

# The Legal Impacts of the Force Majeure Clause on the Supply Chain Resilience in Response to Unexpected Disruptions

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**ABSTRACT:** The force majeure clause is a contractual term, inserted or incorporated in the supply chain contract, to allow the contracting parties to renegotiate the contract, for the purpose of the suspension, modification and adjustment of the contract, during the occurrence of the supply chain disruptions, rather than its complete termination. This clause, known also as the renegotiating term, plays a considerable role during the occurrence of the supply chain disruptions, in order to perform the proactive plans which, facilitate the supply chain resilience and minimize the effects of risks and damage brought about by disruptions. The problematization of the research is represented by some questions, the most important of which is: How can the legislator benefit from the force majeure clause to give the parties a tantamount or equivalent power or authority of the judge, to empower or authorize them, the same as the judge, to modify and adjust the contract, by renegotiating the supply chain contract during the occurrence of the supply chain disruptions, to realize a flexible supply chain resilience?. The researcher suggests some relevant recommendations to the Iraqi legislator, the most important of which is to suggest the amendment of the second paragraph of the article (146) of the Iraqi civil law, to allow the parties to renegotiate the contract, by the force majeure clause inserted in the contract.

**KEY WORDS:** Force Majeure, Supply Chain Disruptions, Supply Chain Resilience, Risk-Sharing, Risk Mitigation

## 1. INTRODUCTION

The force majeure clause is a contractual term that makes provision for the modification or adjustment of the contract rather than its complete termination. It is also aimed at anticipating disruptions, disruptive contingencies, or unforeseen events, and allocating the risks beforehand in an agreed, rather than an imposed, manner. The role played by this clause may appear distinctively during the supply chain disruptions, in order to effectuate and facilitate the supply chain resilience and minimize the effects of the damage caused by disruptions. The Iraqi civil law no. (40) of 1951 did not define the force majeure clause, but it identified and referred indirectly and implicitly to the

unexpected supply chain disruptions in the second paragraph of the article (146), and nominated it as exceptional and unpredictable events of a general nature. The importance of this article of research lies in trying to make use of the force majeure clause during the occurrence of the supply chain disruptions, in order to facilitate the supply chain resilience and minimize the damage caused. The problem of this research is displayed by five questions: first: does the force majeure clause play a role in realising the supply chain resilience? second: to which extent Does this clause, which is inserted in the supply chain contract, minimize the damage, and mitigate the risk caused by the supply chain disruptions? third: How can the Iraqi civil and commercial laws make use of this clause to protect the supply chain from unexpected disruptions? fourth: how can the legislator handle the insufficiency of the law concerning the incapability of the parties to interfere during the supply chain disruptions, to renegotiate, modify, and adjust the supply chain contract? and fifth: how can the legislator make use of this clause to give the parties a tantamount or equivalent power or authority of the judge, to empower or authorise them, the same as the judge, to modify and adjust the contract to make it flexible and suitable for resilience? This research has followed up the analytical descriptive methodology of the legal research, by studying the concept of the force majeure clause, realising the supply chain resilience. and the legal impacts of this clause on the supply chain resilience. besides the situation of the Iraqi civil law towards this concept. This study is also considered an interdisciplinary study. coordinating and connecting between law and management (Massoudi & Birdawod, 2023). in conformity with the above-mentioned methodology, this research has been divided into two sections. the first discusses the concept of the force majeure clause realising the supply chain resilience. the second studies legal impacts of the force majeure clause on the supply chain resilience.

## 2. Literature Review

### 2.1 Supply Chain Resilience

To begin with this section will be dedicated to the study of the concept of the force majeure clause realizing the supply chain resilience, we should review the definition of this clause, as well as defining and identifying some such relevant and closely related terms as the supply chain and its resilience. Besides the classification of disruptive or unforeseen events and the Stages of the Supply Chain Resilience. And the situation of the Iraqi civil law No. (40) of 1951 towards the force majeure clause and supply chain disruptions.

## 2.2 Force Majeure Clause

The force majeure clause is defined one of the English law jurists (Mckendrick, 2013, ) as a contractual term which makes provision for the modification of the contract rather than its complete termination, as well as seeking to anticipate disruptions, disruptive supervening contingencies or unforeseen events (Cooke, 1999.), and allocating the risks beforehand in an agreed, rather than an imposed, manner. It is also defined (Atiyah and Smith, 2005,) as a contractual term which provides for the adjustment of the contract rather than its being terminated completely, in response to unexpected disruptions. Another jurist (Tepper, 2012,) defines it as a contractual term incorporated into the contract to excuse the debtor completely from the liability, arising from the non-performance or non-fulfillment of his or her contractual obligations, to mitigate the liability, to prolong the time of performance, or to stop performing these obligations for a certain period of time. (Siam et al., 2022) Due to disruptive or unforeseen events which are out of control of one of the parties. As far as the supply chain is concerned, it is defined as a system of organization flowing, moving or transporting products, materials and information from suppliers to manufacturers to distributors to ultimate customers (<https://www.newcastlesys.com/blog/5-ways-to-recover-from-supply-chain-disruptions>). it is also defined (Schroeder et al, 2013.) as a set of entities and relationships that determine materials and information flow both downstream towards the customer, and upstream toward the first supplier (Wilman, 2005.). The supply chain is also imagined (Coyle et al, 2013.) as an extended enterprise which crosses the boundaries of individual firms, to span the related activities of all the companies involved in the total supply chain. This extended enterprise should attempt to implement a coordinated two-way flow of goods, services, information and financial resources. These definitions illustrate that the supply chain is a network of manufacturing and service operations, that supply one another from raw materials through production (Massoudi, 2019). This network contains manufacturers, distributors, suppliers, wholesalers, retailers and ultimate customers (Massoudi & Fatah, 2021). It is also worth-bearing in mind that the supply chain consists of the physical flow of materials, money and information, along the entire chain of production and distribution. Accordingly, the supply chain management is designed to manage the flow of information, products and services across a network of customers, enterprises and supply chain partners (Russell and Taylor, 2009). It focuses on integrating and managing the flow of goods, services and information through the supply chain in order to make it possible to customer needs. Finally the supply chain resilience

is defined as the ability to respond quickly to unexpected disruptions in supply or demand, in order to mitigate the risk and minimize damage (Schroeder et al, 2013; Birdawod, 2022). But as far as the Iraqi civil law No. (40) of 1951 is concerned, it has been highly affected by Islamic jurisprudence, particularly the journal of juristic rules of 1869 (Mejelle-i Ahkām Adliye "Majallah"), which is considered as a European-style Ottoman codification of Islamic law of the hanafite school, from which it borrows most of its rules (Stigall, 2006.). Although this law mentions the force majeure in the article (211), but it does not define the force majeure clause (Baker, 2011.). Instead this law identified indirectly and implicitly the unexpected supply chain disruptions in the second paragraph of the article (146), and nominated it as exceptional and unpredictable events of a general nature, and provides that (Where however as a result of exceptional and unpredictable events of a general nature the performance of the contractual obligation has not become impossible but onerous on the debtor such as will threaten him with exorbitant loss the court after balancing the interests of the parties may if it would be equitable reduce the onerous obligation to a reasonable limit; every agreement otherwise shall be null and void). The Iraqi court of cassation adopted this principle in its decision No. 3878/ civil body/ 2020 of 28/12/2020, and emphasized that many requirements of the application of the theory of fortuitous events should be satisfied, the most important of which the occurrence of exceptional and unpredictable events of a general nature, making the performance of the contractual obligation onerous on the debtor but not impossible (kadhum, 2021.). Finally the supply chain contract, in which the force majeure clause is usually inserted, is based upon the basic element of time (Al Hakim et al, 1980,) . Therefore the subject-matter of the contract is measured by the element of time (Al Hakim, 1967.). This contract is also qualified or classified as the contract of successive execution or performance (Al Sanhour, 2004.).

## 2.3 Classification of Disruptive Events

It is worth bearing in mind that the disruptive events are also known as unforeseen events or unexpected disruptions. They can be classified into three main sub-categories. The same is true for the stages of the supply chain resilience, which may also be sub-categorized into three sub-division. Therefore, we should review the classification of both disruptive events, that is to say, the supply chain disruptions and the stages of the supply chain resilience in brief.

### 2.3.1 Natural Disruptions

There are many factors leading to unexpected disruptions, known also as disruptive or unforeseen events, but they are frequently sub-categorized into three main sub-categories: First: The natural supply chain disruptions: this sub-category of disruptions may heavily affect the supply chain process, which starts from the supplier to the manufacturer to the until reaching the ultimate consumer, through intermediaries such as the transporter, shipper, carrier, distributor, wholesaler, retailer (Ramsköld, 2024.). The natural disruptive events are exemplified by natural disasters like, earthquakes, floods, hurricanes and various types of climate changes, which can

damage infrastructure, delay deliveries and disrupt logistics ([http://www.aplf.net/articles/5\\_Types\\_of\\_Supply\\_Chain\\_Disruptions.pdf](http://www.aplf.net/articles/5_Types_of_Supply_Chain_Disruptions.pdf)). Also drastic changes in climate patterns can affect agriculture-based food supply chains, causing scarcity or paucity of raw materials. As well as delaying the transportation. Not to mention unpredictable weather changes delaying shipments and reducing inventory availability. But still the most conspicuous example of natural disruptive events has been the COVID-19 global pandemic, which brought about severe effects on the supply chain worldwide (Clancy, 2024.). In brief these disruptive or unforeseen events cause shipping delays, slower delivery times, too much or too little inventory in warehouses, higher costs, and higher prices passed on to customers (<https://www.oracle.com/scm/reduce-supply-chain-disruptions/>). Secondly: The political supply chain disruptions: this sub-category of disruptions can be clearly exemplified by a wide spectrum of events, such as wars, whether it be external or internal. An example of the former is the Russian-Ukraine war (Ramsköld, 2024.), and the latter is the civil war. This type of disruptions or disruptive events can also encompass political instability, civil unrest and changes in governments, leading to unexpected supply chain disruptions. We can mention also protests causing roadblocks and transport delays. Thirdly: The economic supply chain disruptions: the global supply chain can also be seriously affected by higher tariffs rates (Grossman and Helpman, 2021.). Another important point to be made is that the imposition of trade restrictions and tariffs, or some economic sanctions, such as embargoes, can increase the cost of imported materials and reduce access to foreign markets (Massoudi, 2018; Qader et al, 2025).

### 2.3.2 Political Disruptions

The supply chain resilience is normally made up of three stages: the proactive planning for supply chain risk mitigation, the minimization of the damage caused by the supply chain disruptions or disruptive events, and the recovery stage or the post-disruption recovery. Therefore we should briefly study these three stages as follows: First: The proactive planning for supply chain risk mitigation: The proactive planning for supply chain is the first stage included in the supply chain resilience, and supply chain risk management. It involves acting in advance to identify potential risks that could disrupt the supply chain streamlined process, and badly affect business operations, and taking steps to evaluate them, prioritize their severity, and mitigate their possible effects (<https://panorays.com/blog/supply-chain-risk-management/>). This stage also encompasses various tactics, methodologies and preemptive strategies, used in the planning for risk mitigation (Schroeder et al, 2013.). Four main strategies can be summarized here (<https://www.newcastlesys.com/blog/5-ways-to-recover-from-supply-chain-disruptions>). That is to say, prevention, preparedness, response and recovery. Secondly: The minimization of the damage caused by the supply chain disruptions: this stage is aimed at minimizing the damage to the supply chain during the influence of the disruption (Schroeder et al, 2013.). Thirdly: The post-disruption recovery: The speed of recovery from supply chain disruptions has been identified as the predominant factor in building a resilient supply chain (<https://www.sciencedirect.com/science/article/pii/S13665545>

23001904). In brief the purpose of these three stages is to make the supply chain more resilient by advance planning, early detection of the damage caused by supply chain disruptions, in order to minimize its effects. And the speedy action during disruptions, in order to control the damage and guarantee the speed of recovery from disruptions (Schroeder et al, 2013.).

### 2.3.3 Economic Disruptions

The force majeure clause is characterized by the following distinguishing features: First: The force majeure clause is considered as a contractual term used as a statement or stipulation (Duxbury, 2001.), which the contracting parties agree to insert in the supply chain contract, to prolong the time of performance or enforcement of the obligation arising from the contract. Second: This clause is also regarded as a means of planning for the future of the contract, particularly the supply chain contract, to protect it from unforeseen contingencies (Mckendrick, 2013.), known as supply chain disruptions. Therefore a well-drafted contract can thoroughly plan to take precautions against supply chain disruptions (Johnson et al, 2011.), whether they be expected or unexpected. In order to handle these disruptions legally. Third: It is also considered as a successful tool of the allocation of risks or risk-sharing in case of disruptions. Therefore the contractual term intended to realize liability- allocation and risk-sharing can efficiently mitigate the inclement impacts of supply chain disruptions (Mckendrick, 2013.,). Fourth: This clause is also featured by its flexibility to handle the supply chain disruptions. Thus the effects of the precisely drafted force majeure clause can be clearly illustrated in the second stage of the supply chain resilience. In which case this clause can provide the agility, represented by the early detection of the disruptions, and the quick response to minimize the damage (Schroeder et al, 2013).

## 2.4 The Legal Impacts of the Force Majeure Clause on the Supply Chain Resilience

We shall dedicate this section of the study of legal impacts of the force majeure clause on the supply chain resilience, in the aftermath of the bad effects of the supply chain disruptions and as follows:

### 2.4.1 The obligation of each contracting party to inform the other party of the probability of the occurrence of the force majeure

The force majeure is represented here by the supply chain disruptions, which can obstruct and hinder the enforcement of the supply chain contract, whether it be international or national. And one of the most important effects arising from the force majeure clause is the obligation of each contracting party to inform the other party of the probability of the occurrence of the force majeure. Zaidan, (2023) Therefore, if one of the contracting parties observes or expects the occurrence of any supply chain disruption, which may prevent him from enforcing or performing his contractual obligations, he should inform the other party with the probability of non-performance or non-fulfillment of these obligations. (Younus et al., 2022) This obligation of information can play a considerable role in reducing the damage brought about by the continuous performance of these obligations. It is to be noted that this obligation of information is embodied by a notice or

notification delivered by one of the parties to another, and identifies clearly the type of force majeure or disruption interrupting the supply chain contract (Al-Azzani et al, 2024.).

#### **2.4.2 The mitigation of the effects of the frustration or impossibility of the performance of the contractual obligation due to the force majeure**

This can also be considered as one of the effects arising from the force majeure clause is the mitigation of the effects of the frustration or impossibility of the performance of the contractual obligation due to the force majeure. This means that the function of this clause is to keep the contract going, and maintain it from being terminated abruptly or prematurely. This can be legally realized by a temporary suspension of the contract, until the end of the frustrating supply chain disruption. Then the supply chain contract will resume bringing about its legal effects (Al-Thannon and Al-Rahho,2002.). This mitigating impact of the force majeure clause will preclude the appearance of the most significant effect of the impossibility of the fulfillment of the contractual obligation, that is to say, the spontaneous termination of the supply chain contract by the power or operation of law, besides the discharge of its contractual obligations (Al Hakim, 1963.). This mitigating impact of the clause represents a remarkable exception from the principle of the frustration or impossibility of the performance of the contractual obligation due to the force majeure (Massoudi et al., 2024).

#### **2.4.3 The extension of the period of time awarded to the debtor for the performance of contractual obligations**

This is also considered as one of remarkable impacts brought about by the force majeure clause, since it leads to the extension of the period of time required to perform the contractual obligation, which the frustrating event (unforeseen event) or disruption precluded its fulfillment. This is the reason why this clause is generally known as the extension clause (Mckendrick, 2013).

#### **2.5 The temporary suspension of the supply chain contract due to the force majeure or supply chain disruptions.**

Another effect arising from the force majeure clause is the temporary suspension of the supply chain contract due to the force majeure or a supply chain disruption. This means that the insertion or the incorporation of this clause in the contract will lead to a temporary but not a permanent frustration or impossibility of the performance of the contractual obligation. But the period of time for the suspension of the contract should be reasonable, during which the reason of the supply chain disruption must have disappeared (Al-Ahwani, 2000).

### **2.6 THE RENEGOTIATION AND MODIFICATION OF THE SUPPLY CHAIN CONTRACT**

When unforeseen circumstances take place and prevent one or both parties from fulfilling or performing their contractual obligations. the force majeure clause inserted in supply chain

contracts permits the contracting parties to renegotiate their contract and modify it in order to be consistent with these unforeseen circumstances or supply chain disruptions, whether they be natural disasters, wars, pandemics, political or governmental actions. this form of the force majeure clause may sometimes be referred to as a renegotiating term. if the clause plays this role, it often makes provision for the adjustment or modification of the contract, rather than the complete termination of the contract (atiyah and smith, 2005.). as a consequence, this adjustment or modification of the contract may encompass the allocation of risks or risk-sharing in case of disruptions, and allocates the relevant risk on both the contracting parties (atiyah and smith, 2005.). but the second paragraph of the article (146) of the iraqi civil law vested the judge with the authority of the adjustment or modification of the contract, but did not vest it to the contracting parties (al-sa'adawi and sumaisem, 2017.). the judge is authorized to make use of his discretionary power (hammad, 2016.), to modify the contract by decreasing the debtor's obligations, or increasing the creditor's obligations (al-fadhel, 2006).

### **2.7 The Termination of The Supply Chain Contract**

The force majeure clause can also display a great deal of agility or flexibility shown in the second stage of the supply chain resilience, by terminating the supply chain contract under circumstances which are not tantamount or equivalent to the frustrating events, making impossible the fulfillment of the contractual obligations. These circumstances are usually prevalent in the environment of the labor and production. This means that the scope of the application of the force majeure clause can be extended to terminate the contract under these wide-spread circumstances, under which the doctrine of frustration or impossibility of the fulfillment of the contractual obligations will not originally take effect (Clarke et al, 2017).

## **3. CONCLUSION**

Presents several important insights and integrates the study's findings and recommendations. the force majeure clause is a contractual provision that anticipates unforeseen disruptions and allocates risks through mutual agreement, rather than terminating a contract wholly. supply chain resilience is the capacity to promptly respond to unforeseen disruptions in order to mitigate risks and minimize damage. the supply chain is defined as a system that involves the passage of products, materials, and information from suppliers to customers. article 146 of the iraqi civil law no. 40 of 1951 indirectly refers to force majeure, which are exceptional and unpredictable events. meanwhile, article 211 explicitly mentions the expression. unanticipated disruptions to the supply chain are frequently classified as natural, political, or economic. proactive planning, damage mitigation during disruptions, and post-disruption recovery are all components of supply chain resilience. the

force majeure clause is distinguished by its ability to allocate risks, plan for contingencies, and adapt to disruptions. its substantial effects include the requirement for contracting parties to notify each other of potential disruptions, the mitigation of the effects of frustration or impossibility in contractual performance, the extension of timelines for obligations, the temporary suspension of contracts, and the ability to renegotiate or terminate contracts under specific circumstances. ultimately, the force majeure clause functions as a strategic instrument to guarantee the continuity and adaptability of supply chain contracts in the face of unforeseen obstacles.

### 3.1 LIMITATION

The limitation of this research appears in the specificity related with Iraq Legal system, where it is not possible to generalize the findings among different legal systems. Second, the study has been predominantly focused on empirically untested theoretical legal effects of force majeure provision over supply chain resilience. So it groups the cases in a more generalised fashion but does not elaborate and goes to levels of various industries as well. In addition, the ongoing changing nature of global supply chain risks from events like pandemics or cyber threats has not been covered and as such constrains our ability to apply this study towards current challenges.

### 2.8 DISCUSSION

The literature review investigates the force majeure clause and its function in mitigating risks from disruptive events, thereby improving the resilience of the supply chain. force majeure clauses, which are contractual provisions that adjust obligations rather than terminating contracts, are designed to address unforeseen disruptions, including economic constraints, political instability, or natural disasters. the study emphasizes the Iraqi civil law no. (40) of 1951, which indirectly recognizes force majeure by including provisions for exceptional and unpredictable events. the concept of supply chain resilience is investigated in three phases: proactive planning, damage minimization, and post-disruption recovery. these stages emphasize strategies such as risk evaluation, mitigation, and rapid recovery. furthermore, the force majeure clause's risk-sharing and flexibility features are essential for the management of disruptions, thereby assuring the resilience and contractual agility of supply chain management.

### 3.2 RECOMONDATION

This research underscores the importance of enhancing supply chain resilience by limiting judicial discretion in modifying contracts during abrupt unanticipated local disasters and allowing both parties to renegotiate contract terms on spot after such shocking events. He suggested to amend Article 146 of the

Iraqi Civil Law by adding a force majeure clause that facilitates adjustments in contracts between infringed parties with an equitable and flexible sharing for possible risks and damage. Renegotiation should be stepping number one and if that fails, the court needs to come into settle things out for a fair distribution. Moreover, during disruptions the researcher recommends applying the force majeure clause for suspending temporarily supply chain contracts in order to execute resilience stages and effective proactive plans that will reduce risks and losses. These changes are aimed at promoting adaptability and equity to ensure the lasting, stable functioning of supply chain operations when faced with sudden circumstances.

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