

# The impact of COVID-19 on GCC PPPs: "Change of Law" as a potential relief measure?

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Much like the rest of the world, the Gulf Cooperation Council (GCC) is in uncharted waters with governments of almost all GCC countries imposing lockdowns, travel restrictions and curfews to deal with the COVID-19 pandemic. Bid deadlines for a number of new PPP/IPP/IWP projects (under bid phase) have been extended and operational infrastructure and utility projects are facing or expected to face shortages of labour/materials, restriction in movement of personnel and interruption to supply chains. The impact of one or more of these events probably means that contracting parties will be looking much more closely to "excusable" events under existing contracts (concession/offtake agreements, EPC contracts, O&M contracts etc.) for potential time/cost relief.

Affected parties (usually the sponsor, contractor, engineer, service provider etc.) will typically look for relief under the force majeure provision of the contract for exemption from performance and extension of the project schedule. However, an affected party may only be entitled to relief from performance and time relief, such relief only being available if the affected party can establish causation (i.e. prove that the force majeure event has prevented or hindered it from performance of the relevant obligation) and that it has complied with the procedural requirements for relief under the contract. This may prove difficult in the case of staff or supply shortages as there may be alternative sources (even if more expensive) to perform the relevant obligation. Cost relief is generally not available for (natural) force majeure events, so affected parties would have no relief or would need to rely on insurance (where available).

However, contracting parties may have the benefit of "Change of Law" protection. In the GCC, the scope of change of law under offtake/concession agreements is typically very robust and provides cost and/or time relief to the affected party where a new law has been issued after the date of execution of the relevant contract (or where an existing law, permit or consent in force at the date of execution has been withdrawn, amended, modified or replaced (other than as a result of specified carve-outs)). Although much will depend on the factual circumstances and the scope of the change of law provision in a contract (as well as a compliance with the procedural requirements), project participants should analyse the Change of Law provision vis-à-vis the restrictions imposed and actions taken by the respective GCC governments to overcome the COVID-19 pandemic (which includes issuance of new laws/regulations).

This may be particularly true given the new regulations around flight and travel restrictions and lockdowns being imposed by GCC governments. Such governmental action is likely to have a far-reaching impact on a project due to potential delay in supply of material and labour or ability to access the project site.

As the contractual framework in an infrastructure or utility project can be quite complex, careful legal analysis is required to understand fully the scope, impact and relief offered by a Change of Law provision under a contract. A member of the Dentons Energy, Transport and Infrastructure team would be happy to assist and support you through this challenging time.

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