

**Economic Imbalance in Construction Contracts:
Supply Chain Disruptions and Price Escalation Between
Contractual Risks and Exceptional Circumstances**



A Legal Study Prepared by:

Jassim Al Suwaidi Advocates & Legal Consultants

Muhammad J. Salah

Legal Counsel – Construction & Commercial Disputes

Contributors:

Rayan Femeela Beevi

Ekram Seid Ali

Mohamed Yousef

Prepared on: 8 March 2026

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I. Purpose of the Study

This study examines the legal and contractual implications of rising construction material prices and supply chain disruptions in construction

projects in the Gulf region. It analyses the legal basis of potential claims in light of the doctrines of exceptional circumstances and force majeure, and reviews the contractual mechanisms available in construction contracts to address economic imbalance. The study focuses on the legal and contractual aspects of these developments without engaging in any political assessment or analysis of international relations.

First: The Market and Economic Context of Risks in the Construction Sector

1. Supply Chain Disruptions in the Gulf Region

Construction projects in the Gulf countries rely heavily on international supply chains to provide essential materials and equipment. Therefore, any disruption in trade movement or maritime transport may directly affect the execution of projects, whether through delays in the supply of materials or increases in transportation and insurance costs. When these disruptions exceed the limits of normal market fluctuations, they may shift from being merely an economic phenomenon to a contractual issue that affects the economic balance of the contract.

The impact of these disruptions quickly moves from the market level to the project level. This appears in a number of practical outcomes, the most important of which are:

- a. Delays in the arrival of materials and equipment, particularly those that depend on external supply such as imported steel or electromechanical equipment.
- b. Increased transportation and shipping costs as a result of higher marine insurance, changes in shipping routes, and increases in fuel prices and logistics services.
- c. Changes in supply schedules and execution plans, as the contractor may be forced to modify work schedules or reorganize activities due to the unavailability of materials at the expected time.

As a result, claims may arise for extensions of time for completion or financial claims related to the additional costs resulting from the continuation of the project for a longer period than originally planned.

Accordingly, supply chain disruptions do not represent merely an operational or logistical problem, but may develop into contractual and legal risks that

require early and organized management in order to prevent them from turning into formal disputes.

2. Increase in Construction Material Prices

The increase in the prices of essential materials, such as steel and electromechanical materials, constitutes one of the most significant economic risks in construction projects. The importance of this issue increases in Long-term contracts or lump sum contracts, where an unexpected increase in prices may lead to an economic imbalance of the contract and give rise to disputes regarding the allocation of this increase among the parties to the project.

Not all materials are affected to the same extent; however, some categories remain more exposed to price fluctuations due to their direct connection with global markets and international supply chains. The most prominent of these include:

- a. Steel, particularly reinforcement steel, whose price is linked to energy prices and basic raw materials.
- b. Aluminium used in façades and architectural systems.
- c. Electromechanical equipment, which often depends on importation and long supply chains.

An increase in the prices of these materials is immediately reflected in the cost of execution, particularly in large-scale or long-term projects.

The rise in material prices becomes a factor affecting the financial and operational stability of the project. Its most significant effects can be summarised as follows:

- a. Inflation in the cost of execution compared with the estimated cost at the time of submitting the bid or signing the contract.
- b. Erosion of the profit margin on which the contractor relied when pricing the project.
- c. Increased need for working capital to cover the gap between the actual cost and the expected cash flows.

In lump sum projects, the contractor may bear the largest portion of this increase if the contract does not include an explicit mechanism for price adjustment.

3. The Impact of Price Escalations on Project Continuity

The impact of rising prices is not limited to the erosion of the contractor's profitability; it may also extend to the continuity of the project itself. Among the most notable manifestations of this are:

- a. The possibility of the contractor encountering financial distress if it is unable to absorb the increase in costs.
- b. Rescheduling procurement as a result of searching for alternative suppliers or waiting for prices to decrease.
- c. Pressure on the company's liquidity due to the need to finance higher-than-expected costs.
- d. Increased contractual disputes with the employer, consultant, or suppliers regarding responsibility for these increases.

Accordingly, price fluctuations are not merely an external economic factor; they may become a decisive factor in determining whether the project will proceed smoothly or turn into a contractual dispute.

Second: Market Transformations and Contractual Risk

Market transformations, such as Price Escalations or supply chain disruptions, do not remain purely economic phenomena. Rather, they quickly move into the contractual relationship within construction projects. This stage begins when these developments affect the assumptions upon which the contract was built, whether in terms of execution costs, supply timelines, or the contractor's ability to adhere to the project schedule. At this point, the issue shifts from a market problem to a contractual risk that may develop into a dispute if it is not addressed in an organized manner.

1. Economic Imbalance of the Contract

1.1 The concept

At the time of its conclusion, a contract is based on the assumption that there is a reasonable balance between the reciprocal obligations of the parties. The contractor determines its price based on a reasonable estimate of the cost of materials, labour, and equipment during the execution period, while the employer undertakes to pay the agreed consideration in exchange for the execution of the works.

However, this balance may be disturbed when exceptional economic circumstances arise that lead to a significant increase in the cost of execution. In such cases, the performance of the obligation remains technically possible, but it becomes unexpectedly burdensome. This situation places one of the parties-most often the contractor-in a financially unbalanced position compared with what was envisaged at the time of contracting.

1.2 Manifestations of Imbalance in Construction Projects

Economic imbalance in construction projects may appear through several practical indicators, most notably:

- a. Execution of the works at an unsustainable loss when the actual cost exceeds the limits of normal commercial risks that the contractor can reasonably bear.
- b. Inability to maintain the original supplier prices due to major changes in material prices, transportation costs, or energy prices.
- c. Collapse of the assumptions upon which the pricing was based, such as the stability of material prices or their availability at specified times.

In such cases, the dispute is usually not about the principle of performing the contract itself, but rather about how the exceptional increase in costs should be distributed between the parties.

2. Contracts Most Exposed to Risk

Not all construction contracts are exposed to the same degree to the risks of Price Escalations or supply disruptions. The level of risk largely depends on how risks are allocated within the contract itself.

2.1 Lump Sum Contracts

Lump sum contracts are considered the most sensitive to Price Escalations. In this type of contract, the contractor undertakes to execute the entire scope of works for a fixed total price, regardless of changes that may subsequently occur in the cost of materials or services.

In the absence of clear price adjustment clauses, the contractor effectively bears the largest share of the risks of inflation and fluctuations in material prices.

2.2 EPC Contracts

These risks increase in Engineering, Procurement and Construction (EPC) contracts, where the contractor usually assumes responsibility for design, procurement, and execution together. In this situation, the risk does not only relate to execution costs, but also includes procurement risks and changes in the prices of imported equipment and materials.

2.3 Contracts that Expressly Exclude Price Adjustment Clauses

Some contracts contain explicit provisions excluding the application of any price adjustment mechanism or cost revision, or limiting compensation to very specific situations. In such cases, the scope for claiming compensation becomes narrower, and the contractor is often compelled to seek another basis for its claim, whether within other contractual provisions or within the general principles of law.

Contractual practices in a number of projects in the region indicate a clear tendency to place the greater part of inflation and price fluctuation risks on the contractor in lump sum contracts, with relatively limited use of price adjustment clauses.

3. Pathways Through Which A Market Event Turns Into a Dispute

An increase in prices or a disruption in supply does not necessarily lead by itself to a contractual dispute. However, disputes usually arise when several factors interact simultaneously and lead to differing interpretations of the contract or disagreements regarding the allocation of responsibility for cost increases or delays in execution.

3.1 Price Escalations Alone

A significant rise in material prices may lead to disagreement as to whether such an increase falls within the normal commercial risks borne by the contractor, or whether it constitutes an exceptional circumstance that justifies a claim for price adjustment or compensation.

3.2 Supply Disruption

When supply chain disruptions result in delays in the delivery of materials or equipment, a dispute may arise regarding whether such delay justifies an extension of the project duration or additional costs associated with extending the execution period.

3.3 Refusal of the Consultant or Employer to Acknowledge The Impact

Even where the event itself is clear, disputes may escalate if the consultant or the employer refuses to acknowledge its impact on the project or considers it part of the contractor's ordinary risks.

3.4 Delay in Issuing Notices or Weak Documentation

One of the most common reasons for the failure of claims in construction projects is delay in issuing contractual notices or inadequate documentation. A contract may grant the contractor the right to make a claim, but that right may be lost if the employer is not notified within the required time or if the impact of the event on cost and the project schedule is not sufficiently proven.

Accordingly, the transition from an economic event to a contractual dispute does not depend only on the nature of the event itself, but also on how the contractor manages the situation contractually from the very beginning.

Third: The Governing Legal Framework

After explaining the market context and how its effects move into the contractual relationship, it becomes necessary to determine the legal framework governing the treatment of such imbalances. This framework is based on two complementary principles:

The first is the principle of the binding force of the contract, which ensures the stability of transactions. The second consists of the exceptions recognized by law to restore contractual balance when exceptional circumstances lead to a serious disturbance in the economics of the contract.

1. The Principle of The Binding Force of The Contract

1.1 The Rule: the contract is the law of the parties

The principle of the binding force of the contract is considered a cornerstone of civil law and of the stability of economic transactions. This principle means that a contract validly concluded between two parties becomes binding upon them, and must be performed in accordance with what has been agreed. Neither party may unilaterally modify or terminate it.

Legal doctrine expresses this principle through the rule that “the contract is the law of the parties,” meaning that the mutual will of the parties determines the scope of their reciprocal obligations, and that this will must be respected in order to preserve confidence in transactions and the stability of economic relations.

1.2 Limits of the rule: contractual fairness and restoration of balance

Despite the importance of the principle of the binding force of the contract, modern legal thought no longer considers it an absolute principle. Practical experience has shown that strict adherence to the contract in all circumstances may sometimes lead to unjust outcomes, particularly when exceptional events arise that were not anticipated at the time of contracting.

For this reason, modern civil laws have introduced specific exceptions that allow courts to intervene to restore contractual balance when that balance is seriously disturbed due to circumstances beyond the parties’ control.

The objective of this intervention is to achieve contractual fairness, meaning the preservation of the contract as far as possible while correcting the imbalance that has affected its economic structure due to exceptional circumstances.

2. The Theory of Exceptional Circumstances (Extraordinary Events)

2.1 Legal basis

The theory of exceptional circumstances finds its legislative basis in Article 249 of the UAE Civil Transactions Law , which grants the judge exceptional authority to intervene in the contract if, after its conclusion, exceptional and general events occur that could not have been foreseen and that make the performance of the obligation burdensome for the debtor in a manner that threatens him with severe loss.

This theory is considered one of the most important legal mechanisms for addressing the economic imbalance of long-term contracts, including

construction contracts, when economic conditions change substantially after the contract has been concluded.

2.2 Conditions for the application of the theory

The theory of exceptional circumstances applies only when specific conditions are collectively met. These conditions may be summarised as follows:

First: The occurrence of an exceptional and general event. The event must fall outside the ordinary conditions of the market or economic activity and must have a general character rather than affecting only one of the contracting parties.

Second: The event must not have been reasonably foreseeable at the time of contracting. It must be something that the parties could not reasonably include in their calculations when pricing or planning the project.

Third: The event must make the performance of the obligation burdensome but not impossible. The obligation remains physically possible to perform, but its execution becomes excessively costly or onerous for the debtor.

Fourth: The event must threaten the debtor with severe loss or serious hardship. The effect must exceed ordinary commercial loss or natural market fluctuations and reach a level that clearly disturbs the economic balance of the contract.

However, it must not reach the level of impossibility. If it reaches the level of impossibility, then the theory of force majeure becomes applicable instead.

When these conditions are met, the debtor may rely on the theory of exceptional circumstances and request judicial intervention to restore the contractual balance.

2.3 Practical consequences of the application of Article 249

If the judge or the arbitral tribunal is convinced that the conditions of the theory of exceptional circumstances are satisfied, the general rule is not to terminate or rescind the contract, but rather to restore the economic balance of the contract in a manner that achieves fairness between the parties.

In practice, this may appear through a number of measures that the court may adopt, most notably:

- a. Reducing the burdensome obligation to a reasonable level so that it becomes capable of performance without unjustified hardship.
- b. Increasing the consideration due to the burdened party if this is more appropriate to achieve balance.
- c. Distributing the exceptional loss between the parties instead of placing it entirely on one party.
- d. Encouraging renegotiation between the parties before reaching a final judgment.

2.4 Interaction between Article 249 and contractual provisions

Although Article 249 of the UAE Civil Transactions Law grants the judge exceptional authority to intervene to restore the economic balance of the contract, the application of this article in construction contracts raises an important practical question concerning the relationship between statutory provisions and contractual provisions.

In many project contracts, particularly lump sum contracts, the contractual documents contain explicit clauses placing the risk of price fluctuations on the contractor or excluding any adjustment of the contract price due to changes in economic circumstances. This raises the question of whether such contractual allocation of risks prevents the application of the theory of exceptional circumstances.

In principle, courts tend to respect the allocation of risks agreed upon by the parties in the contract, unless the economic impact of the exceptional event reaches an extraordinary level that causes serious hardship threatening the debtor with severe loss. In such exceptional cases, the court may consider that strict adherence to the contract results in an unfair disturbance in the economic balance of the contractual relationship and may therefore intervene to modify the obligation in accordance with the discretionary authority granted by Article 249.

In all cases, any agreement between the parties stipulating that the judge may not intervene to restore the contractual balance under Article 249 is considered void.

However, the exercise of this authority remains a limited exception and is subject to careful evaluation of the circumstances of each case individually,

taking into account the nature of the contract, its duration, and the allocation of risks between the parties.

2.5 Practical limitations of the application of the theory of exceptional circumstances

Practical experience in contractual disputes shows that the application of the theory of exceptional circumstances in construction contracts is not automatic. Rather, it requires proof of strict conditions. Courts do not intervene merely because of a commercial loss or an increase in costs; instead, the event must be exceptional and unforeseeable and must lead to serious hardship exceeding the limits of normal commercial risks.

Courts also take into consideration several factors when evaluating whether the theory applies, including:

- a. The duration and nature of the contract.
- b. The allocation of risks in the contractual documents.
- c. The possibility of foreseeing economic changes at the time of contracting.
- d. The extent to which the debtor could mitigate or reduce the effects of the event.

Accordingly, reliance on Article 249 in construction disputes remains an exceptional path that is generally pursued only when it is not possible to find a direct contractual basis for the claim.

3. Force Majeure

3.1 Its nature

The concept of force majeure is based on the occurrence of an event external to the will of the parties to the contract, which could not have been foreseen at the time of contracting and whose effects cannot be prevented or avoided, and which results in making the performance of the obligation absolutely impossible. The impossibility referred to here is physical or legal impossibility that prevents the performance of the obligation either permanently or temporarily, and not merely difficulty in performance or an increase in its cost.

The UAE Civil Transactions Law provides for the application of force majeure in Article 273. If the impossibility is total, the obligation is extinguished. If

the impossibility is partial or temporary, the creditor (the party to whom the obligation is owed) may rescind the contract. However, such rescission does not occur automatically; rather, it requires the creditor to declare its intention to rescind and notify the debtor accordingly.

In construction contracts, force majeure may arise from external events that make the performance of contractual obligations impossible, such as war, natural disasters, or regulatory measures that prevent the execution of the works or the supply of essential materials.

Legal doctrine has established that the standard for force majeure is based on three cumulative elements: the event must be external to the will of the parties, unforeseeable at the time of contracting, and unavoidable, such that it directly results in the impossibility of performing the obligation.

In construction contracts governed by FIDIC forms, the concept of force majeure is addressed through detailed contractual provisions rather than relying solely on general legal principles.

Earlier editions of FIDIC (notably the 1999 editions) used the term Force Majeure, while the 2017 edition replaced it with the concept of an Exceptional Event, without fundamentally changing the legal substance of the rule.

An exceptional event generally refers to an event that is beyond the control of the affected party, could not reasonably have been foreseen at the time of contracting, and whose consequences cannot reasonably be avoided or overcome.

FIDIC contracts provide examples of such events, including war, hostilities, serious security disruptions, and natural disasters. However, the mere existence of security-related developments does not automatically qualify as force majeure. The decisive factor remains the actual impact of the event on the performance of the contractual obligations.

Therefore, the classification of an event as force majeure or as an exceptional event depends primarily on its actual impact on the performance of the contractual obligations.

3.2 Distinguishing between a geopolitical event and a contractual impediment to performance

In practice, the existence of a geopolitical event in itself is not sufficient to establish force majeure. The legal assessment focuses on the operational consequences of that event on the execution of the contract.

A political or regional crisis may be widely reported and economically significant, yet it may not directly prevent the performance of contractual obligations in a specific project. In such circumstances, the issue is not the existence of the geopolitical event itself, but whether it has created an actual impediment to performance.

If the event merely results in increased costs or operational difficulty, without reaching the level of impossibility, the situation is more appropriately analysed within the framework of exceptional circumstances or contractual risk rather than force majeure.

4. Regional Developments In The Gulf And Their Legal Classification

From a contractual perspective, recent regional developments affecting international trade and logistics in the Gulf have had noticeable economic implications. However, these developments have not, at present, produced a direct disruption to construction activities within Gulf jurisdictions or within the immediate geographical scope of most construction projects.

This distinction is legally significant. The classification of an event as “war” in the context of force majeure generally presupposes that the geopolitical disruption has reached a level that directly affects economic activity or prevents the performance of contractual obligations.

Therefore, regional developments, even when widely reported, do not automatically constitute force majeure unless they directly prevent the performance of the contractual obligations.

5. Supply Chain Disruption As A Source of Disputes in Construction Projects in The Gulf

In international construction projects, the effects of regional developments usually do not move directly to the project itself. Rather, they often appear through disruptions in global supply chains and disturbances in shipping movement or changes in maritime transport routes on which the transportation of materials and equipment depends.

Construction projects in the Gulf countries rely heavily on the import of steel, electromechanical materials, and heavy equipment from international markets. This makes the regular movement of maritime shipping an essential element in the stability of the project execution schedule.

When regional developments lead to disruptions in navigation, the redirection of shipping routes, or increased shipping costs and insurance premiums associated with changes in global transport conditions, the legal impact usually does not appear in the form of absolute impossibility of executing the contract. Instead, it appears in the form of disruption in supply chains, delays in procurement, and increases in costs.

For this reason, disputes in construction projects under such circumstances often appear in the form of claims relating to:

- i. Extension of time for completion.
- ii. Delay costs.
- iii. Or disruption claims.

In such cases, the dispute is usually not about the geopolitical event itself, but rather about the contractual impact of the resulting supply chain disruption.

From a legal perspective, these situations raise several contractual issues, the most important of which is determining whether transport disruption or procurement delays constitute force majeure, an exceptional event, or merely a commercial risk borne by the contractor.

This legal classification depends on several factors, including:

- a. The nature of the event.
- b. The extent to which it could have been foreseen at the time of contracting.
- c. The degree of its impact on the ability to perform the contractual obligation.

In many construction projects in the Gulf, disruptions in navigation or delays in shipping do not lead to complete impossibility of executing the works. Rather, they often result in temporary supply disruptions, increased costs, or disturbances in the execution schedule.

For this reason, early contractual management of these risks becomes particularly important through:

- a. Documenting the effects of supply chain disruption.
- b. Sending contractual notices within the specified time limits.
- c. Linking the external event to its actual impact on the project schedule and costs.

Ultimately, the issue does not concern the existence of disruption in maritime routes in itself, but rather the ability of the affected party to prove the causal link between that disruption and the delay or additional costs in the project.

Fourth: The Practical Application of These Rules to Construction Contracts

1. Increase in Material Prices

1.1 When Price Escalations may amount to an exceptional circumstance

An increase in material prices in itself does not automatically lead to modification of the contract or to the creation of an automatic right to compensation. The general rule in construction contracts—particularly lump sum contracts—is that the contractor bears part of the risk of price fluctuations as part of ordinary commercial risks.

However, Price Escalations may in some cases rise to the level of exceptional circumstances if a number of objective indicators are present, including:

The increase must be exceptional and general, rather than a limited market fluctuation.

- a. The increase must exceed the normal limits of commercial risk that could reasonably have been anticipated at the time of pricing.
- b. Its economic impact must be substantial enough to cause a clear disturbance in the economic balance of the contract.
- c. The contractor must demonstrate that this increase was not anticipated at the time of contracting and that it directly affected the cost of the project in dispute.

When these elements are present together, it may become possible to discuss restoring the economic balance of the contract, either on the basis of contractual provisions or on the basis of general legal principles.

1.2 When a Price Escalation alone is not sufficient

On the other hand, a mere increase in prices is not sufficient to establish the existence of an exceptional circumstance or to justify a claim for modification of the contract. There are several situations in which such an increase is not legally taken into account.

The first of these situations arises when the increase is minor or foreseeable in light of the nature of the market or the duration of the contract. Ordinary fluctuations in material prices are considered part of the commercial risks that the contractor is expected to take into account when pricing the project.

The second situation arises when the contract expressly provides that the contractor bears the risks of price fluctuations, as is the case in many lump sum contracts that explicitly exclude the application of any price review mechanism. In any event, even where such a contractual provision exists, this does not prevent the contractor from invoking the theory of exceptional circumstances under Article 249 of the UAE Civil Transactions Law, or Article 97 of the Saudi Civil Transactions Law, since these provisions are considered rules of public order that cannot be excluded by agreement.

The third situation arises when the contractor is unable to prove the direct link between the economic event and the actual increase in the cost of its project. A legal claim does not arise solely from the existence of an economic event; it also requires proof of the impact of that event on the specific project, whether in terms of the cost of materials, procurement costs, or the duration of execution.

Accordingly, the success of a claim in such cases does not depend solely on proving the increase in prices, but rather on demonstrating that the increase was exceptional, that it exceeded normal commercial risks, and that it had a real impact on the economic balance of the contract in dispute.

2. Disruption of Supply Chains

The effect of supply chain disruptions in construction projects is not limited to Price Escalations. It often extends to the disruption of the execution sequence and delays in the delivery of materials and equipment. In construction projects that rely on an integrated schedule linking different activities, any delay in procurement may lead to a series of time-related and financial consequences that go beyond mere late delivery.

From a contractual perspective, supply disruption raises two principal issues: the first relates to the time impact on the duration of the project, and the second relates to the financial impact resulting from that delay.

2.1 Time impact

When supply chain disruptions lead to delays in the delivery of materials or equipment necessary for execution, the contractor may become entitled to request an extension of time (Extension of Time – EOT) in order to avoid being held responsible for delay or being subject to delay penalties.

A request for extension is usually based on demonstrating that the cause of the delay:

- i. Is outside the contractor's control.
- ii. Could not reasonably have been foreseen or avoided.
- iii. Has actually affected the project schedule or the critical path of execution.

In many cases, supply disruption results from external circumstances such as disruptions in maritime transport, delayed shipments, or regulatory restrictions on export. These factors may constitute a reasonable basis for requesting an extension of time in accordance with the provisions of the contract.

2.2 Financial impact

The effect of supply delays is not limited to time-related consequences. In many cases, it also results in additional costs borne by the contractor due to the continuation of the project for a longer period than originally planned.

Among the most significant of these costs are:

- Prolongation costs, which are the costs associated with the continuation of the project beyond the original completion date.
- Disruption costs resulting from changes in the sequence of works or the suspension of certain activities while waiting for materials to arrive.
- Increased indirect costs such as administrative expenses, site costs, and support services that continue throughout the project duration.

In large projects, these costs may sometimes exceed the direct increase in the price of the materials themselves.

2.3 Linking delay to cost

One of the fundamental issues in claims related to supply chain disruption is proving the connection between the time delay and the additional costs. A delay in supply does not only create a potential entitlement to request an extension of time, but may also give rise to a claim for financial compensation associated with the consequences of that extension.

This relationship usually appears in several practical forms, including:

- a. The costs of keeping resources on site for a longer period than originally planned.
- b. Salaries of technical and administrative staff during the extended period.
- c. Rental costs of equipment and machinery that remain on site without full utilisation.
- d. Reduced efficiency of execution due to the need to rearrange works or perform them in interrupted phases rather than in the originally planned sequence.

For this reason, claims related to supply chain disruption should not be limited to requesting an extension of time alone, but should also include a clear analysis of the financial impact resulting from the delay, supported by documents and data demonstrating the direct link between the event and the additional costs incurred by the contractor.

2.4 Regional Developments and Supply Chain Disruption

In modern construction projects, the effects of exceptional events often appear through disruptions in global supply chains. Large-scale geopolitical disruption may lead to disturbances or disruption of international shipping routes, the imposition of export restrictions, disruptions to international shipping routes or air transport, or increased shipping and insurance risks.

In such cases, the military or political event itself is not the decisive factor in the dispute. Rather, the decisive factor is the impact of that event on the contractor's ability to obtain the materials or equipment necessary for executing the project. If the event prevents the supply of a critical material

or disrupts the arrival of equipment at the site, it may fall within the situations that can be considered an exceptional event under FIDIC contracts.

However, if the event only results in Price Escalations or market fluctuations without actually preventing procurement, the dispute usually moves from the realm of force majeure to that of economic hardship or price fluctuation.

3. The Role of The Consultant in Escalating or Containing The Dispute.

The consultant plays a central role in evaluating claims during project execution, as the consultant is often authorised to issue the initial contractual decisions regarding extensions of time or financial compensation. For this reason, the manner in which the consultant handles claims may either help contain the dispute in its early stages or contribute to its escalation if the claim is not assessed objectively and within an appropriate timeframe.

3.1 The consultant's obligation to decide within a reasonable period

Most construction contracts include provisions requiring the consultant or the engineer to issue decisions within a specified period of time or within a reasonable period after receiving the claim or request. The purpose of this obligation is to prevent disruption of the project and to provide contractual clarity for the parties.

When claims are decided within an appropriate timeframe, it becomes possible to address the effects of the event at an early stage, either by adjusting the project schedule or by agreeing on an appropriate financial solution.

3.2 The impact of delay or unjustified refusal

A delay by the consultant in issuing a decision, or an unjustified refusal of the claim, may lead to several negative consequences, including:

- a. Obstructing the contractual claim and delaying the resolution of the disputed issue.
- b. Increasing the financial damage suffered by the contractor due to the continuation of the project under unbalanced circumstances.
- c. Strengthening the contractor's position later if it is proven that the consultant acted unreasonably or with bias when assessing the claim.

In many arbitration disputes, it becomes apparent that a significant part of the dispute did not arise from the event itself, but from the way in which it was handled in its early stages.

3.3 The possibility of challenging the consultant's decisions

Despite the important role played by the consultant in contract administration, the consultant's decisions are not necessarily final or immune from review. If these decisions are:

- i. Not impartial,
- ii. Unreasonable in light of the technical facts,
- iii. Or inconsistent with the provisions of the contract, they may be challenged through dispute resolution procedures, arbitration, or litigation.

In such cases, the consultant's decisions do not merely represent a procedural step in the administration of the project. Rather, they may become a central element of the dispute itself, particularly if they contributed to the escalation of the disagreement or hindered possible contractual solutions.

Fifth: Allocation of Risks in Contracts and Standard Forms

Construction contracts, unlike many other commercial contracts, rely on a precise allocation of risks between the parties. The success of the project depends not only on the execution of the works but also on determining which party bears the consequences of changes that may arise during execution, such as price fluctuations or changes in economic or regulatory circumstances.

For this reason, most modern construction contracts—particularly those based on standard forms such as FIDIC contracts—include a number of provisions designed to allocate risks clearly between the employer and the contractor. Identifying these provisions and understanding their scope is one of the most important factors affecting the possibility of claiming compensation when prices rise or circumstances change.

1. Price Adjustment Clauses

1.1 Their purpose

Price adjustment clauses aim to address the problem of fluctuations in the prices of materials, labour, or services during the execution period of the project, particularly in long-term contracts. These clauses allow the contract value to be adjusted in certain situations so that one party does not bear alone the consequences of significant changes in prices.

This type of clause is based on the idea that certain economic changes fall outside the control of the parties, and that distributing their effects between the parties provides greater contractual stability than placing the entire risk on one party.

1.2 Forms of price adjustment clauses

Price adjustment clauses in construction contracts may take several practical forms, depending on the nature of the project, its duration, and the type of materials used.

The first form consists of price adjustment formulas, where a mathematical formula is established linking the contract value with certain core cost elements such as the prices of steel, cement, or energy. When these prices change, the contract value is adjusted according to the formula.

The second form consists of linking the contract to price indices, where the contract relies on official or market indices to measure changes in the prices of materials or labour, and the contract value is adjusted according to the changes in these indices during the execution period.

The third form consists of periodic price review, where certain cost elements are re-evaluated at specified time intervals, particularly in long-term projects where predicting prices at the time of contracting is difficult.

These mechanisms provide a degree of contractual flexibility and reduce the likelihood of disputes arising from unexpected Price Escalations.

2. Variations

2.1 Limits of variations

Variation orders are one of the fundamental mechanisms in construction contracts. They allow the employer or the consultant to make changes to the scope of the works, their specifications, or their quantities during execution. These changes usually lead to an adjustment in the contract price or the execution period.

However, the scope of variations in standard contracts remains primarily connected to changes in the scope of the works or in the method of execution, rather than changes in general economic conditions.

2.2 When variations alone are not sufficient to address Price Escalations

In many disputes relating to Price Escalations, some parties attempt to rely on variation orders as a basis for claiming an increase in price. However, this basis is not sufficient in most cases.

A general increase in the market price of materials does not in itself constitute a change in the scope of the works. Therefore, it cannot be considered a variation in the contractual sense unless it is associated with an actual modification in the required works, in the technical specifications, or in the method of execution.

In other words, if the scope of the works remains unchanged, then an increase in material prices alone does not fall within the concept of variations as defined in construction contracts.

3. The limitations of force majeure in contracts

Although force majeure clauses constitute an important mechanism for addressing exceptional events that affect the performance of contracts, their practical application in construction contracts is often limited by several factors.

First, many contracts contain precise definitions of force majeure events, restricting their application to specific situations such as war, natural disasters, or government actions that make the execution of the works impossible. Consequently, many economic or logistical changes—such as Price Escalations or supply chain disruptions—may not fall within the strict definition of force majeure.

Second, even when force majeure is established, the legal consequences provided by the contract are often limited to extending the time for completion or suspending certain obligations. In many cases, force majeure clauses do not provide a basis for financial compensation unless the contract expressly allows it.

Third, some contracts include procedural requirements that must be strictly followed in order to rely on force majeure, such as the obligation to issue notices within specified time periods and to provide evidence demonstrating the direct impact of the event on the execution of the works.

For these reasons, reliance on force majeure clauses in construction disputes is not always straightforward, and their effectiveness depends largely on the wording of the contractual provisions and the factual circumstances of each case.

4. Clauses that The Contractor Should Review Immediately

In the context of market fluctuations and rising prices, it becomes necessary for the contractor to review a number of fundamental provisions in the project contract, because these provisions determine the legal framework of the claim and the mechanisms available to address changes in economic circumstances.

Among the most important of these provisions are the following:

First – Price Adjustment / Fluctuation Clauses: These clauses determine whether the contract allows adjustment of the contract price when the cost of materials or labour changes.

Second – Change in Law Clauses: These clauses determine whether the contract covers the effects of new governmental fees or regulatory restrictions.

Third – Force Majeure Clauses: These clauses determine the situations in which performance may be suspended or the contract may be terminated.

Fourth – Claims and Notices Clauses: Failure to comply with notification deadlines may result in the loss of the right to claim.

Fifth – Engineer's or Consultant's Determinations: These provisions define the consultant's role in evaluating claims and issuing contractual decisions.

Sixth – Extension of Time Clauses: These clauses determine the circumstances in which the contractor may request an extension of the completion period.

Seventh – Suspension or Termination Clauses: These provisions determine the rights of the parties if continuation of the project becomes impossible under current circumstances.

Eighth – Payment and Certification Clauses: Cash flow may be affected by increases in project costs.

Ninth – Variation Valuation Clauses: These clauses determine how adjustments in the works or price are to be calculated.

Tenth – Dispute Resolution Mechanisms: These provisions determine the path that claims will follow if they are not resolved contractually.

Understanding and analysing these clauses is an essential step before submitting any claim, because the success of claims in construction contracts depends largely on identifying the correct contractual basis before relying on general legal principles.

Sixth: Analysis of FIDIC Contracts In The Context of Rising Prices and Supply Disruptions

FIDIC contracts represent one of the most widely used contractual frameworks in construction projects in the Gulf region. These contracts are characterised by an integrated structure that combines objective risk allocation with procedural mechanisms for managing claims. Therefore, dealing with the effects of rising prices or supply chain disruptions in FIDIC projects requires a comprehensive reading of the contract provisions rather than reliance on a single clause.

In practical application, claims in this context often arise from the interaction of several contractual clauses, most notably those relating to variations, price adjustments, exceptional events, and claims procedures.

1. Clause 13 – Variations

Clause 13 of FIDIC contracts grants the employer or the engineer the authority to issue variation orders relating to the scope of the works, their quantities, their specifications, or the method of execution. These variations usually result in adjustments to the contract price or to the time for completion.

However, the scope of this clause remains primarily connected with changes to the scope of works or the method of execution. Therefore, a general increase in market prices of materials does not in itself constitute a contractual variation unless it is accompanied by a change in the required works or the method of execution.

Accordingly, Clause 13 may provide a basis for a claim in specific situations such as:

- i. Changing the source of materials or the method of procurement.
- ii. Modifying technical specifications.
- iii. Changing the sequence or arrangement of works due to project circumstances.

However, general market Price Escalations usually require another contractual basis.

2. Clause 13.8 – Adjustments for Changes in Cost

Clause 13.8 addresses adjustments for changes in cost and is designed to deal with fluctuations in the prices of labour, goods, and other inputs during the execution of the project.

Where this clause is included in the contract, the contract price may be adjusted using a formula that reflects changes in the cost of specific components such as materials, labour, or fuel. These adjustments are usually based on indices or other measurable indicators that track market price movements.

The presence of such a clause provides a contractual mechanism for addressing inflation and price fluctuations, thereby reducing the risk of disputes arising from unexpected increases in costs.

However, the application of Clause 13.8 depends entirely on whether it has been included in the contract documents. In many lump sum contracts, this clause is excluded, with the result that the contractor bears the risk of cost increases unless another contractual or legal basis for adjustment can be established.

3. Clause 19 or its equivalent – Force Majeure or Exceptional Events

This clause in FIDIC contracts addresses situations in which exceptional events beyond the control of the parties make it impossible to perform contractual obligations.

These events may include:

- i. Wars or large-scale geopolitical disruption.
- ii. Natural disasters.
- iii. Government restrictions that prevent the execution of the works.
- iv. Closure of ports or disruption of transportation chains.

In such situations, the contractor may be entitled to request:

- a. An extension of the time for completion.
- b. Suspension of the execution of the works.
- c. Termination of the contract if the impossibility continues for a long period.

However, this clause remains of limited usefulness in claims related solely to Price Escalations because most such situations do not reach the level of impossibility and instead remain within the scope of economic hardship.

3.1 Regional Developments Affecting International Supply Routes as a Potential Exceptional Event

FIDIC contracts include among the examples of exceptional events situations of war, hostilities, and widespread disturbances. Accordingly, regional tensions may fall, in terms of type, within the category addressed by the clause concerning exceptional events. These situations refer to events that directly affect the execution of the project rather than general regional developments.

The mere occurrence of war or geopolitical tension in a region is not sufficient by itself to establish the existence of an exceptional event in a particular project. The contract requires that the event be beyond the control of the affected party, that it could not reasonably have been foreseen at the time of contracting, and that it prevents or substantially hinders the performance of the contractual obligation.

When these conditions are satisfied, several contractual consequences may arise, the most important of which are:

- a. Granting the contractor the right to request an extension of time if the event causes delay in the works.
- b. The possibility of claiming certain costs in cases permitted by the contract.
- c. In prolonged situations where impossibility continues for an extended period, a right to terminate the contract may arise in accordance with the procedures specified in the contract.

This demonstrates that FIDIC contracts treat exceptional events through a gradual approach aimed primarily at managing the impact of the event on the project and maintaining performance before reaching the stage of contract termination.

4. Clause 20 or its equivalent – Claims Procedure

This clause is considered one of the most important provisions in FIDIC contracts because it determines the procedural framework that must be followed when submitting claims.

This framework usually includes several essential steps, including:

- a. Issuing an initial notice of claim within a specified period from the date on which the event becomes known.
- b. Submitting the full details of the claim within a subsequent period.
- c. Providing the documents that demonstrate the impact of the event on time or cost.

The purpose of this system is to enable the engineer and the employer to evaluate the claim at an early stage and to manage the effects of the event during the execution of the project.

5. The Practical Importance of the FIDIC Structure

FIDIC contracts are characterised by an integrated contractual and procedural structure designed to manage risks and disputes in an organised manner during the execution of the project. These contracts do not merely define the substantive rights of the parties but also establish a strict procedural system for submitting and evaluating claims.

One of the most important practical consequences of this structure is that the success of a claim does not depend solely on the strength of the legal or contractual basis. It also depends on the extent to which the contractor

complies with the procedures stipulated in the contract, particularly with regard to notice periods and the submission of detailed supporting documents.

Practical experience in many disputes has shown that numerous claims based on strong substantive grounds may nevertheless be rejected or reduced because of failure to comply with the contractual procedures specified in the contract.

For this reason, the management of claims in FIDIC projects must combine legal analysis of the event with strict compliance with contractual procedures from the moment the event occurs.

Seventh: Managing Claims Within the Company – From the Event to the Legal File

The effectiveness of claims in construction projects depends on compliance with the contractual procedures governing them, particularly those relating to notice periods and the documentation of the event and its impact on the project. For this reason, the success of a claim does not depend only on the existence of a legal basis but also requires proof of the causal relationship between the external event and the delay or additional cost incurred by the contractor.

For this reason, claims management should be understood within the company as an integrated operational system rather than merely a subsequent step taken when a dispute arises.

1. General Principles of Claims Management

1.1 A Claim Is Not a Single Letter

One of the common misconceptions in project management is the belief that a contractual claim is achieved simply by sending a letter to the consultant or the employer. In reality, the letter represents only one step within a broader sequence of procedures.

A successful claim requires:

- i. Understanding the event and characterising it contractually.
- ii. Proving its time-related and financial impact.
- iii. Complying with contractual procedures.

- iv. Submitting documents supporting the claim.

Without these elements, the letter may become merely correspondence with no contractual value.

1.2 The Claim as an Integrated Internal Process

An effective claim usually passes through several successive stages within the company, beginning at the project site and ending with a complete legal file. This process can be summarised in the following steps:

- a) **Identifying the Event:** Determining the occurrence that may form the basis of the claim, such as supply delays, Price Escalations, or the issuance of a new regulatory decision.
- b) **Assessing the Impact:** Analysing the effect of the event on the project schedule and on project costs.
- c) **Issuing the Notice:** Informing the employer or the consultant of the event in accordance with contractual procedures.
- d) **Collecting Documents:** Gathering evidence demonstrating the occurrence of the event and its effect on the project.
- e) **Updating the Loss:** Monitoring the development of additional costs or delays resulting from the event.
- f) **Negotiation:** Attempting to resolve the issue contractually before escalating it into a formal dispute.
- g) **Escalation:** Resorting to dispute resolution mechanisms if a settlement cannot be reached.

2. Notification Timeline

Most construction contracts, particularly FIDIC contracts, require that a notice of claim be submitted within a specified period from the date the event becomes known. The purpose of this requirement is to enable the employer or the engineer to assess the impact of the event at an early stage. Therefore, delay in issuing the notice or failure to properly document the event may lead to weakening the claim or losing it contractually.

2.1 Day Zero – The Date of Knowledge of the Event

When the event occurs or becomes known for the first time, a number of immediate actions must be taken within the project:

- a. Recording the event internally in the project records or in the claims management system.
- b. Opening a Claim File specifically related to the event.
- c. Notifying the commercial or legal department within the company of the existence of an event that may give rise to a claim.
- d. Preserving the initial evidence of the event such as correspondence with suppliers, delay notices, or site reports.

The objective of this stage is to prevent the loss of the initial information that may later become an essential part of the claim file.

2.2 Within the Initial Contractual Period

After recording the event internally, the contractual deadline for issuing the Notice of Claim must be respected.

This notice must include essential elements, the most important of which are:

- a. Identification of the event that gave rise to the claim.
- b. Reference to the initial contractual basis upon which the claim may rely.
- c. Explicit reservation of all rights relating to time and cost.

At this stage it is not necessary to provide the full details of the claim. It is sufficient to preserve the right to claim within the contractual deadline.

2.3 Within the Subsequent Period

After sending the initial notice, the stage of submitting the Claim Particulars begins.

This stage must include:

- a. Explanation of the causal relationship between the event and the delay or cost.
- b. Statement of the time impact on the execution schedule.
- c. Submission of preliminary indications of the additional cost.

The earlier and more organised this stage is carried out, the easier it becomes to resolve the issue contractually before it develops into a dispute.

2.4 During the Execution Period

In many cases the full impact of the event does not become clear immediately after it occurs. Therefore, the claim must be updated periodically during the execution period.

This includes:

- a. Updating the actual costs resulting from the event.
- b. Monitoring the impact of the event on the project schedule.
- c. Recording developments in the market or in material prices if they are related to the claim.
- d. Preserving correspondence with suppliers and logistics companies that demonstrate the reason for delay or increase in cost.

This continuous updating helps build a coherent claim file that can later be defended if necessary.

3. Building the Claim File

For a claim to be defensible legally or in arbitration, it must be supported by a clear documentary file proving the event and its impact.

3.1 Essential Documents

Among the most important documents relied upon in claim files relating to Price Escalations or supply disruptions are:

- a. Old and new supplier quotations demonstrating the change in prices.
- b. Market reports or economic indices demonstrating the general nature of the increase.
- c. Procurement and shipping correspondence explaining the reason for the delay.
- d. Records of the actual project costs.
- e. Analysis of the delay impact on the project schedule.

The availability of these documents at an early stage makes the claim stronger and clearer.

3.2 Causal Connection

Providing documents alone is not sufficient; a clear causal connection must be established between the event and the damage claimed by the contractor.

The claim file must demonstrate in a coherent manner:

- a. The occurrence of the event forming the basis of the claim.
- b. Its general or exceptional character if it is related to the market or economic conditions.
- c. The actual impact of the event on the project in terms of time or cost.
- d. The contractor's inability to reasonably avoid the event.

The clearer this causal link is established, the greater the chances that the claim will be accepted.

Eighth: Rapid Practical Tools For Construction Companies

In addition to legal and contractual analysis, construction companies need practical tools that help them respond quickly to risks arising from Price Escalations or supply chain disruptions.

These tools aim to support project teams in identifying potential risks, evaluating their contractual implications, and taking appropriate steps at an early stage to mitigate their effects.

1. Rapid Response Guide To Risks

This guide is based on four fixed questions that must be asked immediately upon the occurrence of any impactful event:

First: What exactly happened?

The event must be described in practical terms rather than general terms. It is not sufficient to say that prices have increased; rather, the material must be specified, the percentage of the increase, the date of its appearance, and whether the increase is general or related to a particular supplier.

Second: What is the cause of the event?

The distinction here is essential, because the legal characterization may differ depending on the cause. The cause may be a government decision, a general disruption in the market, disruption of transport or shipping, or a problem specific to the supplier.

Third: What is the impact of the event on the project?

It must be determined whether the impact is financial only, time-related only, or both financial and time-related.

Fourth: What should be done immediately?

Here, the priority should always be to record the event, issue the notice, collect the initial supporting documents, and prevent the loss of the causal link between the event and the damage.

2. Decision Tree For The Contractor

The purpose of the decision tree is not theoretical complexity, but to guide the contractor quickly to the correct path: is this a genuine claim situation, on what basis, and what is the next step?

In cases of Price Escalations or supply disruption, the contractor must pass through five consecutive questions before deciding how to proceed.

2.1 Is there an explicit contractual clause?

The first question is always: does the contract expressly address this situation? The contract must be examined before general law, because the contractual basis is the strongest and the fastest to apply.

This includes reviewing the following clauses:

- i. Price adjustment.
- ii. Change in law.
- iii. Force majeure or exceptional events.
- iv. Extension of time.
- v. Claims and notice procedures.

If an explicit clause exists that covers the situation, it must be relied upon first. If the contract does not contain a clear provision, or if the provision is insufficient, the analysis then moves to general legal rules such as Article 249 or others depending on the correct legal characterization.

2.2 Is the event exceptional or merely a normal market fluctuation?

Not every increase in prices or delay in supply constitutes a valid basis for a claim.

Therefore, a distinction must be made between two situations:

- The first situation: Normal market fluctuation

This falls within ordinary commercial risks that the contractor is expected to anticipate when pricing the contract.

- The second situation: Exceptional event

This is an event that exceeds what is usual, is general or widespread in its impact, is not reasonably foreseeable, and leads to clear hardship in performance.

This question is decisive, because it determines from the outset whether the company is facing:

- A commercial risk that must be absorbed,
- Or a contractual and legal event that justifies a claim.

2.3 Is there only a time impact, or both time and financial impact?

After determining the nature of the event, the type of its impact on the project must be identified.

The impact may be:

- Time-related only, such as the delay in the arrival of a material without a substantial increase in cost.
- Financial only, such as an increase in the price of a material that was supplied on time.
- Both time-related and financial, which is the most common and the most serious.

This distinction is necessary because the formulation of the claim differs depending on the type of impact:

- i. If the impact is time-related only, the basis may be an extension of time.
- ii. If it is financial only, the claim may be for the cost difference or rebalancing.
- iii. If the impact is dual, the claim must be built to include both time and cost, not one of them alone.

2.4 Has the notice been sent within the required time?

This question is one of the most critical in practice.

A contractor may have a strong claim in substance, but it may be lost or significantly weakened if the notice is not sent within the specified contractual period.

Therefore, the following must be verified:

- a. When did the company become aware of the event?
- b. What is the time limit specified in the contract?
- c. Was the notice sent with adequate wording?
- d. Were all rights expressly reserved?

If the answer is negative, this deficiency must be addressed immediately with the strongest possible reservations and subsequent correspondence, while recognising that the procedural position has become weaker.

2.5 Is the evidence sufficient?

Correct legal characterisation or the existence of a contractual clause is not sufficient if the evidence is inadequate.

In this type of claim, the evidence must answer five issues:

- What is the event?
- When did it occur?
- What is its cause?
- What is its impact on the project?
- What is the relationship between it and the time or cost being claimed?

If the evidence is incomplete, escalation should not be pursued quickly; instead, the file should first be completed with documents, data, and technical and financial analysis.

3. Contractor's Claim Checklist

This checklist is not for theoretical use; rather, it is intended to serve as an internal working tool that the company reviews for every claim before moving from one stage to another.

3.1 Before the Notice

Before issuing the initial notice, the following matters must be verified:

- a. Precisely identify the event.
- b. Determine the date when the company became aware of it.
- c. Review the potential contractual clause.
- d. Determine whether the impact is time-related, financial, or both.
- e. Collect the initial supporting documents.
- f. Notify the commercial or legal team internally.
- g. Confirm the contractual notice period.

The objective here is not to prepare the complete claim file, but to prevent the loss of procedural rights from the outset.

3.2 After the Notice

After the notice has been sent, the stage of building the claim in an organised manner begins. At this stage, the following must be ensured:

- a. Retaining proof of sending and receiving the notice.
- b. Opening a separate claim file.
- c. Collecting old and new quotations and reference prices.
- d. Compiling suppliers' and shipping correspondence.
- e. Beginning to measure the impact on the project schedule.
- f. Preparing an initial estimate of the additional cost.
- g. Updating senior management or the relevant department on the development of the situation.

This stage is what transforms the notice from a formal procedure into a claim capable of being developed.

3.3 Before the Meeting with the Employer

Before any negotiation or technical meeting with the employer or the consultant, the company should not enter the meeting while still at the stage of general impressions. Rather, it should be prepared with three elements:

- i. The cause of the event: what happened and why?
- ii. The impact of the event: what is its actual impact on time or cost?
- iii. The required solution: what exactly does the company want?

It should also be ensured that:

- a. A written summary of the claim exists.
- b. A table or preliminary figure showing the financial or time impact is available.

- c. Possible alternatives have been reviewed, such as extension of time, partial compensation, rescheduling, or direct procurement by the employer of certain materials.
- d. It has been determined who will speak on behalf of the company and who has the authority to decide on settlement.

3.4 Before Escalation to a Dispute

Before proceeding to a dispute board, arbitration, or the courts, it must be ensured that the file is genuinely mature and that escalation is not merely a reaction.

This includes reviewing the following matters:

- i. Has the initial contractual process been exhausted?
- ii. Have decisions or responses been issued that can clearly be challenged?
- iii. Is the documentary file complete?
- iv. Has the causal link been established?
- v. Has the claim been calculated in a defensible manner?
- vi. Is there a realistic assessment of the strength of the position and its weaknesses?
- vii. Is there still a reasonable opportunity for settlement that has not yet been exhausted?

Successful escalation is not merely referring the dispute, but referring a structured and ready file.

Ninth: Negotiation with the Employer and the Consultant – How Settlement is Managed Before a Dispute

In construction projects, many major disputes could have been contained at an early stage if negotiations had been managed correctly. A contractual claim is not an end in itself, but a means of addressing a disruption that has occurred in the project. Therefore, negotiation should be viewed as a tool to restore balance and allow the continuation of performance before the matter turns into a formal dispute.

From a practical perspective, effective negotiation management requires three clear stages: preparation, management of the dialogue, and documentation of the results.

1. The Philosophy of Negotiation

The objective of negotiation is not only to recover the value of the claim, but to achieve a broader balance that includes:

- a. Continuation of the project without disruption.
- b. Reducing the cost of the dispute for both parties.
- c. Preserving the contractual relationship during the execution period.
- d. Preventing the escalation of claims over time.

In long-term projects, an early dispute may lead to delays in technical and financial decisions, which increases the final cost for all parties. Therefore, an early negotiated solution is often less costly and more realistic than arbitral or judicial dispute resolution.

2. The Most Likely Disputes

In the context of supply chain disruption and rising prices, specific patterns of disputes repeatedly appear in construction projects. Understanding these patterns helps companies anticipate the course of disputes and manage claims more realistically from the outset.

2.1 Price Escalation Disputes

This type of dispute arises when the prices of materials, transportation, or energy increase significantly after the contract has been signed. The disagreement usually focuses on two main questions:

Does this increase fall within the commercial risks borne by the contractor, or is it an exceptional event that justifies price adjustment or contractual rebalancing?

These disputes often become more complicated in lump-sum contracts that do not include a clear mechanism for price adjustment.

2.2 Extension of Time and Prolongation Cost Disputes (EOT and Prolongation Claims)

This type arises when supply disruptions, regulatory decisions, or logistical restrictions lead to delays in the project's execution schedule. In such cases, the contractor usually claims:

- An extension of the execution period,

- Compensation for the costs arising from the continuation of the project for a longer period.

The dispute usually focuses on two issues: did the event actually affect the critical path of the project, and are the claimed costs directly linked to the delay?

2.3 Disruption Claims

This type of dispute is less clear than delay claims, but it is common in complex projects. It occurs when supply disruption or the rearrangement of works leads to reduced efficiency in execution or to the performance of works in a non-optimal manner.

These situations may include:

- Carrying out the works in intermittent stages,
- Rearranging the sequence of activities,
- Or work teams stopping while waiting for materials.

Proving this type of claim is usually more complex because it requires a precise technical analysis to measure the effect of the disruption on productivity.

2.4 Engineer Rejection Disputes

In many projects, the dispute begins when the engineer rejects the claim submitted by the contractor or accepts it only partially. In this case, the disagreement moves from a technical discussion to a contractual dispute concerning:

- Interpretation of the contract,
- The validity of the claim,
- Or the neutrality of the engineer's assessment.

These disputes often later move to the dispute board or arbitration.

2.5 Calls on Bank Guarantees

In some cases, the escalation of the dispute or delays in the project may lead the employer to attempt to call the contractor's bank guarantee. The dispute then becomes more complex because it moves from a financial claim to an

urgent dispute concerning the prevention of the call on the guarantee or the challenge to its legality.

This type of dispute may require urgent proceedings before the courts or arbitration.

2.6 Suspension or Slowdown Disputes (Suspension / Slowdown Disputes)

When the cost of execution becomes excessively high, the contractor may resort to reducing the pace of work or suspending certain activities pending a contractual solution. Conversely, the employer may consider this to be a breach of the contract.

The dispute here arises over whether the contractor's conduct is:

- A legitimate measure to protect its contractual position,
- Or a breach of its obligation to execute the works in accordance with the agreed programme.

3. Preparation for the Meeting

The success of any negotiation meeting depends on the level of preparation. No meeting with the employer or the consultant should be entered into before preparing three main elements: the cause of the problem, its impact, and the proposed solution.

3.1 Cause of the Increase

A clear explanation of the event that led to the claim must first be presented. Negotiation does not begin with the requested amount, but with understanding the cause.

This includes presenting:

- a. Market evidence showing changes in prices or supply conditions.
- b. Neutral documents such as market reports, price indices, or suppliers' bulletins.

The presence of neutral sources reduces debate about the reality of the event and shifts the discussion from questioning the facts to searching for a solution.

3.2 Impact of the Increase

After establishing the cause of the event, the next step is to explain its impact on the project.

This includes:

- a. Calculating the additional costs resulting from the increase or delay.
- b. Analysing the impact of the event on the project schedule.
- c. Clarifying whether the impact is limited to cost or extends to the execution period.

The clearer and more concise this analysis is, the easier it is for the employer or the consultant to understand the situation and evaluate the possible solutions.

3.3 Proposed Solution

It is a mistake to enter a negotiation meeting without presenting a clear solution. Effective negotiation does not merely present the problem, but offers a practical approach to resolving it.

Solutions may take several forms, including:

- a. Adjusting the price of certain items affected by the increase.
- b. Extending the execution period if the event has affected the project schedule.
- c. Sharing the cost between the parties when the event is beyond the control of everyone.
- d. Direct procurement by the employer of certain materials if this reduces cost or accelerates supply.
- e. Rescheduling certain works to reduce the impact of the delay.

Presenting more than one option helps shift the discussion from confrontation to the search for a practical settlement.

4. The Target of Negotiation

The manner in which a claim is presented may sometimes have a greater impact than its substance. Therefore, a balanced negotiation language should be adopted that preserves rights without pushing the parties quickly toward escalation.

4.1 Language of Continuity, Not Escalation

The language of negotiation should focus on a shared objective, which is the successful continuation of the project. Instead of focusing solely on the loss suffered by the contractor, it is preferable to highlight the impact of the problem on the overall progress of the project.

4.2 Avoid Early Threats to Suspend the Works

Threatening to suspend the works or escalate legally may weaken the negotiating position if used at an early stage. Such steps should remain a last option when all attempts at settlement have failed.

Early escalation may push the other party into a defensive position and make reaching a practical solution more difficult.

4.3 Recording All Meetings with Accurate Minutes

Every negotiation meeting should end with clear minutes indicating:

- i. The issues that were discussed.
- ii. The points that were agreed upon.
- iii. The points that remain in dispute.
- iv. Any next steps or time limits.

This documentation is necessary because it may later form part of the dispute file if a settlement cannot be reached.

5. Practical Compromise Solutions

In many cases, the realistic solution is not the full acceptance or full rejection of the claim, but reaching a middle solution that mitigates the impact on both parties.

Among the most common practical approaches used in construction projects are:

- i. Cost sharing (50/50 sharing) when the event is beyond the control of both parties.
- ii. Partial relief for certain cost elements but not others.
- iii. Temporary price adjustment pending a final financial review.
- iv. Milestone-based compensation, whereby part of the compensation is paid upon achieving specific project milestones.

These solutions help address the problem without immediately entering into a full dispute over every element of the claim.

6. Managing Meetings with the Engineer

The engineer plays a central role in many construction contracts, as it is the entity that evaluates claims or issues initial decisions regarding them. Therefore, managing the relationship with the engineer during negotiations requires clarity and discipline.

6.1 Requesting a Clear Determination

When the contractor submits a formal claim, a clear and specific determination from the engineer should be requested. General or inconclusive responses may lead to the continuation of the dispute without resolution.

A clear determination helps define the next stage, whether settlement or escalation.

6.2 Rejecting Ambiguity

If the engineer's response is vague or undefined, a written clarification should be requested specifying:

- i. Its position on the claim.
- ii. The contractual basis on which it relied.
- iii. The extent to which the elements of the claim are accepted or rejected.

This clarification is necessary to avoid interpretative disputes later.

6.3 Documenting Every Reservation or Objection Immediately

Every reservation or objection must be documented immediately in correspondence or meeting minutes. Delay in recording the reservation may later be interpreted as implicit acceptance of the existing situation.

Accordingly, the continuous documentation of the contractor's position preserves its contractual rights and prevents their loss over time.

The conclusion is that successful negotiation in construction projects does not rely only on pressure, but on presenting the facts clearly, proposing practical solutions, and documenting every step. If this stage is managed properly, the problem can in many cases be addressed before it turns into a costly legal dispute.

7. How a Dispute Is Won or Lost

In disputes related to Price Escalations or supply disruption, the decisive factor is not always the legal or contractual text, but how the claim is managed from the beginning. The outcome of the dispute is often determined by the quality of the file that reaches the stage of arbitration or litigation.

7.1 A Dispute Is Won When

The chances of success of a claim are higher when a set of essential elements is present.

The notices are proper, meaning that the contractor complied with the contractual time limits and sent the notices within the specified time and with clear wording.

The causal link is clear, meaning that the claim file clearly demonstrates the relationship between the event and the delay or cost being claimed.

The documents are strong, such as price quotations, market reports, suppliers' correspondence, and analysis of the impact of the event on the project schedule.

The contractual correspondence is disciplined, meaning that all correspondence and requests were drafted in precise contractual language and did not contain contradictions or unintended concessions.

7.2 A Dispute Is Lost When

Conversely, the claim weakens or is rejected in many cases due to procedural errors or weak evidence.

The increase is not proven, meaning that the contractor is unable to provide objective evidence showing that prices actually increased and that this increase affected the project.

The event is merely a normal commercial fluctuation, if it appears that the increase falls within the normal market fluctuations that the contractor is expected to anticipate.

Failure to send the notice within the required time, which is one of the most common reasons for the rejection of claims in project contracts.

The claim is general and not detailed, meaning that the contractor submits a claim in general terms without a precise analysis of the time and financial impact and without sufficient documentation.

The practical conclusion is that disputes in construction projects are usually not determined only at the arbitration stage; rather, they are effectively determined in the first months after the event occurs, when the facts are recorded, notices are sent, and evidence is collected. If this stage is managed properly, the company's position in any later dispute becomes stronger and more stable.

Tenth: Conclusion

The purpose of this study is not limited to explaining the legal rules related to Price Escalations or supply chain disruption, but rather to provide a practical framework that construction companies can use as a strategic tool in managing their projects.

In an environment characterised by increasing economic volatility, remaining competitive in the market depends on the ability of companies to combine three elements: legal understanding, contractual discipline, and operational risk management.

When these elements are present, economic crises no longer remain merely a source of loss or dispute; rather, they become a test of the institution's ability to protect its rights, continue its operations, and strengthen its position in a market where competition is increasing and risks are growing.

Jassim Al Suwaidi Advocates & Legal Consultants LLC

Construction Disputes Practice