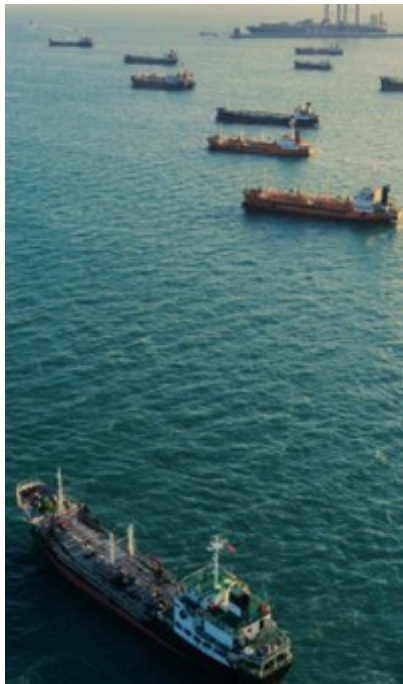


STRAIT OF HORMUZ DISRUPTION: FORCE MAJEURE, DELAY AND COST CLAIMS IN INDIA AND THE MIDDLE EAST – A GUIDE FOR CONTRACTORS

by Ms. Pallavi Agrawalla, Associate, MRP Advisory



I. STRAIT OF HORMUZ DISRUPTION: WHY IT MATTERS FOR CONTRACTORS IN INDIA AND THE MIDDLE EAST

Ongoing geopolitical tensions in and around the Strait of Hormuz have escalated into a material disruption of one of the world's most critical maritime chokepoints, through which a significant portion of global energy and commodity flows transit. Recent developments indicate that the operational and immediate nature of the disruptions. The Strait is practically operating as a controlled corridor[1], because of which maritime traffic through the Strait has dropped sharply from normal levels[3], with a significant number of vessels being stranded or rerouted[2]. Additional measures such as transit restrictions, selective passage, and proposed toll regimes are further constraining normal shipping operations.[4] Gulf oil exports have reportedly fallen significantly, while attacks and security risks continue to affect commercial shipping.[5]

This has resulted in severe disruption to oil, gas, and bulk commodity flows, increased war-risk premiums, freight costs, and insurance exposure, immediate strain on construction material supply chains, particularly for projects dependent on imported equipment and resources.

For projects across the Gulf (UAE, Oman, Qatar, Bahrain, Saudi Arabia), the disruption is already translating into rerouting of shipping lanes away from the Gulf, including diversion toward Red Sea ports, reduced availability of vessels and delayed delivery of critical materials and equipment, and escalation in logistics costs and programme uncertainty.

India is highly sensitive to these disruptions due to its dependence on Hormuz-linked energy imports, with approximately 40% of India's crude imports transiting through the Strait of Hormuz.

From a commercial perspective, the consequences include sharp increases in energy prices and freight costs, higher import prices, reduced predictability in fuel availability and logistics timelines, and downstream impact on infrastructure, EPC, and construction projects dependent on imported materials and energy inputs.[6][7][8]

II. KEY RISKS FOR CONTRACTORS

Across India and the Middle East, supply chains are already impaired, costs are increasing in real time, and project timelines are under active pressure. As already being seen in practice, disruptions to shipping and logistics are translating directly into delay, cost escalation, and supply chain instability across projects in both the Middle East and India.[9]

A. Delay Risk (Critical Path Impact & Time Entitlement)

Delay risk is one of the most immediate and critical consequences of the disruption. Constraints on maritime transit, port congestion, and rerouting of vessels are affecting the delivery of long-lead equipment, imported materials, and specialist resources, which in turn impacts critical path activities.

B. Cost Escalation Risk (Recoverability Challenges)

Cost escalation represents a parallel and equally significant risk. The disruption has led to increased freight costs, war-risk insurance premiums, fuel price volatility, and supplier price escalation, all of which place immediate financial pressure on contractors. Industry commentary also indicates that construction claims linked to supply chain disruption are already increasing across the region, particularly in relation to delay and cost escalation disputes.[10]

C. Supply Chain Disruption (Causation & Attribution Risk)

Supply chain disruption introduces a further layer of complexity, particularly in terms of causation and attribution. Contractors must demonstrate that the Strait of Hormuz disruption specifically impacted their supply chain, whether through delayed deliveries, non-availability of materials, or supplier defaults, and that no reasonable alternatives were available.

D. Subcontractor & Downstream Risk (Flow-Down Exposure)

The disruption also creates significant downstream and subcontractor-related risks. Subcontractors may invoke force majeure or fail to perform due to the same underlying constraints, while contractors remain exposed to upstream obligations under the main contract.

E. Programme & Planning Risk (Evidentiary Weakness)

Another critical risk arises from programme and evidentiary weaknesses. Across jurisdictions, delay claims require robust contemporaneous documentation, including baseline programmes, updated schedules, and clear demonstration of cause-and-effect relationships. In practice, many claims fail not due to lack of entitlement, but due to inadequate records, retrospective reconstruction of delay, or disconnect between site records and the claim narrative.

F. Legal Characterisation Risk (Force Majeure vs Hardship vs Commercial Risk)

The legal and contractual implications regarding the performance of contracts, the potential application of force majeure, and delay and cost recovery are already crystallizing. In this scenario, the legal characterisation of the event itself presents a distinct risk, and is central to determining entitlement to both time and cost relief, and the position varies significantly depending on governing law and contractual wording. While the disruption is clearly geopolitical in nature, it does not automatically qualify as force majeure in all cases; rather, entitlement depends on whether the event falls within the contractual definition, whether it has rendered performance impossible or merely more onerous, and whether the required causal link can be established.

Under Indian law, the analysis is primarily contractual, with force majeure operating only if expressly provided for. In the absence of such provisions, parties may seek to rely on frustration under the Indian Contract Act, 1872; however, Indian courts apply this doctrine narrowly and require a threshold of impossibility rather than increased difficulty, delay, or cost. As a result, contractors in

India are typically entitled to extensions of time where force majeure clauses are triggered, while recovery of additional costs remains subject to various contractual provisions, including variation or price adjustment mechanisms.

Civil law jurisdictions across the Middle East, including the UAE, Oman, Qatar, and Bahrain, recognise force majeure as a matter of law, generally where performance becomes impossible due to events beyond the parties' control. In such cases, liability may be excluded and obligations suspended or terminated depending on the severity and duration of the event. These jurisdictions also recognise broader doctrines of "exceptional circumstances" or hardship, which may apply where performance remains possible but becomes excessively onerous, allowing courts or tribunals to adjust contractual obligations to a reasonable level rather than strictly discharging them.

Where the disruption qualifies as force majeure, contractors may be entitled to relief from performance and extensions of time, but not necessarily to additional cost unless expressly provided for in the contract. Where the threshold of impossibility is not met, but performance has become significantly more burdensome, civil law systems may allow partial cost relief or rebalancing of obligations under hardship principles, whereas Indian law might typically treat such circumstances as part of ordinary commercial risk.

Ultimately, the same factual scenarios, such as delay in material delivery, increased logistics costs, or supplier non-performance, may lead to materially different outcomes depending on how they are legally characterised and the governing law of the contract. Contractors must therefore carefully assess whether the disruption meets the threshold of force majeure, whether hardship or exceptional circumstances doctrines may apply, and whether the contract provides an independent basis for cost recovery. Failure to correctly frame the claim within the appropriate legal construct may result in loss of entitlement even where the underlying impact is demonstrable.

III. WHAT CONTRACTORS MUST DO IN THE NEXT 7 DAYS

A. Immediate Contract Review (Day 1-2)

The first and most critical step is an immediate and structured review of their contract suite to identify available relief mechanisms and preserve entitlement. Given that the legal consequences of the Strait of Hormuz disruption will depend primarily on contractual wording, contractors must move quickly to assess how the event fits within existing provisions and what procedural steps are required to trigger relief.

Construction contracts typically allocate risk and provide relief through a combination of force majeure, extension of time, cost recovery, notice, and mitigation provisions. Contractors should therefore focus on identifying these clauses and assessing how they operate in the context of the current disruption.

- The force majeure clause should be reviewed to examine whether the clause expressly covers events such as war, hostilities, blockade, shipping disruption, or governmental interference, or whether it is drafted broadly enough to capture events beyond the parties' control. Particular

attention should be paid to whether the clause requires the event to render performance impossible or merely prevent or hinder performance, as this distinction directly affects entitlement.

- Extension of time provisions must be analysed to determine whether delay caused by supply chain disruption, material shortages, or logistics constraints qualifies as a compensable or excusable delay. Many contracts allow time relief for events beyond the contractor's control, even where force majeure is not strictly established, but entitlement will depend on demonstrating impact on the critical path and compliance with notice and substantiation requirements.
- Cost recovery provisions require particular scrutiny, as entitlement to additional costs is often more limited than entitlement to time. Contractors should identify whether the contract permits recovery of additional costs arising from disruption, whether through variation clauses, change in law provisions, fluctuation or price adjustment clauses, or specific compensation events.
- Notice provisions must be reviewed with particular urgency, as they often impose strict timelines and formal requirements that are treated as conditions precedent to entitlement. Contractors should identify the applicable notice periods, required content, and designated recipients, and assess whether the current disruption has already triggered an obligation to notify. Failure to comply with notice provisions remains one of the most common reasons for losing otherwise valid claims.
- Finally, contractors should assess any provisions relating to mitigation, alternative performance, acceleration, etc. Many contracts require contractors to take reasonable steps to avoid or reduce the impact of delay events, and failure to do so may limit or defeat entitlement. This includes considering alternative sourcing, rerouting, or resequencing of works, and documenting such efforts from the outset. As emphasised in industry guidance, entitlement is closely linked not only to the occurrence of the event but to the contractor's response to it.

In practical terms, this initial review should result in a clear mapping of (i) applicable contractual triggers, (ii) required procedural steps, and (iii) potential entitlement to time and/or cost. Contractors who undertake this exercise promptly will be significantly better positioned to preserve their rights and structure their claims effectively as the situation evolves.

B. Issue Protective Notices (Day 2–3)

Once the contractual position has been identified, the immediate priority is to issue protective notices in strict compliance with the contract, as a delay in issuing notices can result in a complete loss of entitlement, regardless of the merits of the underlying claim.

Most construction contracts impose detailed notice requirements as conditions precedent, requiring contractors to notify the employer within a specified period after becoming aware (or when they ought reasonably to have become aware) of the relevant event. These provisions typically require not only notification of the occurrence of the event, but also an initial indication of its likely impact on time and cost.

Contractors should therefore adopt a cautious and proactive approach by issuing notices at the earliest possible stage, even where the full impact of the disruption is not yet known. It is preferable to submit a protective or precautionary notice reserving rights, rather than risk missing contractual deadlines while waiting for certainty. This is particularly important in the present context, where the disruption is evolving and its downstream effects on supply chains and project timelines may materialise progressively rather than immediately.

Further, contractors should ensure that notices clearly identify the relevant contractual basis (for example, force majeure, delay event, or other applicable provision), describe the nature of the disruption (such as shipping delays, port restrictions, or supplier non-performance), and expressly reserve rights to claim both time and cost where applicable. Notices should also avoid overly definitive statements on impact at an early stage, instead framing the position in terms of anticipated or potential effects, subject to further assessment.

Contractors should also ensure that notices are issued consistently across the contractual chain, including to subcontractors and suppliers where relevant. Misalignment between upstream and downstream notices can weaken the overall claim position and create gaps in causation or entitlement.

The objective at this stage is not to present a fully developed claim, but to secure the contractor's position. A timely and properly issued notice preserves entitlement and creates the foundation upon which a substantiated claim can be built as the impact of the disruption becomes clearer.

C. Establish Documentation Protocols (Day 3–5)

Once notices have been issued, the focus must shift immediately to establishing a structured and disciplined documentation process. In disruption-related claims, entitlement is rarely defeated on legal principles alone; more often, it fails due to inadequate contemporaneous records. Contractors must therefore begin building their evidentiary position in real time, rather than attempting to reconstruct it retrospectively.

At a minimum, contractors should implement a centralised system to capture all records relating to the disruption, including supplier communications, delivery schedules, shipping delays, port restrictions, and internal correspondence assessing impact. Particular attention should be given to documenting when and how the disruption began to affect specific project activities, as this forms the foundation for establishing causation.

Cost records must also be maintained with precision. This includes tracking additional freight charges, increased material

costs, extended preliminaries, idle resources, and any inefficiencies arising from disruption. It is critical that such costs are clearly segregated from baseline project costs, with supporting documentation retained for each category, as claims frequently fail where cost escalation cannot be substantiated or properly attributed.

From a programme perspective, contractors should ensure that project schedules are regularly updated to reflect evolving impacts. This includes identifying affected activities, recording delays as they occur, and maintaining a clear link between the disruption event and its effect on the critical path. Contemporaneous programme updates carry significantly greater evidentiary weight than retrospective delay analyses and are often decisive in dispute resolution.

Further, contractors should record all steps taken to avoid or reduce the impact of the disruption, including attempts to source alternative suppliers, reroute shipments, re-sequence works, or deploy additional resources. Demonstrating proactive mitigation is not only a contractual requirement in many cases but also strengthens the overall credibility of the claim.

Finally, contractors should ensure alignment between project, commercial, and legal teams in maintaining records and developing the claim narrative. Disconnected or inconsistent documentation can undermine even well-founded claims, whereas a coordinated and structured approach enables contractors to present a clear and persuasive case as the situation evolves.

D. Quantify Early Impacts (Day 4–6)

Once documentation protocols are in place, contractors should move quickly to quantify the emerging impact of the disruption. While the full extent of delay and cost consequences may not yet be known, early quantification is critical to framing the claim, supporting ongoing notices, and informing commercial strategy.

From a time perspective, contractors should begin assessing the effect of the disruption on the project programme by identifying impacted activities and evaluating whether these fall on the critical path. Even a preliminary analysis, such as linking specific supply chain disruptions or delivery delays to affected works, can significantly strengthen the contractor's position. Early identification of potential extension of time entitlement also allows contractors to align internal planning and external communications, rather than reacting defensively at a later stage.

In parallel, contractors should start quantifying cost impacts as they arise. This includes additional freight and logistics costs, war-risk insurance premiums, increased material prices, extended preliminaries, and costs associated with disruption or inefficiency. It is important that these costs are not only recorded, but also analysed and categorised in a way that

aligns with contractual entitlement, distinguishing between recoverable and non-recoverable heads of claim.

Contractors should also consider developing an initial quantum framework, even at this early stage. This involves mapping each category of impact to its contractual basis (for example, force majeure, variation, or other relief mechanisms) and identifying the evidence required to substantiate each component. Doing so helps ensure that ongoing record-keeping is aligned with eventual claim requirements and avoids gaps that may be difficult to address later.

Given the evolving nature of the disruption, early quantification should be treated as indicative rather than definitive, with assumptions clearly stated and regularly updated as further information becomes available. Overly rigid or premature conclusions can undermine credibility, whereas a transparent and iterative approach strengthens the overall claim position.

Early quantification is not about finalising the claim, but about shaping it. Contractors who begin this process promptly are better positioned to engage with counterparties, justify interim relief, and ultimately present a coherent and well-supported claim as the full impact of the disruption unfolds.

E. Engage Counterparties & Mitigate (Day 5–7)

As the impact of the disruption becomes clearer, contractors should move proactively to engage with counterparties while continuing to implement and document mitigation measures. Early and structured engagement is critical, not only to manage project performance but also to shape the narrative of the claim and position the contractor as acting reasonably and in good faith.

Contractors should initiate discussions with the employer or engineer at an early stage, clearly communicating the nature of the disruption, the steps being taken to address it, and the likely implications for time and cost. This is particularly important in circumstances where the situation is evolving, as it allows expectations to be managed and reduces the risk of disputes arising from misalignment or lack of transparency. Early engagement can also create opportunities to agree interim measures, such as revised delivery schedules, resequencing of works, or provisional extensions of time.

At the same time, contractors must actively engage with subcontractors and suppliers to ensure alignment across the supply chain. This includes verifying the basis of any force majeure or delay claims being advanced downstream, ensuring that corresponding notices are issued upstream, and maintaining consistency in the contractual position. A coordinated approach across the contractual chain strengthens causation and reduces the risk of gaps in entitlement.

Mitigation remains a central requirement across both common law and civil law systems, and contractors must be able to demonstrate that they have taken reasonable steps to reduce the impact of the disruption. This may include exploring alternative sourcing options, rerouting shipments, adjusting construction sequences, or deploying additional resources

where feasible. Importantly, mitigation efforts should be documented with the same level of rigour as delay and cost impacts. Records of alternative supplier inquiries, logistics adjustments, internal decision-making, and commercial evaluations can play a decisive role in demonstrating that the contractor acted reasonably and complied with contractual obligations. Conversely, a failure to evidence mitigation can significantly weaken entitlement, even where the underlying disruption is undisputed.

From a strategic perspective, this stage also presents an opportunity to explore commercial solutions alongside formal claims. In some cases, early engagement may lead to negotiated outcomes, such as agreed variations, cost-sharing arrangements, or revised project timelines, which can reduce dispute risk and preserve commercial relationships.

Ultimately, contractors who combine proactive engagement with well-documented mitigation efforts are better positioned not only to preserve their legal entitlement but also to manage the disruption in a commercially effective manner.

IV. COMMON MISTAKES IN FORCE MAJEURE AND DISRUPTION CLAIMS

Even where the disruption is clear and the contractual framework supports relief, contractors frequently undermine their own position through avoidable missteps. The following are some of the most common issues observed in disruption-related claims.

- Contractors often delay notification while assessing the full impact of the event, but in doing so risk missing strict contractual deadlines. In many contracts, particularly those used in large infrastructure and EPC projects, notice provisions operate as conditions precedent, meaning that late notice can result in a risk of complete loss of entitlement irrespective of the merits of the claim.
- Contractors should not assume that force majeure automatically applies to geopolitical disruptions. Entitlement to time and costs depends on the precise wording of the clause, the nature of the event, and the ability to demonstrate that performance was prevented or sufficiently hindered. Contractors who rely on general assertions of disruption without analysing contractual thresholds or evidencing impact often find their claims rejected.
- Contractors also frequently fail to establish a clear causal link between the disruption and the specific delay or cost impact claimed. General references to supply chain disruption or market conditions are insufficient; claims must demonstrate how the event affected particular activities, resources, or cost components on the project. Without this linkage, even well-documented disruption may not translate into entitlement. Absence of contemporaneous records and reliance on retrospective delay analysis significantly weakens claim credibility.

- Contractors often attempt to reconstruct events retrospectively, relying on incomplete records or broad assumptions. However, contemporaneous documentation, such as programme updates, correspondence, and cost records, carries far greater evidentiary weight and is often determinative in dispute resolution. Failure to demonstrate critical path impact and causation through updated programmes may result in the denial of time entitlement.
- A further issue arises from failure to properly analyse and segregate costs. Presenting aggregated cost claims without distinguishing between baseline costs, escalation, and disruption-related inefficiencies makes it difficult to establish entitlement and often leads to rejection or significant reduction of claims.
- Finally, and most importantly, contractors sometimes adopt a passive approach, waiting for the situation to stabilise before taking action. In a rapidly evolving disruption scenario, this can be particularly damaging. Entitlement is shaped in real time through notices, records, and mitigation efforts, and delays in taking these steps can permanently weaken the contractor's position.

V. KEY TAKEAWAY: EARLY ACTION IS CRITICAL

With disruption impacts already materialising, contractors should act now to preserve entitlement and minimise exposure. Contractors impacted by the Strait of Hormuz disruption should consider undertaking an immediate assessment of their contractual position, including notice requirements, entitlement to time and cost, and documentation strategy.

Our team continues to monitor developments relating to the Strait of Hormuz disruption and its impact on construction and infrastructure projects across India and the Middle East.

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