

**FORCE MAJEURE AND COMPANIES CAUGHT
MID-STREAM IN CONTRACTS IN KUWAIT**

by

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As a result of Iraq's invasion of Kuwait and the subsequent sanctions and freeze orders, companies that were mid-stream in their commercial deals with Iraq or Kuwait have to consider how to make the best transitional arrangements for those now-frozen transactions.

The U.S. sanctions, for example, freeze not only Iraqi and Kuwaiti assets, but also various commercial and financial transactions with Iraq or Kuwait at whatever point those transactions had reached when the sanctions became effective. (These sanctions are similar to those imposed on Libya.)

Companies that were performing contracts in Kuwait have been forced to consider the implications of suspending or terminating those contracts. Inevitably, these companies need to examine the relevant contracts and applicable law to assess their rights under such concepts as "special risks," "war risk" and *force majeure* (or impossibility of performance).

Force majeure -- a legal concept that, incidentally, is also recognized under Kuwaiti law -- refers to an event which occurs during the performance of a contract, was unforeseeable by the contractual parties and beyond their control, and which renders the contract impossible to perform.

During the Iran-Iraq war and the resulting spillover of tensions to Kuwait and the region in the 1980s, many multinational companies performing work in the Gulf insisted upon broad and elaborate contract clauses for special risks and *force majeure*. These companies may find that they have relatively well-defined rights to suspend or terminate performance. But many practical issues remain. For example:

- How does a company best notify its Kuwaiti customer of actions taken to suspend or terminate their contract, particularly if that customer happens to be the Kuwaiti government, now in exile?
- For large projects involving numerous contractors, subcontractors and suppliers, how does a company best reconcile the many overlapping and sometimes inconsistent contracts, each of which might provide for a different governing law or method to resolve disputes?

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For attorneys providing commercial law advice to companies affected by the sanctions and freeze orders, the most difficult problem is that the political situation in the Gulf has not stabilized, so there can be substantial and sudden changes.

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