bottlenecks have severely constrained the downstream supply of refined products. Diesel and bunker fuel are the master resources of the physical economy. Without them, the sprawling infrastructure pipelines in Saudi Arabia, the logistics hubs in the UAE, and the massive backup generators required for the region's data centers simply grind to a halt.

For years, procurement teams at major regional contractors managed their energy exposure through long-term, fixed-price diesel supply agreements. These contracts were viewed as ironclad hedges against market volatility. However, this strategy relied on the flawed premise that a paper contract can indefinitely command physical delivery, regardless of macroeconomic or geopolitical conditions. Paper barrels do not power generators.

Today, those fixed-price contracts are deeply out of the money. Spot prices for refined products have spiked dramatically, and commercial fuel suppliers are operating at severe losses with every truck they dispatch. Predictably, these suppliers are issuing sweeping “Force Majeure” notices, unilaterally suspending deliveries, and demanding immediate price renegotiations.

Within the region’s commercial sectors, there is a growing misconception that extreme market volatility automatically excuses contractual performance. It is critical to examine this through the lens of established GCC civil law, which takes a highly structured, unsentimental approach to separating economic friction from true contractual impossibility.

The Unified GCC Legal Framework: Impossibility vs. Hardship When a fuel supplier unilaterally halts deliveries during a regional conflict, their primary defense is Force Majeure. However, the civil codes across the entire GCC, which share a deeply intertwined jurisprudential DNA heavily influenced by the Sanhuri model, draw a strict, unforgiving line between *absolute impossibility* and *extreme financial hardship*.

Across the region, Force Majeure requires an unforeseeable event that renders the performance of a contract physically or legally impossible. Only then is the obligation extinguished. Conversely, the doctrine of *Exceptional Circumstances* (or Hardship) applies when an unforeseeable public event occurs and performance remains physically possible, but has become so economically burdensome that it threatens the supplier with “grave loss.” Crucially, this doctrine does *not* allow the supplier to unilaterally terminate the agreement.

This vital duality is explicitly codified across the major Gulf jurisdictions:

- **The United Arab Emirates:** Article 273 of the Civil Transactions Law governs Force Majeure (impossibility), while Article 249 governs Exceptional Circumstances (hardship).

- **Kingdom of Saudi Arabia (KSA):** Under the recently enacted KSA Civil Transactions Law (Royal Decree M/191 of 2023), Article 125 dictates Force Majeure, whereas Article 97 provides for judicial intervention when unforeseeable circumstances make performance “oppressive” to the debtor.
- **Qatar:** The Qatari Civil Code (Law No. 22 of 2004) mirrors this structure precisely in Articles 258 and 171.
- **Oman and Kuwait:** Similar structural divides exist in the Omani Civil Transactions Law (Arts. 172 and 159) and the Kuwaiti Civil Code (Arts. 215 and 198).

Price Shocks Are Not Force Majeure To understand how regional courts apply these codes during commodity shocks, we can look to historical precedents. Following the 2008 global financial crisis and subsequent commodity supercycles, suppliers of highly volatile industrial materials faced catastrophic price spikes. Bound by fixed-price contracts, many claimed Force Majeure and halted deliveries.

The regional courts, setting a jurisprudential standard widely respected and cited across the GCC, have generally established a definitive rule: **A massive, unexpected increase in procurement costs, even if triggered by an unforeseeable geopolitical black swan, does not render a contract “impossible” to perform.**

If the physical molecules of diesel exist in the spot market, the supplier can technically procure and deliver them. The fact that doing so erodes profit margins and threatens the supplier’s balance sheet constitutes a *relative* impossibility (hardship), not an *absolute* one (Force Majeure). Therefore, any supplier who unilaterally halts fuel deliveries based solely on market price surges is in material breach of contract.

The Judicial Pressure Valve The legal system, however, recognizes that rigidly enforcing economically ruinous contracts can trigger systemic cascading defaults across the supply chain. Bankrupting regional logistics providers serves neither the project owners nor the broader economy.

This is where the doctrine of Exceptional Circumstances acts as a vital pressure valve. It grants the presiding judge or arbitral tribunal the exclusive authority to intervene. By reviewing forensic financial data, a tribunal can equitably distribute the "grave loss." The judge may force the buyer to absorb a calculated percentage of the price surge, while mandating that the supplier continues deliveries at a newly adjusted rate.

The key legal distinction is procedural: the supplier cannot simply stop pumping fuel while demanding higher rates. They must maintain physical performance while formally petitioning the court to restore the economic balance of the contract.

When Sovereign Rationing Intervenes While market price surges do not trigger Force Majeure, the 2026 Iran War introduces a variable that absolutely does: Sovereign Energy Rationing.

If a GCC Ministry of Energy, national oil company, or sovereign military command issues a formal decree limiting commercial diesel allocations, perhaps capping them at 40% of pre-war volumes to preserve strategic reserves, the legal paradigm immediately shifts.

A direct sovereign rationing order is a true "foreign cause." It creates an absolute legal impossibility. If a supplier fails to deliver the remaining 60% of the contracted fuel because the state redirected the refinery output, they are completely shielded under the Force Majeure provisions across all GCC civil codes. The buyer cannot claim delay damages or demand the supplier procure fuel on the grey market to circumvent a sovereign mandate. When physical constraints are enforced by state power, the commercial contract must yield.

The Wartime Playbook for Energy Logistics For EPC contractors, heavy logistics operators, and energy suppliers navigating the supply constraints of the 2026 conflict, adhering strictly to regional legal frameworks is essential for mitigating risk:

- **For the Buyers – Audit the Notices:** Do not accept blanket Force Majeure notices at face value. If the supplier's inability to deliver stems entirely from spot-market price inflation, issue a formal Notice of Breach. Regional jurisprudence makes it clear that market volatility is not a valid basis for unilateral termination.
- **For the Suppliers – Maintain Supply While Seeking Relief:** Unilaterally suspending fuel deliveries is a critical error that exposes the firm to substantial delay damages. Suppliers must continue physical performance while simultaneously invoking the Exceptional Circumstances provisions in local courts or tribunals to seek a formal, judicially mandated price adaptation.
- **For All Parties – Document Sovereign Intervention:** If fuel deliveries are halted due to state-imposed rationing, informal communications from downstream distributors are legally insufficient. To successfully invoke Force Majeure, the impacted party must formally serve the counterparty with the published government decrees, ministry circulars, or military orders demonstrating that the shortfall was dictated by sovereign mandate rather than commercial preference.

Takeaway The 2026 Iran War has profoundly disrupted the fundamental inputs of regional commerce. Businesses find themselves navigating a narrow corridor between severe price surges and the reality of state-level resource rationing. The assumption that fiat agreements can entirely insulate operations from physical supply chain shocks is no longer viable.

The GCC civil law frameworks provide a pragmatic, structured mechanism for managing this disruption. The law rigorously protects the sanctity of contracts against mere market panic, while allowing for judicial intervention to prevent systemic economic collapse. Companies cannot use geopolitical volatility to unilaterally walk away from unprofitable agreements, but they can leverage statutory doctrines to ensure an equitable sharing of the wartime burden. Ultimately, success requires aligning legal strategy with physical market realities.

Wasel & Wasel advises on complex commercial disputes, international arbitration, and cross-border financial litigation. The firm represents major corporate entities, regional contractors, and energy suppliers in high-stakes proceedings before various courts and tribunals across the GCC. Our practice includes navigating complex force majeure claims, litigating the application of exceptional circumstances and contract adaptation, managing multi-jurisdictional supply chain disputes, and enforcing contractual rights amidst geopolitical crises and sovereign interventions.

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Secondary Market Misrepresentation in Crypto: Insights from the Ontario Superior Court of Justice

September 27, 2026

A recent decision by the Ontario Superior Court of Justice in *Banach v. Galaxy Digital Holdings Ltd., 2026 ONSC 4534* is emerging as a critical reference point for digital asset investors, class actions, and corporate disclosure obligations. The judgment establishes decisive principles regarding secondary market misrepresentations, the assessment of materiality for cryptocurrency disclosures, and the liability associated with the promotion of algorithmic stablecoins. The ruling also sheds light on the broader implications for the permissibility and opportunity of class action crypto disputes globally. **Background**The precedent case arose from a class action against Galaxy Digital Holdings Ltd. ("Galaxy"), an investment company heavily engaged in the digital asset industry, and its senior management. The plaintiff alleged that Galaxy failed to disclose material risks associated with its core digital asset holdings, specifically Luna and its associated algorithmic stablecoin, TerraUSD. Between May 2021 and May 2022, Galaxy's CEO heavily promoted Luna. However, in May 2022, Luna and TerraUSD entered a "death spiral," wiping out $40 billion in market value globally, which resulted in a 42.9% drop in Galaxy's share price and a $300 million quarter-to-date loss.

The plaintiff claimed that Galaxy's public disclosures during the class period contained misleading omissions regarding the operation and inherent risks of the Terra blockchain and algorithmic stablecoins, particularly the risk of a "death spiral," whilst simultaneously selling their Luna holdings.

The Court's Key Findings The Ontario Superior Court granted the plaintiff leave to proceed under the Ontario Securities Act and certified the action as a class proceeding. The Court's detailed judgment provided several critical findings:

- **Materiality Exceeds Strict Percentages:** The defendants argued that Luna was a relatively small portion of Galaxy's total portfolio during most of the class period and was therefore not legally material. The Court rejected this quantitative defense in full. It held that the test for materiality is whether the omitted information would significantly alter the "total mix of information" available to a reasonable investor. The intense promotional campaign by Galaxy's CEO made Luna fundamentally material to the company's valuation in the eyes of the market, demonstrating that risks cannot be ignored based on percentage alone.

- **Public Corrections:** Following the collapse of Luna, the CEO issued public statements acknowledging the risks of algorithmic stablecoins and the resulting losses. The defendants dismissed these as *ex post facto* musings. However, the Court categorized these statements as actionable "public corrections," revealing to the market the material facts and risks that Galaxy was obligated to disclose all along.

Comparing Permissibility of Class Action Crypto Disputes in Global Jurisdictions The *Banach* decision highlights Canada's permissive "opt-out" class action regime, which seamlessly aggregates massive retail investor claims. For digital asset issuers and exchanges operating globally, the permissibility of class action crypto disputes varies drastically across other major jurisdictions:

- **London (England & Wales):** The English legal system does not possess a direct equivalent to the North American opt-out class action for securities fraud. Claimants generally rely on Group Litigation Orders (GLOs) under the Financial Services and Markets Act (FSMA) or representative actions. GLOs operate on an "opt-in" basis, requiring upfront funding from each claimant. Representative actions require all claimants to share the "same interest," making it exceedingly difficult to aggregate the claims of retail investors who purchased digital assets at varying times and prices.
- **Hong Kong & Singapore:** Neither Hong Kong nor Singapore currently supports a statutory class-action regime. Mass claims are limited to traditional representative proceedings, which mandate a rigid "same interest" test.

Consequently, mass retail actions over crypto market misrepresentations face significant procedural hurdles. These jurisdictions heavily favor bilateral commercial litigation and institutional arbitration for digital asset disputes, limiting the threat of plaintiff-driven mass securities torts.

- **DIFC (Dubai) & ADGM (Abu Dhabi):** As leading offshore common law jurisdictions in the Middle East, the DIFC and ADGM provide highly sophisticated courts capable of handling complex digital asset disputes. While they offer mechanisms for group litigation, these operate on an opt-in basis. Neither jurisdiction permits the sweeping, opt-out class actions seen in Ontario, thereby providing an efficient venue for organized institutional investors but inherently shielding token issuers from the asymmetric exposure of North American retail class actions.

Looking Ahead The Ontario Court's decision serves as a definitive warning that generic risk disclosures are insufficient for complex digital assets and that public promotional activities can elevate an asset's legal materiality. Categorizing bespoke digital assets under generic umbrellas constitutes a material misrepresentation if unique structural risks are omitted. For global practitioners and stakeholders operating in this space, navigating the distinct procedural realities of global financial hubs will be essential for effective collective redress and mitigating exposure to class actions.

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Enforcing Third-Party Subpoenas in Arbitration: Supreme Court of Western Australia Rejects Oppression and Discovery Objections

September 27, 2026

The intersection of private commercial arbitration and judicial intervention frequently generates procedural friction, particularly concerning the compulsion of third-party evidence. In the recent decision of *Brackenridge -v- A.T. Brine & Sons Pty Ltd* [2026] WASC 338, the Supreme Court of Western Australia provided significant judicial insight into the legal principles and evidentiary thresholds required to set aside a subpoena issued in support of arbitral proceedings.

This ruling offers a critical reference point for the enforcement of subpoenas against non-parties, clarifying the principles governing legitimate forensic purpose, the intersection with arbitral discovery regimes, and the evidentiary burden required to establish "oppression."

The Context of the Dispute

The precedent case arose from a consolidated arbitration between plaintiff homeowners and a defendant builder concerning a lump-sum residential building contract in Cottesloe. During the arbitration, the appointed Arbitrator directed by consent that there would be no general discovery. However, the parties were permitted to apply for the production of specific documents relevant to the issues in dispute.

With the permission of the Arbitrator, the plaintiffs obtained an *ex parte* subpoena from the Supreme Court pursuant to section 27A of the *Commercial Arbitration Act 2012* (WA). The subpoena compelled a third party, the project's architect, who was also the authorized agent of the homeowners and a relative of the plaintiffs, to produce several categories of documents, including architectural drawings, correspondence, and variation approvals.

The architect applied to the court to set aside the subpoena, arguing that it lacked a legitimate forensic purpose, circumvented the agreed discovery process, and was oppressively broad.

The Court's Key Findings

Relevance and Legitimate Forensic Purpose

In addressing the objection that the requested documents lacked relevance, the Court applied the established principle that a subpoena possesses a legitimate forensic purpose if it is "on the cards" that the documents sought will materially assist a party's case.

Crucially, Justice Lundberg afforded a degree of judicial deference to the Arbitrator's initial assessment that the documents were material to the issues in dispute. Because the architect acted as the owners' authorized agent under the building contract, his drawings, site instructions, and handling of extensions of time were foundational to the core issues of the arbitration, which included defective work, delays, and variations. The judgment reinforces that a third party cannot rely on an unduly narrow conception of relevance when the arbitral pleadings clearly implicate their professional involvement.

The Discovery Objection

The applicant further argued that the subpoena was an abuse of process designed to bypass standard discovery, given that the arbitrating parties themselves likely possessed many of the requested documents.

The Court rejected this premise. While acknowledging that deploying a subpoena merely to bypass general discovery can constitute an abuse of process, the Court clarified that the mere potential for overlap does not, of itself, invalidate the subpoena. “Something more than this is required,” the Court noted.

The Court highlighted three factors validating the subpoena:

1. The arbitrating parties had expressly consented to forego general discovery, allowing instead for specific document production.

2. The Arbitrator had granted explicit permission for the subpoena, and the defendant builder did not oppose it, demonstrating it was not an attempt to circumvent or undermine the arbitral process.

3. The production of documents directly from the third party’s possession could be independently probative of the existence, content, and context of those records.

The Threshold for Oppression

Perhaps the most instructive aspect of the judgment is the Court’s treatment of the “oppression” objection. The architect contended that compliance would be “significant and onerous,” estimating that thousands of documents generated over a four-year period would need to be reviewed from unsegregated electronic folders and personal devices.

The Court dismissed this contention as “little more than conjecture,” establishing a clear evidentiary standard: assertions of oppression must be supported by cogent evidence rather than mere estimates. Justice Lundberg noted that a subpoena recipient is expected to undertake good faith efforts to assess the compliance task, such as deploying appropriate electronic search terms, to provide the court with a more granular assessment of the work and cost involved. Blanket assertions regarding the volume of emails or the duration of a project are insufficient to demonstrate an unreasonable burden.

Furthermore, the architect expressed concern that the requested documents might be used by the plaintiffs to mount a subsequent professional liability claim against him. The Court held that the evident relevance of the materials to the current arbitration outweighed this risk. Any potential misuse is robustly mitigated by the implied undertaking, which strictly restricts the use of compulsorily produced documents to the proceedings for which they were sought.

Implications and Key Takeaways

The Supreme Court's decision provides clear, direct guidance for legal practitioners, contractors, and project owners navigating arbitral disputes and third-party evidence. The message is uncompromising: general claims of burden are insufficient to avoid compliance.

For stakeholders operating in this space, the key takeaways are:

- **Arbitral Deference:** Courts are highly inclined to respect an arbitral tribunal's determination regarding the relevance of third-party documents. Securing the arbitrator's explicit permission heavily insulates the subsequent court subpoena from relevance-based challenges.
- **Overlap with Discovery is Permissible:** Utilizing a subpoena to obtain targeted documents that might otherwise be discoverable is not automatically an abuse

of process, particularly where the tribunal has actively managed the discovery regime and consented to the subpoena process.

- **Evidentiary Precision for Oppression:** Non-parties seeking to challenge a subpoena on the grounds of oppression cannot rely on theoretical estimates of burden. Detailed, empirical evidence demonstrating good faith efforts to limit the scope (e.g., through targeted technology searches) is an absolute prerequisite.

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Aerospace Exports to Russia Through a UAE Company: U.S. Export Controls in Practice

September 27, 2026

On 14 September 2026, a Russian national pleaded guilty to conspiring to violate the Export Control Reform Act ("ECRA") through the unlawful supply of U.S.-origin aviation and aerospace components to Russia. According to the U.S. Department of Justice, the scheme involved ITC Middle East FZ-LLC, a company he co-founded in the UAE in March 2022 ("ITC"). Nearly USD 2 million in primarily export-controlled aerospace goods were supplied to ITC and ultimately reexported to Russia without the required authorization.

ITC's location gives the case particular relevance to regional aerospace firms. ITC is a Ras Al Khaimah entity, with a registered address at RAKEZ Amenity Center in the UAE. That corporate presence illustrates a legal issue for international distribution: receiving American goods through a company established outside the U.S. does not necessarily remove those goods from U.S. export control.

Under 15 C.F.R. § 734.3(a)(2), U.S.-origin items generally remain subject to the Export Administration Regulations ("EAR") wherever located in the world, subject to specified exclusions. Consequently, an onward shipment by a UAE company can require U.S. authorization even where the transaction occurs entirely outside the U.S. A company's place of incorporation and the regulatory status of its inventory are separate questions. Free-zone establishment does not itself create an exemption from these controls.

As in this case, Russia-specific restrictions can further complicate transactions. Section 746.8 of the EAR imposes, *inter alia*, licensing requirements on exports, reexports and transfers to or within Russia of items specified on the Commerce Control List, which is maintained by the Bureau of Industry and Security ("BIS"). Applicable exceptions and exclusions require separate examination. For aerospace suppliers, the relevant assessment therefore includes product classification, ultimate destination, end user and intended use. Thus, an intermediate delivery to the UAE cannot resolve whether a subsequent Russian delivery is permissible. Criminal consequences arise under 50 U.S.C. § 4819 which prohibits violations, attempts, conspiracies and conduct causing violations.

Importantly, the criminal provisions of the ECRA address willful conduct and there are distinct forms of exposure; a compliance failure should not automatically be equated with the willful conspiracy admitted in this case. The geographical connection is another layer that should be discussed precisely. The case in question is an individual's guilty plea involving a particular company. It does not establish wrongdoing by UAE authorities or the wider UAE aerospace sector. Equally, it does not identify every supplier as a knowing participant. No charges against ITC as an entity have been announced thus far.

For the aerospace industry, the practical implication is that compliance must extend beyond the immediate purchaser. Manufacturers, distributors and maintenance providers should establish who will ultimately receive controlled components, verify the commercial explanation for intermediaries and investigate any inconsistent shipping instructions. As per BIS guidance, when transactional circumstances raise red flags, exporters have a duty to conduct an inquiry. Commercially, this incident demonstrates the need for detailed end-use documentation, contractual controls on onward transfers and procedures for suspending deliveries when material questions remain unresolved. For aerospace firms in the UAE and elsewhere, demonstrable control over distribution can help preserve access to U.S. suppliers and reduce disruption to legitimate trade.

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Compensating the Void: UAE Tortious Liability for

Unauthorized Arbitration Agreements and the Revival of Set-Aside Awards

September 27, 2026

The annulment of an arbitral award due to a strict procedural defect is often a frustrating experience for a prevailing party. A common scenario arises when a counterparty successfully sets aside an unfavorable award by arguing that their legal representative lacked the explicit authority to agree to arbitration or its specific terms. However, a profound judgment by the Dubai Court of Cassation (Challenge Nos. 1262 and 1282 of 2016 Civil) has established a robust remedy. The overriding theme of this ruling is the absolute right to claim compensation for an unauthorized agreement to an arbitration clause in cases where an award has been set aside, partly or fully.

The Factual Matrix and the Court's Pronouncements In the dispute before the Court, the claimant secured a commercial arbitration award that included a substantial sum for legal costs. The respondent company subsequently applied to the courts to partially set aside the award concerning those legal costs. The company argued that its legal agents signed the Terms of Reference, granting the tribunal the power to allocate costs, without possessing the explicit, special authorization required under UAE law.

Refusing to accept this loss, the original claimant filed a civil lawsuit against the respondent company and its legal agents, seeking tortious compensation equal to the exact amount of the nullified legal costs. The Dubai Court of Cassation firmly upheld the lower courts' rulings in favor of the claimant.

The Court laid down the foundational principle of this liability, stating:

> *"Arbitration is a mutual agreement between contracting parties, i.e., an agreement on mutual obligations to submit to the judgment of arbitrators, and the nullity of agreements is a relative nullity."*

Crucially, the Court determined that the nullification of an award does not absolve the at-fault party from the financial consequences of their bad faith, establishing that:

> *"Once nullity is established, it is permissible, according to general rules, to seek compensation from the party in the contract who caused the nullity, provided its cause came from their side and as a result of a fault attributed to them, while the other party believed in the validity of the contract and built their dealings on the basis of this belief. The basis for compensation in this case is the fault of the responsible party to whom the nullity is attributed and resulting from a cause coming from their side."*

The Court found that the respondent company had acted with deliberate bad faith to exploit the procedural defect. The judgment affirmed:

> *"the establishment of the Appellant's fault by intentionally concealing the issue of its authorization to the Second and Third Respondents regarding the signing by the Second Respondent of the Terms of Reference for arbitration in her capacity as a legal agent for the Appellant and authorizing the arbitral tribunal to adjudicate the legal costs… and the Appellant's silence in objecting to that until the issuance of the arbitral tribunal's decision based on these Terms of Reference."*

The Court emphasized that *"good faith dictates that it should inform the First Respondent of its non-approval of this* *condition and that it does not bind it, in a manner contrary to what it clung to in the lawsuit for the nullification of the arbitration award."* This wrongful conduct caused harm *"represented in the loss of opportunity to collect the legal costs in the adjudicated amount, which is the basis of the Appellant company's liability requiring it to pay appropriate compensation to redress the damage."*

Allocating Liability: Shielding the Agent, Penalizing the Principal When addressing whether the legal representatives themselves should be jointly liable for acting without authority, the Court protected agents acting within the apparent scope of their relationship unless personal wrongdoing is proven. The Court ruled that *"if the agent or representative concludes, within the limits of his agency, a contract or transaction in the name of the principal, its provisions and the rights and obligations arising from it are added to the principal."*

Dismissing the claims against the agents, the Court noted that *"The agent is not liable if the transaction they concluded with a third party in the name of the principal is void or voidable, unless a personal fault is proven on their part. Thus, the agent is not liable towards third parties unless they commit a fault warranting their liability; if they do not commit a fault, they are not liable even if a third party suffers damage from the execution of the agency."* Because the company permitted the agents to proceed and intentionally concealed the authorization defect internally, liability fell squarely on the corporate principal.

Global Perspectives on Procedural Bad Faith It is worth noting in passing that the posture adopted by the UAE courts shares conceptual DNA with legal mechanisms in other global jurisdictions designed to combat bad faith in proceedings. In common law jurisdictions, such as the United States, the United Kingdom, Hong Kong or Australia, courts frequently address unauthorized representation through the doctrine of breach of warranty of authority, allowing an injured party to claim wasted costs from an agent who acted without proper backing, or from a principal whose deceitful conduct caused the reliance under principles of ostensible authority. Meanwhile, in civil law systems like Germany and France, courts regularly utilize the doctrine of *culpa in contrahendo* (fault in contracting) to award damages against parties who negotiate or participate in agreements in bad faith while knowing they lack the legal capacity to be bound.

A New Recourse to Revive Set-Aside Awards Under UAE Law This judgment answers a critical question for practitioners and businesses: Does this ruling grant parties who have previously had awards set aside a new avenue of recourse against companies or agents to effectively "revive" the values of those nullified awards?

The general answer is yes; through the mechanism of tortious liability rather than contractual enforcement. Historically, the annulment of an arbitral award due to a lack of signatory capacity left prevailing parties assuming their financial victory was permanently extinguished. However, this Cassation judgment confirms that the procedural death of an award does not extinguish the underlying economic entitlement if the annulment stems from the opposing party's fault.

The Court explicitly endorsed this bypass, clarifying that the prior annulment judgment *"does not preclude the First Respondent from filing the current lawsuit requesting compensation for the very same legal costs of the arbitration against the Appellant based on its causation of this nullity, and that judgment does not hold any res judicata that precludes the First Respondent from requesting compensation for the fault committed by the Appellant which caused the First Respondent not to obtain the legal costs of the arbitration."*

The Court noted a clear distinction: *"this nullity adjudicated in the lawsuit for the nullification of the arbitration award relates to the agency relationship between the principal and its agent and the limits of that agency, whereas the current lawsuit is about the First Respondent's request for compensation for the legal costs of the arbitration for which* *the issued arbitration award was ruled null."*

Therefore, aggrieved parties can now pivot to file a tort claim under UAE law, successfully arguing that a company's intentional concealment or strategic silence regarding its agent's authority constitutes an actionable harm (and equally, against the agents themselves if personal fraud or deceit can be proven). Through this, a party can claim the exact financial value of the annulled award as compensation.

One procedural caveat remains regarding delay interest. Because this revived value is awarded as tortious damages rather than a fixed contractual debt, the Court noted that *"this adjudicated amount was not of a known amount in the court's estimation and was subject to its estimation even if it matches the value of the legal costs in the arbitration case which was ruled nullified… so this similarity does not make it of a known amount."* Consequently, *"if the judge has discretion in estimating it, the interest is not due except from the date the judgment issued for the adjudicated amount becomes final."*

Ultimately, this judgment acts as a formidable deterrent against guerrilla arbitration tactics. It ensures that the strict structural rules of arbitration cannot be exploited to evade financial liability, providing a robust pathway to fully resurrect the value of an annulled award through civil compensation.

Wasel & Wasel advises on complex commercial disputes, UAE domestic and international arbitration, and cross-border enforcement litigation within the UAE courts and the broader GCC. The firm advises financial institutions, investors, technology companies, and commercial entities in high-stakes proceedings before the UAE Federal and Emirate-level Courts. Our practice includes navigating complex set-aside applications, managing multi-jurisdictional arbitral disputes, and enforcing arbitral awards and alternative legal remedies, such as tortious claims regarding arbitration awards, to safeguard our clients' rights.

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The First UAE and Middle East Judgment on AI Liability: Institutional Accountability and Global Perspectives

September 27, 2026

In what stands as potentially the first judicial decision in the United Arab Emirates, and potentially the broader Middle East, addressing institutional liability for the failure of artificial intelligence (AI) and automated systems, the Abu Dhabi Commercial Court has established a direct precedent on corporate accountability. Financial institutions deploying AI for risk management, fraud detection, and advisory services cannot rely exclusively on standard security protocols, such as a One-Time Password (OTP), to avoid liability when those systems fail. The ruling establishes that an institution will be held liable for consumer losses if its automated risk assessment model is fundamentally flawed. This judicial precedent works in tandem with the UAE Securities and Commodities Authority (SCA) regulations, the UAE’s September 2024 AI policy, and an emerging global consensus: algorithmic complexity does not absolve financial institutions of their legal duty of care, and structural failures in AI models will result in direct institutional liability.

The First Regional Precedent: Abu Dhabi Commercial Court Case No. 762 of 2026

In a case of first impression regarding AI and automated risk models (Case No. 762 of 2026), the Abu Dhabi Commercial Court of First Instance ruled on a dispute involving digital fraud, consumer liability, and the failure of a bank's automated monitoring systems. The claimant was the victim of a phishing scam in which an OTP was intercepted and used to activate Apple Pay on an unrecognized device. Within minutes, multiple high-value transactions were processed, consuming a large portion of the claimant's credit limit.

Although the claimant reported the incident to the bank within two minutes, the bank allowed the settlements to process, delayed the investigation, and ultimately rejected the claim. The bank relied on its standard terms and conditions, arguing that because the transactions were authenticated via an OTP, the liability fell squarely on the consumer.

The Court appointed a banking expert and adopted their findings, ruling that the bank had breached its duty of care. The Court determined that strict reliance on procedural authentication terms is legally insufficient when the institution fails to implement functional safeguards capable of recognizing abnormal transaction patterns.

Addressing the bank's automated monitoring capabilities, the Court stated verbatim:

"…as the real-time fraud detection system at the bank 'failed' to read the three consecutive red flags (abnormal chronological sequence, speed of transactions, depletion of 67% of the credit limit within seconds), which constitutes a fundamental error in the design of the risk assessment model."

The Court further highlighted the discrepancy between the standard of care expected from institutions utilizing advanced technologies and the bank's actual security measures, noting verbatim:

“Furthermore, the bank’s reliance on the OTP code alone without establishing strict and comprehensive auditing scenarios when receiving a request to add a card to a digital wallet constitutes a clear banking shortcoming that contradicts the level of due diligence expected from a financial institution claiming to possess advanced artificial intelligence systems.”

Based on these findings, the Court cleared the claimant of the disputed debt and ordered the bank and the fraudulent merchant to pay compensation for the material and moral damages incurred.

UAE Financial Regulation: The SCA Framework on AI Risks

This first-of-its-kind judicial finding in Abu Dhabi is closely aligned with the regulatory groundwork previously laid by the UAE Securities and Commodities Authority (SCA). Under the Decision of the Chairman of the SCA Board of Directors No. (13/R.M) of 2021 concerning the Rulebook for Financial Activities, the UAE regulator proactively defined the operational standards and specific liabilities associated with AI in finance.

The SCA Rulebook explicitly defines “AI Risks” (مخاطر الذكاء الاصطناعي) as hazards arising from the use of AI systems or algorithms in providing financial services. Crucially, the SCA identifies several technical failures that trigger institutional accountability, including:

- **Model Drift (انحراف النماذج):** Variations caused by changing input data or data imbalances.
- **Hallucination (القرارات غير المنطقية أو غير المتوقعة):** Illogical or unexpected decisions generated by the system.
- **Explainability Loss (فقدان القدرة على تفسير المخرجات):** The inability to interpret or explain the outputs

generated by the AI.

- **Algorithmic Bias (التحيز الخوارزمي):** Flaws leading to unfair or inequitable results for certain consumer categories, often due to inappropriate or outdated training data.

Furthermore, for automated systems such as Robo-Advisors, the SCA mandates rigorous “Stress Testing” (اختبار الجهد) to simulate extreme scenarios, ensuring the accuracy and stability of these algorithms. The Abu Dhabi Court’s penalization of the bank for a “fundamental error in the design of the risk assessment model” directly reflects the legal consequences of failing to mitigate the AI risks codified by the SCA.

The UAE’s Stance on AI Policy (September 2024)

This intersection of judicial oversight and financial regulation is further reinforced by the UAE’s broader national policy. In September 2024, the UAE published its “Position on Artificial Intelligence Policy at the International Level.” The policy outlines six core guiding principles for AI development: Progress, Cooperation, Society, Ethics, Sustainability, and Safety.

For financial institutions, the principles of *Ethics* and *Safety* are paramount. The UAE has adopted an 8-principle ethical framework designed to ensure fair and safe treatment for all members of society. When AI systems unfairly penalize consumers for sophisticated fraud that the institution’s own algorithms failed to detect, as ruled in Case No. 762, it directly contravenes this mandate. The judgment demonstrates that the UAE views AI innovation as inseparable from robust governance, ethical deployment, and strict consumer protection.

Global AI Considerations: The Institutional Liability Landscape

This inaugural UAE judgment is not an isolated development; it represents the localized application of a growing international regulatory shift regarding institutional liability for the use of AI.

- **The European Union:** Under the EU Artificial Intelligence Act, AI systems used to evaluate creditworthiness or assess risks in financial services are classified as “high-risk.” This classification requires financial institutions to implement rigorous risk management systems and maintain continuous human oversight. The framework creates a direct line of accountability, meaning institutions are liable if their AI models exhibit systemic flaws.
- **The United States:** The Consumer Financial Protection Bureau (CFPB) has issued guidance emphasizing that the deployment of complex or “black-box” AI models does not exempt financial institutions from consumer protection laws. If an automated system fails to protect consumers or violates regulations, the institution bears direct liability. The CFPB maintains that institutions cannot use technological complexity as a defense for operational failures.
- **The United Kingdom:** The UK’s Financial Conduct Authority (FCA) approaches AI liability through existing frameworks such as the Consumer Duty, which requires firms to proactively deliver good outcomes and avoid foreseeable harm. If an automated fraud-detection system fails to identify obvious anomalies, the FCA considers this a breach of the firm’s overarching regulatory duties, holding senior management directly accountable.

Conclusion

The first judgment on AI liability in the UAE sets a clear and operational standard for the Middle East: the integration of AI and automated decision-making into financial operations requires a highly elevated legal duty of care. As evidenced by this precedent from the Abu Dhabi Commercial Court, supported by the SCA Rulebook's codification of AI risks and the UAE's September 2024 AI policy, judiciaries and regulators will evaluate the actual operational effectiveness of algorithms rather than deferring to traditional contractual defenses.

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Enforcing Arbitral Awards After the Abolition of the DIFC-LCIA: The Ontario Court of Appeal's Pragmatic Approach

September 27, 2026

The abrupt abolition of the Dubai International Financial Centre Arbitration Institute (the DIFC-LCIA Arbitration Centre) by the government of Dubai in September 2021 left the international dispute resolution community with a pressing dilemma. With the enactment of “Decree 34,” the rights and obligations of the DIFC-LCIA were transferred to the Dubai International Arbitration Centre (DIAC). This raised a critical question: does the extinguishing of the DIFC-LCIA structure prejudice the enforcement of an award rendered under the substituted DIAC rules, when the underlying contract explicitly referenced the now-defunct DIFC-LCIA provisions?

Recently, the Court of Appeal for Ontario provided a clear answer for Canada (or at least Ontario) in its unanimous decision, *InFrontier AF LP v. Rahmani*, 2026 ONCA 289. The Court confirmed that the dissolution of the DIFC-LCIA structure does not inherently prejudice the enforcement of an award, charting a thoughtful path forward based on contractual interpretation.

The Background of the Dispute

The dispute arose from a September 2020 Term Loan Agreement involving a United Kingdom-based private equity firm, InFrontier AF LP, and Roeen Rahmani, who guaranteed a substantial loan. The parties explicitly agreed that disputes were to be resolved by arbitration in the Dubai International Financial Centre under the DIFC-LCIA Rules.

By the time the respondent commenced arbitration proceedings in 2023 for an alleged default, Decree 34 had abolished the DIFC Arbitration Institute. A joint press release by DIAC and the London Court of International Arbitration subsequently confirmed that arbitrations commenced after March 21, 2022, under agreements referencing the DIFC-LCIA Rules, would be administered under the new DIAC Rules.

Over the appellant’s objections, the arbitration was conducted under the DIAC Rules, culminating in an award ordering him to pay over $2.5 million USD. When the respondent sought to recognize and enforce this award in Ontario, the appellant resisted. Relying on Article V 1(d) of the New York Convention, he argued that the arbitral procedure “was not in accordance with the agreement of the parties” because they had contracted for the DIFC-LCIA Rules, not the DIAC Rules.

The Court’s Analysis: Contractual Interpretation

Writing for the Court, Justice Zarnett upheld the enforcement of the award. Rather than viewing the application of the DIAC Rules as an unlawful override by a foreign state, the Court framed the issue primarily as a matter of contractual interpretation.

Justice Zarnett observed that the application judge “did not, contrary to the Convention, allow the law of the place of arbitration to oust or override the parties’ agreement as to the applicable procedure. Rather, he interpreted their agreement to determine what procedure they had agreed to.” The Court closely examined the Preamble to the DIFC-LCIA Rules, which provided that agreeing parties were bound by those rules or “such amended version of those rules as the DIFC-LCIA Arbitration Centre may have adopted hereafter to take effect before the commencement of the arbitration”.

Addressing the appellant’s concern that relying on Dubai law to determine the applicable rules was improper, the Court respectfully disagreed. Justice Zarnett explained that “the parties’ Agreement about procedure makes the law of the place of arbitration relevant to the question of what rules the parties agreed to.” Because the parties had agreed to an evolving framework, the application judge was entitled to consider the foreign decree to determine that the DIAC Rules legally constituted the amended version of the DIFC-LCIA Rules.

The Court also dismissed the appellant's public policy arguments, recalling the high threshold required: "to succeed on [the public policy ground] the award must fundamentally offend the most basic and explicit principles of justice and fairness in Ontario, or evidence intolerable ignorance or corruption on the part of the Arbitral Tribunal."

Global Perspectives: A Fractured Consensus

The Ontario Court of Appeal's decision is particularly noteworthy when viewed alongside judgments from other jurisdictions grappling with the exact same institutional transition. As the Court politely acknowledged in a footnote, the international consensus remains fractured.

The courts of Singapore have taken a restrictive view. In *DFL v DFM*, [2024] SGHC 71 (affirmed at [2024] SGCA 41), the Singaporean judiciary viewed the differences between the two sets of rules as significant, demonstrating a reluctance to enforce awards where parties were subjected to a substituted institutional framework.

Conversely, the United States Court of Appeals for the Fifth Circuit adopted a pro-enforcement stance in *Baker Hughes Saudi Arabia Company Limited v. Dynamic Industries, Incorporated*, 126 F (4th) 1073 (5th Cir. 2025), dismissing concerns by characterizing the two sets of rules as "nearly identical."

Ontario has charted a sophisticated middle ground. By rooting its decision firmly in the contractual interpretation of the phrase "such amended version," the Court of Appeal elegantly sidestepped the need to conduct a comparative analysis of the institutional rules. As Justice Zarnett noted regarding the debate over whether the rules were materially different or nearly identical, "In view of the conclusion above, it is unnecessary to consider either question."

Conclusion

With *InFrontier AF LP v. Rahmani*, the Court of Appeal for Ontario has provided a straightforward and commercially sensible judgment. By meticulously interpreting standard institutional preambles to encompass state-mandated amendments, the Court successfully ensured that the extinguishing of the DIFC-LCIA structure does not prejudice the enforcement of arbitral awards in Canada. It is a welcome decision that respects party autonomy while offering a practical solution to unexpected shifts in international dispute resolution.

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A Reading of the High Court of Australia Transcript on the Nature of Cryptocurrency in Poulton v Conrad: Judicial Considerations of Whether a Bitcoin Holding Can Be Possessed and Protected by the Torts of Conversion and

Detinue

September 27, 2026

A Reading of the High Court of Australia Transcript on the Nature of Cryptocurrency in *Poulton v Conrad*: Judicial Considerations of Whether a Bitcoin Holding Can Be Possessed and Protected by the Torts of Conversion and Detinue

In August 2026, the High Court of Australia heard oral arguments in *Poulton v Conrad* [2026] HCATrans 44, addressing a foundational question in digital asset law: can a Bitcoin holding be possessed at common law, and therefore be protected by the traditional torts of conversion and detinue? The transcript provides an extensive view of how an apex court assesses the integration of decentralized digital assets into established property paradigms. The inquiries raised by the Justices highlight the mechanical and conceptual difficulties of applying historic torts to modern technology. These deliberations hold significant implications for the cryptocurrency industry across common law jurisdictions, including the United Kingdom (UK), the Dubai International Financial Centre (DIFC), the Abu Dhabi Global Market (ADGM), Hong Kong, and the British Virgin Islands (BVI).

Identifying the "Thing"

A threshold issue for the Court was defining the exact subject matter of the dispute. To establish the torts of conversion or detinue, a claimant must prove interference with a possessory right over a specific, identifiable "thing."

Justice Gordon repeatedly sought clarity on this classification, asking counsel to isolate the exact asset in question: "Are we talking about the private key? Are we talking about the private key with the public key? Are we talking about the private key, plus the private key, plus something else?” She emphasized that “when we are talking about a legal relation, it is identification of the thing, whatever it is, between the two parties.”

The respondent submitted that the relevant object is the Unspent Transaction Output (UTXO), the record of value on the public ledger. Justice Gleeson summarized the structural necessity of this identification: “But you need ‘thing’ in order to get possession, and you need possession in order to get the tort.”

However, the appellant characterized Bitcoin as an “ideational asset,” asserting that “bitcoin is just a string of data. There is no coin, nothing tangible. There is nothing backing bitcoin; there is no promise, no resource,” and argued that “information is not property, no matter how valuable or useful.”

Justice Edelman expressed skepticism toward utilizing broad labels to solve specific legal questions. “I mean, I find this going round in circles with definitions of ‘property’ which apply in different ways, with different elements, in different contexts, to be incredibly unhelpful,” he remarked. Instead, he tested a functional definition, asking whether there is anything wrong with “describing bitcoin as a liberty to alter the ledger?”

The Absence of a Counterparty and the Rule of Law

A crucial distinction between Bitcoin and traditional financial intangibles, such as bank accounts, is the absence of a centralized debtor. Justice Beech-Jones explored this distinction by comparing Bitcoin to a physical commodity rather than a contractual right.

Responding to analogies drawn between Bitcoin and fiat currency deposited in a bank, Justice Beech-Jones observed: “when we talk about a chose in action in the form of a debt in a bank, the thing is the debt owed by the bank to the individual. So, there is effectively a counterparty.” He contrasted this with physical property: “When you own a diamond, there is no counterparty – it is the world. There is no counterparty obligation.” Applying this to the crypto asset, he asked, “Are you not saying, well, the relevant analogy is bitcoin is not like a chose in action in that sense, because it is not a cause of action or a debt or a contractual right or anything of that kind against, say, the bank. It exists against the world – on one view, either against the world or against no one.”

This architecture, an asset with no counterparty obligations maintained by a consensus protocol, prompted Justice Steward to question the legal enforceability of the network. He asked whether Bitcoin is simply “an unenforceable congeries of rights” and whether the appellant’s argument meant that “bitcoin sits outside an ascertainable system of the rule of law – it is almost anarchial – and it cannot give rise to something that we can recognise at law?”

Systemic Legal Consequences and “The Gap”

The Justices critically assessed whether it was necessary to extend conversion and detinue, which are historically chattel torts, to intangible assets. Justice Edelman warned of the downstream effects on other legal domains, asking: “if one were to change the torts of conversion and detinue and extend them beyond tangible things or assets, then what would that do to other areas of the law?”

Both Justice Edelman and Justice Gordon interrogated whether there was a genuine legal vacuum requiring this extension. Justice Edelman pressed the respondent: “What is the gap? What is the factual scenario where an interference with somebody’s so-called bitcoin – to use the term compendiously – would not give rise to an adequate legal remedy?” Justice Gordon similarly asked, “are there other remedies available that would give you the same relief?”, noting that claims based on agency, breach of confidence, or contract might already provide adequate recourse without altering personal property torts.

Normative Choices and Third-Party Risks

Chief Justice Gageler framed the dispute as a policy decision for the common law. Noting that property is universally described as a legal relationship with a thing, he stated: “The question here is at the level of: should a legal relationship be recognised?” He subsequently outlined the challenge: “The question we have to address is whether the existing principles need to be adapted to meet it.”

A major consequence of that normative choice involves third-party rights. The tort of conversion operates on strict liability. Gageler CJ noted the historical treatment of physical money: “If you steal money from me – if you take money out of my pocket, I can sue you for conversion, can I not?… If you then use the money to buy something from an innocent third party, I cannot sue the innocent third party who then holds the coin.” He observed that “it is the negotiability of the property that allows for the innocent third party to have a defence.”

He then pressed the respondent on whether Bitcoin possesses this attribute, asking, “Is bitcoin a currency? Is it negotiable?” If a court allows conversion claims for Bitcoin but does not extend a good-faith purchaser defense, an innocent third party who receives stolen Bitcoin could be strictly liable to the original owner.

Global Implications for Common Law Jurisdictions

The judicial debate in *Poulton v Conrad* is highly significant for the global cryptocurrency industry, particularly in offshore and regional financial hubs that rely on the common law. Jurisdictions such as the UK, DIFC, ADGM, Hong Kong, and the BVI frequently look to apex courts in Australia and

England to clarify the treatment of novel commercial assets.

If the High Court of Australia rules that a Bitcoin holding is capable of possession and subject to conversion, it provides plaintiffs with a strict-liability proprietary remedy. Conversion does not require a breach of contract or fiduciary duty; it is an assertion of superior title against anyone who interferes with the asset. For digital asset exchanges, liquidators, and victims of cryptocurrency theft in hubs like Dubai, Hong Kong or the BVI, this would streamline asset recovery, establishing a direct claim over stolen digital assets and circumventing complex equitable tracing rules.

Conversely, if the Court determines that extending possessory torts to intangibles disrupts established law and that plaintiffs should rely on equitable and contractual remedies, industry participants will need to structure their custodial and trading agreements with greater reliance on express trusts and strictly drafted indemnities. Furthermore, if strict liability torts are applied without recognizing cryptocurrency as negotiable, digital asset exchanges in the DIFC or ADGM could face severe compliance and liability risks when handling deposited assets that may be tainted by prior theft.

Ultimately, the High Court's examination of the UTXO, physical control, and the boundaries of personal property will shape the commercial realities and legal architecture of the digital asset economy across the common law world.

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War Series: The Multipolar Sanctions Minefield – China's Supreme Court Outlaws "Overcompliance" with U.S. Sanctions

September 27, 2026

The Headline Event: Overcompliance is Now a Direct Liability

In a landmark directive with immediate, severe implications for global supply chains and cross-border finance, China's Supreme People's Court (SPC) has formally utilized its 2021 Anti-Foreign Sanctions Law (AFSL). By elevating a recent Shanghai Maritime Court ruling into its official case database and giving it "strong exemplary significance," the SPC has established the mandatory application of the AFSL in commercial disputes.

The Crux: The End of the Sanctions "Safe Harbor"

The crux of this development is simple but overcoming: actions taken to comply with Western sanctions now systematically trigger legal liability within Chinese jurisdiction. There is seemingly no longer a neutral ground.

Historically, when Washington escalated economic restrictions, the corporate playbook was uniform: comply (or potentially overcomply) to avoid regulatory wrath, and sever or drawdown ties with targeted entities. Financial institutions relied on boilerplate "draw-stops." Logistics providers invoked the "fear of secondary sanctions" to halt shipments. Losses from these broken contracts were absorbed as the cost of doing business to appease the U.S. Office of Foreign Assets Control

(OFAC).

That unipolar reality is now subject to reconsideration. The SPC has explicitly established that preemptive overcompliance to appease Western regulators may trigger lawsuits, asset seizures, and countermeasures inside China. Under the AFSL, enforcing or assisting in foreign “discriminatory restrictions” against a Chinese party is itself an illegal act.

The Precedent: The $740,000 Price of Obeying OFAC

The facts of the precedent-setting case are a wake-up call for international compliance officers. In late 2022, a Hong Kong-based company hired a Singaporean carrier to transport roughly RMB 4.99 million (USD 740,000) worth of electronics from Shanghai to Panama.

After loading the cargo, the Singaporean carrier discovered the Hong Kong shipper was on a U.S. sanctions list. To avoid secondary penalties from Washington, the carrier abruptly halted performance. It refused to issue a bill of lading, refused to deliver the cargo in Panama, and unilaterally shipped the goods back to Shanghai.

When the shipper sued for damages in China, the carrier defended its actions by citing standard contractual clauses, the overarching risk of U.S. secondary sanctions, and a foreign choice-of-law provision.

The Shanghai Maritime Court firmly rejected this defense, ordering the carrier to pay the full cargo value of RMB 4.99 million plus interest.

The Legal Trap: Voiding Boilerplate Defenses

The court’s reasoning causes caution to traditional corporate defenses and establishes two significant realities for foreign businesses:

1. **Foreign Sanctions Are Not “Force Majeure”:** The court ruled that the preemptive fear of foreign secondary sanctions does not excuse contractual non-performance. The carrier was not responding to a direct U.S. legal order; it acted out of internal compliance fears. The Chinese court viewed this preemptive overcompliance as actively assisting in illegal foreign discrimination.
2. **Contracts Cannot Override Chinese Law:** The carrier attempted to invoke Singaporean law based on its standard bill-of-lading terms. The court blocked this attempt, declaring the AFSL a mandatory provision of Chinese public policy. If a dispute involves Chinese interests, Chinese courts will bypass foreign choice-of-law or international arbitration clauses to enforce the AFSL.

The Squeeze on Global Lenders and Supply Chains

This ruling places international lenders and logistics providers directly in the crosshairs. Because the SPC has mandated the AFSL’s application, triggering a draw-stop against a Chinese entity out of fear of Western sanctions strips a lender of contractual protections within China. The traditional corporate protocol, assess exposure, freeze the account, and cease all communications before a regulatory deadline, is now a risk to being sued in a Chinese court, where foreign fora or arbitration protections may be disregarded.

Businesses can no longer rely on a passive, one-sided compliance approach. For corporate boards and legal counsel managing cross-border transactions, this precedent demands a tactical pivot. Standard OFAC-compliance clauses, automatic termination rights, and sanctions-related draw-stops are now highly vulnerable. Contracts involving Chinese entities must be revised to include localized grace periods or alternative performance mechanisms that do not explicitly cite “compliance with foreign sanctions” as a trigger for termination.

Companies should also consider proactively engage in structured, court-facilitated mediations to engineer a structured settlement that safely navigates the fault lines of both U.S. and Chinese law.

Takeaway

Global businesses no longer face a single dominant regulatory regime. China’s Supreme People’s Court has delivered a definitive mandate: U.S. sanctions are not a valid excuse for disrupting Chinese commerce. Multinational entities must recognize that the very mechanisms they historically used to protect themselves from Western regulators are now the exact triggers for liability in the East. Navigating this multipolar minefield requires abandoning passive compliance in favor of highly sophisticated, transaction-specific risk management.

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Data Center Warfare and the Evidentiary Threshold for Financial Force Majeure – Applying the 2026 Dubai Cassation Court's Banking Disruption Precedent to the Iran War

September 27, 2026

Introduction: Data Center Warfare, AI Targeting, and the Cross-Border Liquidity Squeeze

The 2026 Iran War, initiated by joint U.S.-Israeli airstrikes under Operation Epic Fury on February 28, 2026, has fundamentally altered the risk profile of commercial operations across the Middle East. Beyond traditional geopolitical and economic risks, the current conflict has escalated into "data center warfare," directly impacting the physical digital infrastructure that underpins international banking networks and cross-border liquidity.

As extensively documented in recent months, kinetic strikes on hyperscale cloud infrastructure have transitioned the risk of "banking disruptions" from a theoretical geopolitical issue to a tangible commercial crisis. This targeting is driven by the increasing commingling of civilian tech infrastructure with military intelligence. With U.S. and allied forces utilizing commercial AI models, such as Anthropic's Claude embedded in Palantir's Maven Smart System, for military targeting, commercial data infrastructure has been treated as a dual-use battlefield asset. Consequently, on March 1, 2026, Iranian Shahed drones struck Amazon Web Services (AWS) data centers in the United Arab Emirates and Bahrain.

According to *Responsible Statecraft* (“Why Gulf data centers became deliberate targets in Iran War”), these strikes “knocked out banking apps across a region of 50 million people.” *TechPolicy.Press* further reports that the attacks critically impaired the UAE’s ME-CENTRAL-1 cloud availability zones, causing immediate outages for major regional financial institutions, including Abu Dhabi Commercial Bank, Emirates NBD, and First Abu Dhabi Bank. The broader financial impacts were immediate: while the GCC’s Islamic banking sector demonstrated structural resilience, maintaining 17.1% Tier 1 capital ratios with zero Fitch-rated sukuk defaults, cross-border liquidity tightened severely, and new dollar-denominated GCC sukuk issuance collapsed to zero in March 2026.

This disruption is both reciprocal and systemic. As noted by Georgia Tech, retaliatory strikes on March 11 targeted a Tehran data center operated by Iran’s state-run Bank Sepah. The Modern War Institute highlighted that this emerging doctrine of targeting data centers deliberately disrupts digital services to banks and payment platforms to exert coercive economic leverage.

As these infrastructure disruptions choke international liquidity and delay wire transfers, commercial parties in the Gulf Cooperation Council (GCC) may seek to invoke these highly publicized “banking disruptions” and data center outages as a force majeure defense to excuse delayed payments or prevent the forfeiture of transaction deposits. However, as Dubai Court of Cassation Judgment No. 1004 of 2026 (Real Estate), issued on June 29, 2026, demonstrates, invoking the conflict as a blanket excuse for financial non-performance requires meeting a strict legal standard.

The Factual Matrix: The Real Estate Default and the "Regional Tensions" Defense

The dispute in Dubai Cassation Judgment No. 1004/2026 involved a high-value real estate transaction. On April 24, 2025, the appellant (the buyer) entered into a contract to purchase a plot of land in Dubai's Wadi Al Safa 3 for AED 22,000,000. Upon signing, the buyer issued a security cheque of AED 2,200,000 as earnest money (*Arboun*), with the remaining AED 19,800,000 due by June 24, 2025.

When the deadline arrived, the buyer had not transferred the remaining funds. Consequently, the sellers filed a lawsuit to terminate the contract and liquidate the AED 2.2 million *Arboun* cheque.

In their defense before the UAE courts, the buyer argued that the failure to pay was not a voluntary breach, but rather the result of force majeure circumstances. Pointing to the well-documented strikes on regional cloud infrastructure, the buyer asserted that the "regional tensions and the war" had directly affected international bank transfers, creating a circumstance completely beyond their control that prevented them from remitting the balance from abroad. The buyer further relied on electronic correspondence demonstrating their serious intent to close the transaction, noting they had explicitly requested an extension until the international banking disruptions subsided, which the sellers had refused.

The Court's Ruling: Piercing the Blanket Defense of Wartime Disruption

The Dubai Court of Cassation rejected the buyer's defense, ruling in favor of the sellers and affirming their right to terminate the agreement and retain the AED 2.2 million deposit.

Relying on Article 137 of the UAE Civil Transactions Law (Federal Decree-Law No. 25 of 2025), the Court reaffirmed that an *Arboun* payment makes a contract binding; if the buyer subsequently withdraws or fails to perform, the deposit is forfeited. The Court ruled that general claims of “regional tensions” and widely reported cloud banking disruptions do not automatically equate to a legal impossibility to perform.

The Court’s strict stance on financial obligations provides a stark contrast to how regional commercial entities handle physical trade disruptions. For example, following the closure of the Strait of Hormuz in March 2026, QatarEnergy successfully declared force majeure on its LNG supply contracts. While a maritime blockade constitutes an absolute physical impossibility for shipping a localized physical commodity, the Dubai courts recognize that *money is fungible*. A localized cloud outage does not inherently extinguish the ability to source funds globally. The Court found that the buyer was effectively attempting to use macro-level digital and infrastructural instability as a blanket excuse without proving a direct, insurmountable impediment to their specific transaction.

The Implied Evidentiary Threshold for Financial Force Majeure

Crucially, even though the Dubai Court of Cassation rejected the force majeure argument in this specific instance, its reasoning explicitly identified the exact evidence that would have been required to successfully substantiate a defense based on wartime banking disruption.

The Court noted that the defense failed because the buyer *“did not submit any document from a banking entity proving the impossibility of the transfer or its rejection, or anything indicating the existence of a legal ban or freezing of accounts, or an actual impediment preventing payment by any alternative means.”*

Despite highly publicized AWS data center outages and physical strikes on regional tech hubs, the definitive threshold for proving financial force majeure during the 2026 Iran War requires a party to produce:

1. **Official Banking Documentation of Rejection:** Citing reports from *TechPolicy.Press* or global news outlets about targeted strikes on cloud infrastructure is legally insufficient. A litigant must present authenticated documentation issued directly by their specific financial institution explicitly proving the absolute impossibility of the transfer or its outright rejection due to these outages.
2. **Proof of Legal Bans or Frozen Assets:** Administrative delays caused by compromised AWS availability zones do not constitute force majeure. A successful defense requires evidence of a formal legal prohibition, such as wartime capital controls, international sanctions, or official documentation proving that the remitting accounts were frozen by regulatory authorities directly due to the conflict.
3. **Exhaustion of Alternative Payment Methods:** This establishes the highest evidentiary hurdle. Under UAE civil law, financial obligations are rarely extinguished by external events because money is fungible. The Court explicitly required proof of an “actual impediment preventing payment by any alternative means.” A party must demonstrate that they were entirely blocked from utilizing alternative financial routing, third-party liquidity, local assets, or localized credit facilities to fulfill the obligation, even when primary cloud or telecom routes failed.

Strategic Playbook for Cross-Border Financial Obligations in the 2026 Context

For commercial counterparties and foreign investors managing cross-border transactions amidst the infrastructural vulnerabilities of the 2026 Iran War, Judgment No. 1004/2026 offers critical tactical guidance:

- **Securing Immediate Institutional Evidence:** If data center attacks or wartime cyber measures block a transfer, counterparties must immediately demand formal written explanations from their banks. Official bank documentation explicitly linking the transaction's failure to the infrastructural outage is mandatory for GCC court litigation.
- **Structuring Redundant Payment Channels:** Because courts require proof that payment was impossible by any alternative means, corporate entities should structure transactions with contingency payment mechanisms in mind (e.g., GCC-based escrow facilities, localized credit lines, or secondary banking networks unaffected by specific AWS/cloud outages) to bypass cross-border bottlenecks.
- **Precision in Contract Drafting for Dual-Use Infrastructure:** Standard force majeure clauses often fail to protect against financial delays. Because commercial cloud platforms are increasingly targeted as dual-use military infrastructure due to AI integrations, contracts drafted during the conflict should explicitly define "data center outages," "cloud infrastructure attacks," or "banking network disruptions" as specific trigger events that warrant predefined grace periods, avoiding the draconian legal standard of absolute impossibility.

Takeaway

The technological and infrastructural turbulence generated by the 2026 Iran War cannot be used as a blanket legal shield for failing to meet commercial obligations. Dubai Court of Cassation Judgment No. 1004/2026 firmly establishes that while UAE courts recognize the severe realities of regional conflict, from drone strikes on AWS availability zones to crippled digital banking platforms, they require stringent, localized, and specific evidentiary standards to disrupt the sanctity of a contract. To successfully claim financial force majeure, parties must cross a high evidentiary threshold, transitioning from broad geopolitical and infrastructural arguments to producing highly specific, bank-issued proof of absolute impossibility and the total exhaustion of alternative payment methods.

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