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Consensual Renegotiation of Contracts in Changed Circumstances: A Comparison of Qatari, Indonesian and Saudi Civil Laws

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Abstract

This paper tackles the issue of contract renegotiation due to changed circumstances that render performance of the obligor's duties excessively onerous. Whereas Article 171(2) of the 2004 Qatar Civil Law (QCL) only acknowledges a judicial apparatus to restore contract equilibrium in changed circumstances (adaptation of contract by court), Article 97 of the 2023 Saudi Civil Transactions Law (SCTL) not only recognizes a judicial solution but also a consensual one (contract renegotiation), while the Indonesian Civil Code (ICC) fails to directly regulate hardship or consensual renegotiation. The main objective of this paper is to show the advantages of consensual renegotiation compared to adaptation of contract by court. The paper adopts descriptive, analytical, and comparative approaches to understand the reasons behind this consensual mechanism in SCTL (and QCL) and how it better serves the contracting parties' interests. The Qatari/Saudi comparison serves as a basis for a proposed reform of the ICC. The conclusion states some important findings

and recommendations. To keep the contract on solid footing and to better salvage the parties' interests, some changes to the Qatari, Indonesian, and Saudi civil laws are proposed. The paper's most significant recommendation is that Article QCL and ICC should expressly adopt the consensual renegotiation apparatus. Additionally, both Article 171(2) QCL and Article 97 SCTL should directly require the obligor to notify the obligee of the changed circumstances and should require the obligee to mitigate the obligor's loss resulting from the changed circumstances. Finally, the ICC should formally adopt hardship and contract renegotiation by the parties.

KEYWORDS *Hardship, Contract Equilibrium, Renegotiation, Contract Adaptation, Termination, Indonesian Civil Law*

Introduction

Transactions law seeks to strike a balance between the principle of sanctity of contract and the protection of the legitimate expectations of the parties to the contract. The will of the parties usually expresses their familiar and expected circumstances, and this expression of will must be preserved as much as possible in light of emerging circumstances by adopting fair solutions that balance the interests of both parties. Otherwise, the contracting parties will be bound against their will, which is a result that does not conform to the principle of autonomy of contractual will.

In Qatar, Saudi Arabia, and Indonesia, the contract is the law of the contractors. Article 171(1) of the 2004 Qatar Civil Law[1] (QCL), Article 94(1) of the 2023 Saudi Civil Transactions Law[2] (SCTL) and Article 1338 of the 1847 Indonesian Civil Code (ICC)[3] acknowledge the binding force of a contract as an aspect of the notion of individual autonomy;[4] the lawfully concluded contract becomes the law of the parties. The contractual economic equilibrium—that is, the balance of the parties' interests embodied in their

[1] An English version of this law is available at: https://www.almeezan.qa/LawPage.aspx?ID=2559&language=en

[2] An English version of this law is available at: https://2u.pw/EHDbVL8P

[3] The ICC was promulgated by publication of April 39, 1847, S.NO.23. See an English version of this law at: https://www.flevin.com/id/lgso/translations/Various/Civil%20Code.pdf

[4] Moulay Zakaria and Ramzi Ali Mehani, "COVID 19 and its Impact on Contractual and Labour Relations in Algeria and Turkey and the Kingdom of Saudi Arabia," *Algerian Journal of Law and Political Sciences* 6, no. 1 (2021): 714.

contract[5]—must be kept (*pacta sunt servanda*). Such a contract is only revocable or alterable by the parties' mutual consent or by a stipulation in the law.

To maintain the balance between the parties' rights and obligations, the obligor—based on the principle of sanctity of contract—is bound to perform its obligation even when an occurrence renders that performance more onerous. It does not matter here that the obligor's profit from the transaction is reduced.[6] Thus, the Qatari Court of Cassation concluded that:

> If the debtor's loss [resulting from changed circumstances] is not considered such as a serious loss, it has no effect on the full performance of its obligations, as the usual loss … is not sufficient in itself to give effect to the provision of changed circumstances.[7]

However, the binding force of contract presupposes the continuity of the circumstances under which the contract was made.[8] An unexpected, supervening event may disrupt the contractual economic equilibrium[9] that the parties have realized through their contract.[10] If the obligor had expected such an event at the time of conclusion, it would not have entered into the contract at all or would have done so under totally different conditions.[11] In the meaning of the German doctrine of "*Wegfall/Störung der Geschäftsgrundlage*," the

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5 Chunyan Ding, "Retaining Contractual Equilibrium through the Doctrine of Change of Circumstances: What Can Be Learned from Chinese Experiences?" *Erasmus Law Review* 3 (2023): 141.

6 Ding, p. 149.

7 Qatar Court of Cassation, Civil Rulings, decision no 335/2021, dated September 29, 2021. https://eastlaws.com/; cf. Egypt Court of Cassation, Civil, Decision no 502, judicial year 39, dated June 9, 1975. https://eastlaws.com/

8 Qatar Court of Cassation, Civil Rulings, decision no 335/2021, dated September 29, 2021. https://eastlaws.com/; cf. Egypt Court of Cassation, Civil, Decision no 502, judicial year 39, dated June 9, 1975. https://eastlaws.com/

9 Natia Chitashvili, "Substantive Legal Prerequisites of Hardship and Scale of Legitimate Intervention of the Court into the Private Autonomy," *Journal of Law (TSU)* 2021, no. 2 (2021): 71.

10 Imene, Zekri, "Contractual Equilibrium Mechanisms in the Implementation Phase of Commercial Contracts: Contract Economics Confronting Contractual Equilibrium," *Journal of Namibian Studies* 40 (2024): 545; Rodrigo Uribe and Álvaro Olivares, "Economic Limits to Contractual Performance: From Hardship to the Excessive Costs of Specific Performance," *Uniform Law Review* 27, no. 1 (2022): 12. https://doi.org/10.1093/ulr/unac004

11 Rodrigo Uribe and Álvaro Olivares, 14; Florin Iulian Sandu, "Brief Comparative Examination of the Understanding of Hardship Theory in Recent Times," *Romanian Arbitration Journal* 15, no. 2 (April–June 2021): 65; Natia Chitashvili, p. 71.

supervening event should have resulted in 'collapse of the basis of transaction.'[12] Obviously, the change in circumstances is not per se considered a hardship; rather, the aftermath of the supervening event is the crucial issue.[13] In these types of cases, a judicial or consensual intervention is required to restore the contract's economic equilibrium.[14] Otherwise, there will be "*injustice or inequality in the contractual relationship between the parties.*"[15]

To protect the aggrieved party[16] by returning the contract's economic equilibrium to its original condition,[17] QCL and SCTL recognize the doctrine of changed circumstances (*rebus sic stantibus*), also known as the hardship doctrine. If the performance of a contractual obligation becomes exhausting (excessively burdensome) due to an unforeseen, exceptional change of circumstances (for example, civil war, military coup, floods, drought, earthquake, new legislation, imposition of currency controls, or a pandemic), the contract may be adapted to the new circumstances. Thus, QCL and SCTL consider the doctrine of changed circumstances to be a limitation on the general rule of the binding force of contract.[18]

In contrast, ICC does not directly acknowledge *rebus sic stantibus* or hardship. Articles 1244 and 1245 ICC only explicitly recognize force majeure. However, Indonesian courts have decided cases of changed circumstances by extending the concept of force majeure to include not only cases of absolute

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[12] Natia Chitashvili, 71.

[13] Seema Deshwal and Dr. Ritu, "Contractual Exemption Theories of Force Majeure and Hardship in International Law," *International Journal of Law Management & Humanities* 5 (2022): 13.

[14] Chunyan Ding, 141.

[15] Zekri Imene, 543.

[16] Imene.; cf. Florin Sandu, 68–69; Lauren Harris, "Frustration in Crisis: How the Spanish Doctrine of Rebus Sic Stantibus Can Inform a Post-Pandemic Reexamination of English Contract Law Approach to Hardship," *Trinity College Law Review* 26 (2023): 50.

[17] Seema Deshwal and Dr. Ritu, 10.

[18] Ndubuisi Nwafor and Chidi Lloyd, "Re-imagining the Doctrines of Hardship and Exemption/Force Majeure under the CISG and UNIDROIT Principles of International Commercial Contracts," *Global Journal of Comparative Law*, no. 8 (2019): 70. See also Jürgen Klowait, "Nachverhandlung(spflicht) bei eskalierten Rahmenbedingungen – Teil 1," *Zeitschrift für Konfliktmanagement* 23, no. 6 (2020): 227.

impossibility but also situations of relative impossibility[19]—that is to say, hardship.[20]

When codifying this doctrine of changed circumstances, Article 171(2) QCL —like many other Arab civil codes[21]—copied Article 147(2) of the 1948 Egyptian Civil Code (ECC) almost word for word. Article 171(2) QCL states that:

> Where … as a result of exceptional and unforeseeable events, the fulfilment of the contractual obligation, though not impossible, becomes excessively onerous in such a way as to threaten the obligor with exorbitant loss, the judge may, according to the circumstances and after taking into consideration the interests of both parties, reduce the excessive obligation to a reasonable level. Any agreement to the contrary shall be void.

Although QCL and other Arab civil codes influenced by Article 147(2) ECC aim at rebalancing the contract's equilibrium,[22] they do not entitle the obligor in cases of changed circumstances to request the start of contract

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[19] Pardomuan Gultom and Rumainur, "Contract Renegotiation Due to the Covid-19 Pandemic from the Hardship Perspective," *Indonesian Journal of Law* 15, no. 1 (2022): 87; Tiurma Allagan, Dinda Himmah, and Tazqia Al-Djufri, "Supervening Events in Indonesian Commercial Contracts and Notes on the UNIDROIT PICC in relation to Covid-19 Health Crisis," *Journal of Central Banking Law and Institutions* 1, no. 2 (2022): 247–248.

[20] Natasya Sugiastuti et al., "Chapter 11: Hardship as a Defense to Non-performance of Contract: Can it be Applied in Indonesian Contract Law?" in *Global Digital Era, Social, Peace & Business Perspectives in Society*, eds. Muhammad Ali Tarar et al. (NCM Publishing House, January 2024); Fikri Skd and Sanusi Sanusi, "Application of Hardship Rule Under the UNIDROIT Principles of International Commercial Contracts in Indonesia," *Student Journal of International Law* 2, no. 1 (2022): 86. doi: 10.24815/sjil.v2i1.21739.

[21] *See*, e.g., Article 148(2) of the 1949 Syrian Civil Law; Article 147(2) of the 1953 Libyan Civil Law; Article 205 of the 1976 Jordanian Civil Law; Article 198 of the 1980 Kuwaiti Civil Law; Article 214 of the 1992 Yamani Civil Law; and Article 130 of the 2001 Bahraini Civil Law.

[22] Egypt Court of Cassation, Civil, Decision no 240, judicial year 27, dated December 20, 1962; Egypt Court of Cassation, Civil, Decision no 263, judicial year 26, dated January 3, 1963; Egypt Court of Cassation, Civil, Decision no 259, judicial year 28, dated March 21, 1963; Egypt Court of Cassation, Civil, Decision no 248, judicial year 30, dated February 18, 1965; Egypt Court of Cassation, Civil, Decision no 413, judicial year 30, dated December 16, 1965; Egypt Court of Cassation, Unpublished Civil Decision no 13739, judicial year 91, dated May 8, 2023; Egypt Court of Cassation, Unpublished Civil Decision no 1348, judicial year 93, dated May 25, 2024. https://eastlaws.com/

renegotiation.[23] The parties are not expressly allowed to agree by mutual consent to adapt the contract with a view to restoring its equilibrium. Rather, these Arab legal texts only acknowledge a judicial mechanism to address changed circumstances, namely contract adaptation by a court.

In addition to the judicial mechanism, SCTL introduces another innovative, extrajudicial remedial apparatus to address changed circumstances. Before resorting to court, Article 97 SCTL entitles the aggrieved party to request renegotiation of the original contract terms in order to adapt them to new circumstances. Obviously, SCTL prefers that the imbalanced contractual economic equilibrium be restored "by party autonomy rather than by judicial intervention."[24]

SCTL applies to national and international contracts, and Article 97 SCTL follows the international practice of contract renegotiation.[25] Because of their huge economic value and long term,[26] the parties normally include a renegotiation phrase in their international contracts.[27] Additionally, some new national legislation (e.g., Article 1195 of the French Civil Code [FCC] as amended in 2016 and Article 533 of the 2020 Chinese Civil Code) and international legal instruments (Article 6.2.3 of the 2016 UNIDROIT Principles on International Commercial Contracts [UNIDROIT Principles or UP] and Article 6-111 of the Principles of European Contract Law) directly adopt this new mechanism to correct changed circumstances. Article 97 SCTL expressly states that:

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[23] Notably, contract renegotiation may be allowed by special legal provisions. For example, Article 86 of the Egyptian Trade Law no 17/1999 permits each party to the technology transfer contract to request after the lapse of five years from the date of its conclusion a reconsideration of its terms by amending them to suit the general existing economic conditions; such party may repeat this request whenever the agreed period has elapsed or five years has elapsed in the absence of such agreement.

[24] Chunyan Ding, 151.

[25] Cf. Wen Sun, "The Renegotiation in Change of Circumstances," *US–China Law Review* 21, no 5 (2024): 181; Peng Guo, "Effects of Hardship under the UNIDROIT Principles: Problems and Solutions," *Vindobona Journal of International Commercial Law and Arbitration* 25, no. 1 (2021): 5.

[26] Daoud Hajaj, "The Renegotiation Clause in International Commercial Contracts: An Attempt to Save the Contract from Cessation," *Revue ISTICHRAF pour les Etudes et les Recherches Juriddigues*, no. 18 (2022): 169–170.

[27] Muhammed M. H. Sakr, "Changed Circumstances and Renegotiations in International Commercial Contracts," *College of Law Menoufia University – Journal of Legal and Economic Research* 3, no. 59 (2024): 343; Halima Bendriss, "Renegotiating Contracts: A Study in light of UNDROIT Principles and National Legislation," *Biskra University, Algeria - Jurisprudence Review* 13, no. 2 (2021): 250.

(1) If as a result of exceptional and general events, that were unforeseeable at the time of conclusion, the fulfilment of the contractual obligation becomes excessively onerous in such a way as to threaten the obligor with exorbitant loss, the obligor—without undue delay—is entitled to request the other party to enter into renegotiations.
(2) The request for renegotiation does not entitle the obligor to withhold performance.
(3) Upon failure to reach agreement within a reasonable time, the court may, according to the circumstances and after taking into consideration the interests of both parties, reduce the excessive obligation to a reasonable level.
(4) Any agreement to the contrary of the provisions of this article shall be void.

In Indonesia, in the absence of a direct provision in the ICC on changed circumstances, some legal writers called for enabling the parties to renegotiate their contracts in cases of changed circumstances. As explored later, some scholars even call for the application of the UNIDROIT Principles next to ICC. Most importantly, some Indonesian courts have referred to Articles 6.2.2 and 6.2.3 UP relating to hardship; besides, Indonesian courts occasionally indicated that parties may renegotiate their contract in changed circumstances cases.

This paper tackles the issue of contract renegotiation due to changed circumstances. The paper examines whether such a remedy is available under QCL and ICC, and if so, under what conditions. Further, the paper explains the reflections of that remedy—expressly adopted by Article 97 SCTL—on the parties' contractual interests.

This paper adopts descriptive, analytical, and comparative approaches. By following a desk research methodology, the paper describes the remedies prescribed by Article 171(2) QCL, Article 97 SCTL, and the ICC (alongside Articles 6.2.2 and 6.2.2 UP) for cases of changed circumstances (hardship). The paper also adopts a legal analysis and comparison of these legal texts to understand the reasons behind their different provisions. The paper scrutinizes a range of documents that include legal texts, academic writings, and court rulings in Qatar, Indonesia, and Saudi Arabia.

Due to the influence of ECC on QCL, particularly Article 171(2), the paper considers Egyptian doctrine and jurisprudence. Similarly, the paper refers to French and international academic writings and judgments because Article 97 SCTL is inspired by the provisions of both Article 1195 FCC and Article

6.2.3 UP and because Indonesian courts occasionally refer to Articles 6.2.2 and 6.2.3 UP.

The paper analyses the two different remedies to address changed circumstances, namely the judicial mechanism and the consensual mechanism. The paper also compares the Qatari, Indonesian, and Saudi legal texts to show the advantages and disadvantages of each mechanism and to define which of them better serves the contracting parties' interests; when necessary, reference is also made to other national and international legal texts, such as the FCC and UNIDROIT Principles. This paper is the first to use the new SCTL consensual mechanism to propose a statutory duty to renegotiate in QCL and ICC.

This paper explains the recognition of the remedy of contract renegotiation, particularly in QCL and ICC. The paper also discusses the conduct of contract renegotiation as well as the consequences thereof, whether in the case of success or failure of such renegotiation. The conclusion states the findings and recommendations.

Renegotiation as a Remedy in Changed Circumstances

Renegotiation in this regard means a dialogue between the contracting parties[28] to meet the unforeseen contingencies that occurred after concluding the contract, with a view to adapting contractual obligations to the extent reasonable to remedy the serious loss suffered by the obligor as a result of those changed circumstances.[29] Renegotiation is based on reciprocal proposals that result in the parties making reciprocal concessions[30] with the aim of reaching a

[28] Pascale Accaoui Lorfing, "The Contractually Unforeseen Renegotiation," *International Business Law Journal*, no. 1 (2010): 36; Pardomuan Gultom and Rumainur, 93; Galuh Kartiko, Andi Indrawan, and Dyah Nurfitriasih, 69.

[29] Zouak Nadjette, "The Theory of Contingent Conditions and Its Applications in International Contracts," *University of Laghouat – Academic Journal for Legal and Political Research* 5, no. 2 (2021): 1479; Hasan A. Kazhem and Fatimeh A. Dahsh, "Mechanism Renegotiate Contract in International Trade," *College of Law Kerbala University – Risalat al-Huquq Journal* 9, no. 1 (2017): 78; Pardomuan Gultom and Rumainur, 93.

[30] Abd-Elkareem S. Abd-Elkareem and Zeiman R. Saed, "Developments in the Theory of Contingencies. Study in light of Legislative Decree No. (131) of 2016 amending French Civil Law with Comparison to Iraqi Civil Law," *College of Law Kerbala University – Risalat al-Huquq Journal* 12, no. 2 (2020): 207.

partial adaptation of the imbalanced contract.[31] Renegotiation enables the parties to preserve their contract.[32]

In the following, we scrutinize to what extent the legislatures in Qatar, Saudi Arabia, and Indonesia open the door for contract renegotiation between the parties as well as the benefits of such renegotiation.

A. Availability of Renegotiation

1. Availability of Renegotiation Under QCL and SCTL

In cases of changed circumstances, Article 171(2) QCL envisages only one remedy to restore the economic contract equilibrium as it existed at the time of contracting, namely contract adaptation by a court. Article 171(2) QCL further invalidates the provisions of any agreement to the contrary.

Under this plain wording, the obligor is not expressly allowed to request renegotiation. Instead, the obligor is allowed to immediately resort to the court to ask for contract adaptation. The obligor may not ask the court to terminate the contract in case of changed circumstances.

Accordingly, at the time of conclusion of the contract or at any later time but before the occurrence of changed circumstances, the parties may not agree to exclude the application of the provisions of Article 171(2) QCL from their contractual relationship;[33] otherwise, a strong obligee would make the disadvantaged obligor bear the entire risk of changed circumstances.[34]

Nonetheless, if an exceptional and unforeseeable circumstance occurs, the parties—based on the assumption that the obligee could not abuse the

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[31] Hasan Kazhem and Fatimeh Dahsh, 82; Accaoui Lorfing, 36, 42. From an equality perspective, the parties shall strike a balance between each of their losses and gains. The obligee must be aware that the profit it is getting comes from the losses suffered by the obligor. For more information, see M. Y. Hage, and P. K. Ningrum, "Corrective Justice and Its Significance on the Private Law," *Journal of Indonesian Legal Studies* 7, no. 1 (2022): 1—30. https://doi.org/10.15294/jils.v7i1.46691

[32] Hasan Kazhem and Fatimeh Dahsh, 77; cf. Pardomuan Gultom and Rumainur, 96.

[33] Gharbi Brahim, "Addressing Bad Conditions in the Implementation of International Trade Contracts in Accordance with Algerian Legislation and International Agreement," *University of Djelfa – Journal of Law and Humanities Sciences* 15, no. 3 (2022): 1059; Abd-Elkareem Abd-Elkareem and Zeiman Saed, 206; Halima Bendriss, 258; Ahmed M. Awad, "The Contractual Rebalancing According to the Theory of Emergency Conditions Between Judicial and Legislative Intervention – A Comparative Study," *Al-Azhar University – Journal of Jurisprudential and Legal Research* 37, no. 1 (2022): 383.

[34] Gharbi Brahim, 1059; Ahmad Awad, 383.

obligor—may renegotiate the original contract terms.[35] In this sense, the Egyptian Court of Cassation has concluded that:

> The text in the last part of Article 147 that "any agreement to the contrary shall be null and void" indicates the invalidity of the agreement in advance to exclude the application of this theory. However, after the occurrence of the supervening event, where there is no suspicion of pressure on the delinquent obligor, the obligor may renounce its right to invoke the application of that theory, which means that the court may not apply this theory without a request [by the obligor].[36]

Renegotiation differs from initial contract negotiation in that the parties know each other and their transaction better.[37] However, both processes are based on willingness. When there are changed circumstances, the obligor and the obligee may adapt their original contract based on the freedom to agree. Under Article 171(1) QCL, a contract may be altered by mutual consent of the parties.

Furthermore, Article 189(1) QCL allows parties to mutually agree to rescind the contract upon its conclusion; in terms of its correlative effects, such agreement shall be deemed to terminate the contract between the contracting parties and create a new contract in favor of third parties (Article 190 QCL). *Afortiore*, after the occurrence of changed circumstances, the contracting parties are allowed to reduce the exceedingly onerous obligation to a reasonable level; the parties can agree to adapt the contract to restore its economic equilibrium.

According to Gharbi Brahim, the parties' agreement on contract adaptation results in a new contract (i.e., novation).[38] However, we argue that the parties'

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[35] Ahmad Awad, 383; Muhammed bin Ali Al-Qarni, "Judicial Jurisprudence to Process Effects of Corona Virus Pandemic to Contracts," *Journal of Umm Al-Qura University for Shari'ah Sciences and Islamic Studies* 83 (2020): 1544.

[36] Egypt Court of Cassation, Civil and Commercial Circuit, Decision no 8714, judicial year 80, dated January 21, 2015. https://eastlaws.com/. *See* also Egypt Court of Cassation, Civil, Decision no 269, judicial year 49, dated January 9, 1984. https://eastlaws.com/

[37] Jeswald Salacuse, "Renegotiating Existing Agreements: How to Deal with Life Struggling Against Form," *Negotiation Journal* 17, no. 4 (2001): 313.

[38] *See* Gharbi Brahim, 1060–1063. Notably, under Article 380 QCL, an obligation may be renewed in three cases: change of the debt, the obligor, or the obligee. The parties may agree to replace the initial obligation by a new and different obligation (change of the debt). The obligee may agree with a third party to replace the original debtor, provided that the original debtor is discharged from liability without its consent; the original obligor may also agree with the obligee to be replaced by a third party as the new obligor (change

new agreement is just an adjustment of the original contract to changed circumstances.

By comparison, Article 97 SCTL expressly entitles the obligor to request renegotiation to adapt the imbalanced contract to changed circumstances. Like Article 171(2) QCL, Article 97(3) SCTL forbids the parties from making any agreement in advance that collides with the provisions stated by the same Article. This provides a weak contracting party (the obligor) with the required protection against the stronger party (the obligee).[39] QCL should follow the SCTL approach and expressly allow parties—in hardship situations—to renegotiate their contract.

2. Availability of Renegotiation Under ICC

Unlike QCC and SCTL, ICC does not include any explicit provision on changed circumstances. However, some scholars opine that Article 1244 ICC (force majeure) covers "the principle of *Rebus Sic Stantibus* or hardship."[40]

In practice, the parties increasingly use hardship clauses in their contracts of high value.[41] The parties to the contract may renegotiate by mutual agreement in accordance with the principle of freedom of contract, which is a fundamental principle of ICC (Article 1338).[42] Contractual terms are legally binding upon parties as long as they are consistent with law and public order.[43] Therefore, a contractual clause permitting consensual renegotiation in the event of hardship is valid and enforceable by courts.

In the absence of a hardship clause, courts may not—due to the lack of a direct legal provision—refuse to decide a case involving changed circumstances. Under Article 5(1) of the Indonesian Law No. 48 of 2009 on Judicial Authority, "judges and constitutional judges are obliged to explore, follow, and understand

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of the obligor). The obligee, the obligor, and a third party may agree to designate such third party as the new obligee (change of the obligee).

39 Ahmed Awad, 420.

40 Tiurma Allagan, Dinda Himmah, and Tazqia Al-Djufri, 247.

41 Allagan, et.al, p., 249.

42 Arvhia Makaarim, Almas Sabrina, and Reza Farhan, "The Principle of Freedom of Contract in Practice: Between the Theory and Reality of Economic Inequality in Indonesia," *Advances in Social Humanities Research* 3, no. 5 (2025): 384.

43 Sudarwanto, A. L. Sentot et al., "Position of Freedom of Contract Principle in Forestry Partnership Policy," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 5 (2021): 9. See also Tarmizi, "The Principle of Consensualism and Freedom of Contract as a Reflection of Morality and Legal Certainty of Contract Laws in Indonesia," *Webology* 17, no. 2 (2020): 336–347. doi: 10.14704/WEB/V17I2/WEB17036

the legal values and sense of justice that lives in society."[44] Courts should thus create the law in hardship situations.

When dealing with changed circumstances, courts typically resort to general contract principles such as good faith,[45] justice, and equity.[46] Article 1338(3) ICC prescribes that contracts shall be executed in good faith; thus, the obligee must understand that the obligor's performance of its part of the contract must be "proper and appropriate"[47] according to the changed circumstances.[48] To restore the balance of the contract, the parties may start renegotiation.[49] According to Rizki Kurniawan and Zakiah Noer, if circumstances change, "the parties may, in good faith, review the agreement or contract, make any necessary modifications, and add new parts."[50]

In addition, Article 1339 ICC makes it clear that the parties are bound not only by the contract terms and clauses but also by "that which, pursuant to the nature of the agreements, shall be imposed by propriety, customs, or the

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[44] Fikri Skd and Sanusi Sanusi, 102.

[45] Pardomuan Gultom and Rumainur, 91; Tiurma Allagan, Dinda Himmah, and Tazqia Al-Djufri, 265; Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, "Force Majeure or Hardship Principle in Termination of Employment During the Covid-19 Pandemic," *SASI* 28, no. 3 (2022): 349. https://doi.org/10.47268/sasi.v28i3.941; Taufiq Adiyanto, "Dealing with Unexpected Circumstances: Judicial Modification of Contract under Indonesian and Dutch Law," *Hasanuddin Law Review* 5, no. 1 (2019): 108. doi: 10.20956/halrev.v5i1.1508.

[46] Akhmad Cahyono, Togi Pangaribuan, and Vivika Raumanen, "A Change of Circumstances and Contract Adjustment: Indonesian Law and Beyond," *Journal of Indonesian Legal Studies* 10, no. 1 (2025): 369. doi: https://doi.org/10.15294/jils.v10i1.1592; Fikri Skd and Sanusi Sanusi, 87; Nanda Rizkia et al., "The Impact of the Covid-19 Pandemic on the Implementation of Commercial Contracts Reviewed in Civil Law," *PAULUS Law Journal* 6, no. 1 (2024): 102; Neneng Nurhasanah, Ahmad Ridwan, and Uus Rustiman, "Force Majeure from the Perspective of Islamic Economic Law: A Critical Review of Shari'ah Banking's Response to COVID-19 in Indonesia," *Manchester Journal of Transnational Islamic Law & Practice* 20, no. 2 (2024): 137–149.

[47] Natasya Sugiastuti et al.; cf. Akhmad Cahyono, Togi Pangaribuan, and Vivika Raumanen, 377–378.

[48] Dian Cahyani, "Hardship Doctrine Regarding Fulfillment of the Performance of an Agreement," *Pena Justisia Media Komunikasi dan Kajian Hukum* 22, no. 1 (2022): 8. doi: 10.31941/pj.v22i3.3615.

[49] Taufiq Adiyanto, 108; cf. Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 355.

[50] Rizki Kurniawan and Zakiah Noer, "A Contract Reviewed from the Perspective of Civil Law in Indonesia May Be Delayed Due to Force Majeure," *Iblam Law Review* 4, no. 1 (2024): 140. doi: 10.52249.

law." Thus, when issues arise in the phase of contract execution, heteronomous factors (like hardship) should apply[51] based on fairness and justice.

Some scholars argue that hardship can be classified as relative (or subjective[52]) force majeure under ICC (Articles 1244 and 1245),[53] a view that has been endorsed by the rulings of some courts. Courts have adjusted domestic contracts based on broad interpretation of force majeure,[54] for example, financial crises, riots, and the COVID-19 pandemic.[55] Courts clearly distinguish between two types of force majeure, namely absolute and relative force majeure. Absolute force majeure entails cases of impossibility. Relative force majeure involves situations of hardship in which the contract can still be carried out, but with a huge burden on the obligor.

For example, in *Putusan PN DENPASAR Nomor 20/Pdt.Sus-PHI/2021/PN Dps*,[56] the litigants disputed the employment relationship. Due to the COVID-19 pandemic, PT Dua Cahaya Anugrah (plaintiff) terminated the employment contracts of 34 workers (defendants). Negotiations were conducted between the parties, but with no success. The plaintiff filed a lawsuit with the Industrial Relations Court at the Denpasar District Court claiming that, inter alia, its employment relationship with the defendants had been terminated due to force majeure. In its decision of February 7, 2022, the Court indicated that the COVID-19 Pandemic, as a non-natural disaster, is equivalent to hardship. The Court considered hardship as a reflection of relative force majeure and applied Articles 1244 and 1245 ICC.[57]

As for international commercial contracts, courts also refer to international instruments like the UNIDROIT Principles. Indonesia has ratified the UNIDROIT Principles through Presidential Regulation No. 59 of 2008

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[51] Natasya Sugiastuti et al., and the reference cited.

[52] Pardomuan Gultom and Rumainur, 83. Taufiq Adiyanto, 103.

[53] *See*, e.g., Natasya Sugiastuti et al.; Tiurma Allagan, Dinda Himmah, and Tazqia Al-Djufri, 265; Rizki Kurniawan and Zakiah Noer, 141; Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 354; Galuh Kartiko, Andi Indrawan, and Dyah Nurfitriasih, 71; Taufiq Adiyanto, 106; Neneng Nurhasanah, Ahmad Ridwan, and Uus Rustiman, 142; Natasya Sugiastuti et al.

[54] Pardomuan Gultom and Rumainur, 87; Tiurma Allagan, Dinda Himmah, and Tazqia Al-Djufri, 247; Fikri Skd and Sanusi Sanusi, 87; Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 349.

[55] *See* cases cited by Akhmad Cahyono, Togi Pangaribuan, and Vivika Raumanen, 369 ff.

[56] *See* Putusan PN DENPASAR Nomor 20/Pdt.Sus-PHI/2021/PN Dps, online at https://putusan3.mahkamahagung.go.id/direktori/putusan/zaec906129227a008a72303931393131.html

[57] Natasya Sugiastuti et al.; Akhmad Cahyono, Togi Pangaribuan, and Vivika Raumanen, 379.

concerning the Ratification of the Statute of the International Institute for the Unification of Private Law (UNIDROIT).[58] Therefore, the UNIDROIT Principles, including the provisions on hardship (Articles 6.2.1 – 6.2.3), may apply in Indonesia.[59]

Fikri Skd and Sanusi Sanusi have concluded that Indonesia has "implicitly adopted the doctrine [of the UP hardship] and applied it in various cases in court."[60] Rizki Kurniawan and Zakiah Noer argue that 'In addition to the requirements included in the Civil Code, Indonesia also accepts the term 'hardship,' which … is expressed in UNIDROIT."[61]

In *Putusan PN DENPASAR Nomor 20/Pdt.Sus-PHI/2021/PN Dps*, the Court—based on the Presidential Regulation No. 59 of 2008—concluded that the UNIDROIT Principles apply alongside the ICC. The Court "recognized the doctrine of hardship with the ratification of UPICC in Indonesian regulations";[62] the Court then examined the existence of hardship according to the criteria stipulated by Article 6.2.2 UP. Because the parties' renegotiation failed to solve the dispute, the Court stated that the contractual relationship between the disputants had terminated in line with Article 6.2.2(d) UP.[63]

During the pandemic of COVID-19, the Indonesian government issued some polices to deal with the pandemic's impacts.[64] For example, Presidential Decree Number 12 of 2020[65] determined the COVID-19 pandemic to be a non-natural national disaster. Some scholars understand this policy as not only

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[58] *See* Republic of Indonesia, *Peraturan Presiden Republik Indonesia Nomor 59 Tahun 2008 Tentang Pengesahan Statute of the International Institute for the Unification of Private Law (Statuta Lembaga Internasional untuk Unifikasi Hukum Perdata)*, online at https://www.regulasip.id/themes/default/resources/js/pdfjs/web/viewer.html?file=/eBooks/2018/October/5bd14c543c46e/Perpres_59_2008.pdf

[59] Ahmad Redi, "Renegotiation of Work Contract and Work Agreement of Coal Mining Undertaking in Indonesia: Legal Aspect of Renegotiation Vs Pacta Sunt Servanda Principle," *SSRN Electronic Journal*, January (2013): 9. DOI: 10.2139/ssrn.2292865, available at: https://ssrn.com/abstract=2292865; Mona Minarosa, "The Principles of International Trade Contract as Reference of Indonesian Contract Law," *European Research Studies Journal*, XXI, no. 2 (2018): 525.

[60] Fikri Skd and Sanusi Sanusi, 103.

[61] Rizki Kurniawan and Zakiah Noer, 145.

[62] Akhmad Cahyono, Togi Pangaribuan, and Vivika Raumanen, 379.

[63] Natasya Sugiastuti et al.

[64] For more details on dealing with the COVID-19 pandemic as a hardship, see: Pardomuan Gultom and Rumainur, "Contract Renegotiation Due to the COVID-19 Pandemic from the Hardship Perspective," *Indonesian Journal of Law* 15, no. 1 (2022): 79–99.

[65] https://www.iccc.or.id/wp-content/uploads/2020/08/Presidential-Decree-No.-12-of-2020-SSEK-Translation.pdf

a basis for the application of force majeure but also as a starting point for renegotiation of business contract terms.[66]

The principle of changed circumstances is recognized as a "general legal principle";[67] the parties are bound by their contract only so far as there are no material changes in the circumstances that prevailed at the time of conclusion of the contract.[68] Parties are thus advised to renegotiate in order to rebalance their contract terms according to the changed circumstances. In all events, the parties are allowed to do so based on the party autonomy principle acknowledged by the ICC.[69]

Despite the opinions of these scholars and the court rulings, Indonesia needs direct, clear legal provisions on hardship. To provide legal certainty, ICC should be reformed to include provisions on the definition, conditions, and legal consequences of changed circumstances. Like UP and SCTL, ICC should specifically allow parties to renegotiate their contracts in cases of changed circumstances.

Consensual renegotiation is certainly a common practice in hardship cases.[70] The requirements of justice, cooperation between the parties, and good faith call for consensual renegotiation under QCL, SCTL, and ICC. This is entirely in line with the principle of party autonomy.[71] However, the QCL and ICC should include explicit provisions on consensual renegotiation to achieve legal certainty.

B. Advantages of Renegotiation

Contract renegotiation is a flexible mechanism to meet changed circumstances.[72] The parties may agree to the adaptation or even termination of their contract when it is rendered extremely onerous by a change in circumstances.

When compared with contract adaptation by court, contract renegotiation in changed circumstances keeps the control of the adaptation result in the hands of the obligor and the obligee.[73] Instead of giving the court the authority to

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66 Pardomuan Gultom and Rumainur, 81, and the reference cited. Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 354.

67 Gultom and Rumainur., 92.

68 Gultom and Rumainur.

69 Tiurma Allagan, Dinda Himmah, and Tazqia Al-Djufri, 257.

70 Ahmad Redi, 5.

71 Natia Chitashvili, 94; Pardomuan Gultom and Rumainur, 91.

72 Halima Bendriss, 261; Wen Sun, 187.

73 Ingeborg Schwenzer and Edgardo Muñoz, "Duty to Re-negotiate and Contract Adaptation in Case of Hardship," *Internationales Handelsrecht* 20, no. 4 (2020): 161;

rewrite the contract under such circumstances,[74] the parties may, through renegotiation, adapt or even terminate their contract according to their own interests.

Renegotiations are an extension of the principle of private autonomy.[75] By successful renegotiation, the parties will preserve their contract[76] and maintain trust.[77] The parties will also save a lot of the time that a court normally consumes in adapting an imbalanced contract.[78] In addition, from an economic perspective, contract renegotiations are considered the most suitable mechanism to meet changed circumstances.[79] Renegotiation allows both parties to easily protect their contractual interests.[80] Compared with court, the parties are in a better position to safeguard their own contractual benefits.[81] Renegotiation enables the parties to reach a friendly agreement; thus, the parties will maintain their good contractual relationship.[82]

Conduct of Renegotiation

Whether at the request for, as the response to, or in the conduct of renegotiation, contract renegotiation in changed circumstances is based on the general principle of good faith.[83] This principle is well-acknowledged in Qatar,

Muhammed Sakr, 351; Sergio García Long, "The Influence of the Italian Model of Hardship in Latin America and International Trade (with some Notes from Social Sciences)," *Uniform Law Review* 28, no. 1 (2023): 76. https://doi.org/10.1093/ulr/unad015.

74 Jorge Arturo Gonzalez, "The Hardship Provisions of the UNIDRIT Principles as an Instrument for Post-COVID Economic Recovery," *European Journal of Commercial Contract Law* 13, no. 1 (May 2021): 4.

75 Wen Sun, 186; Pardomuan Gultom and Rumainur, 87; cf. Lauren Harris, 48.

76 Accaoui Lorfing, 35; Rodrigo Uribe and Álvaro Olivares, 15; Redi, 5; cf. Pardomuan Gultom and Rumainur, 96.

77 Pardomuan Gultom and Rumainur, 96.

78 Ingeborg Schwenzer and Edgardo Muñoz, 168; Mark Giancaspro, "The Rule for Contractual Renegotiation: A Call for Change," *University of Western Australia Law Review* 37, no. 2 (2014): 30; Sergio Long, 76; Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 351; Pardomuan Gultom and Rumainur, 96.

79 Halima Bendriss, 260; Jeswald Salacuse, 327.

80 Mark Giancaspro, 30; Pardomuan Gultom and Rumainur, 96.

81 Jorge Gonzalez, 2.

82 Zouak Nadjette, *Id*, 1478; Pardomuan Gultom and Rumainur, 93.

83 Ingeborg Schwenzer and Edgardo Muñoz, 160; Galuh Kartiko, Andi Indrawan, and Dyah Nurfitriasih, "Juridic Aspects of Contract Renegotiation During the Covid-19 Pandemic as an Effort to Mitigate Risk and Loss in Business Activities," *Kontigensi: Scientific Journal of Management* 10, no. 1 (June 2022): 73; Abd-Elkareem Abd-Elkareem and Zeiman Saed, 207; Alaa-Eddin El-Khasawneh, "Legal Aspects of the Obligation to Renegotiate

Saudi Arabia, and the ICC. Article 172(1) QCL, Article 95(1) SCTL, and Article 1338(3) ICC require the contract to be performed in such manner consistent with the requirements of good faith. To put it in the words of Pascale Lorfing, "*When the conditions for a contract's renegotiation are met, its application implies the respect of the requirements of good faith contractual execution.*"[84] According to Planiol and Ripert, "*if the good faith obliges not to betray the other party, it obliges also not to take advantage from him, if the unforeseen circumstances make this contract something totally different to what they agreed upon.*"[85]

In its Decision No. 3087/K/Pdt/2001 w of February 19, 2007 (*Pt Jawa Barat Indah Vs. Suherman Dermawan*),[86] the Indonesian Supreme Court indicated that the 1997–1998 monetary crisis can be treated as relative force majeure. According to Tiurma Allagan, Dinda Himmah, and Tazqia Al-Djufri, renegotiation between the parties was therefore possible based on the principles of party autonomy and good faith.[87]

Because both negotiation and renegotiation are based on the parties' willingness, the provisions of negotiation preceding the contract conclusion apply to contract renegotiation.[88] As for contract negotiations, Article 41 SCTL expressly states that:

1) Contract negotiations may not oblige the parties to conclude the contract; however, a party who negotiates or breaks off negotiations in bad faith shall be liable for any loss caused to the other party, excluding the expected

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and Review of Contracts (A Study in French and Jordanian laws (UNIDROIT Principles of International Commercial Contracts and Principles of European Contract Law)," *Kuwait University – Journal of Law* 38, no. 1 (2014): 635, 654; Halima Bendriss, 256; Husam-Eddin Hasan, "The Renegotiation Clause as a Rebalancing Mechanism in Investment Contracts," *College of Law Mansoura University – Journal of Legal and Economic Research* 62 (2022): 107; UNIDROIT, "Official Commentary Article 6.2.3 Comment no 5," in the 2016 UNIDROIT Principles of International Commercial Contracts. https://www.unilex.info/principles/text; cf. Wang, Lu Lan, "Force Majeure, the Principle of Change of Circumstances, and the Doctrine of Frustration during the COVID-19 Pandemic: The Case of Commercial Leases and Judicial Responses in China and New Zealand," *Peking University Law Journal* 11, no. 3 (2024): 206; Sergio Long, 76.

[84] Accaoui Lorfing, 36.

[85] V. M. Planiol and G. Ripert, *Traitd pratique de droit civil franpais*, t. 6, (Paris, LGDJ 1930), p. 554, cited in Accaoui Lorfing, 37.

[86] *See* Putusan Mahkamah Agung Nomor 3087 K/PDT/2001 Tahun 2001, online at https://www.hukumonline.com/pusatdata/detail/pts243cff6b74d6fcb5f7660e265e5bffa4/putusan-mahkamah-agung-nomor-3087-k-pdt-2001-tahun-2001/

[87] Tiurma Allagan, Dinda Himmah, and Tazqia Al-Djufri, 248.

[88] Mark Giancaspro, 6.

profit which would have resulted had the contract under negotiation been concluded.

2) Entering bargaining with no intention of reaching an agreement, as well as the deliberate non-disclosure of any material term of the contract, shall be deemed acts that constitute bad faith.

In Qatar and Indonesia, negotiations preceding the contract conclusion are also subject to the requirement of good faith.[89] In addition, the provisions of the UNIDROIT Principles may apply to international commercial contracts adjudicated by Indonesian courts.[90] In particular, Article 2.1.15 UP includes provisions similar to the provisions of Article 41 SCTL.

Based on the principle of good faith, the obligor should notify the obligee of changed circumstances and should request the start of renegotiation to rebalance the contract.[91] For its part, the obligee should take all reasonable measures to mitigate the loss resulting from changed circumstances.[92]

A. Request for Renegotiation

Contract renegotiation starts with a request from either party, normally the obligor; it is in the obligor's own interest to give notice to the obligee of the change in circumstances. In all events, the obligor's request to start contract renegotiation should be made "without undue delay" and should indicate the grounds for renegotiation.

1. Request for Renegotiation: A Privilege of the Obligor?

Changed circumstances radically disturb a contract's equivalence;[93] thus, at least one party needs adaptation of the contract to the new circumstances.[94]

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[89] For more information, see Amin Dawwas, "Precontractual Liability under the New Saudi Civil Transactions Law: A Comparative Study," *Journal of Law and Sustainable Development* 13, no. 1 (2025): 1–28; Rizky Dewanti, Pujiyono, and Yudho Muryanto, "The Implementation of Good Faith Principle of Precontract in Common Law and Civil Law Country," *International Journal of Law* 7, no. 4 (2021): 225–228. doi: https://doi.org/10.33448/rsd-v10i16.23621; Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 355.

[90] Deddy Effendy, Chicha Chairunnisa, and Cucu Yanti, 10; Ahmad Redi, 9; Mona Minarosa, 525.

[91] Muhammed Sakr, 367; Accaoui Lorfing, 45.

[92] Daoud Hajaj, 182; Accaoui Lorfing, 38, 45, 47–51.

[93] Qatar Court of Cassation, Civil Rulings, decision no 335/2021, dated September 29, 2021. https://eastlaws.com/ (changed circumstances disturb the supposed balance between the obligations of the parties and their rights).

[94] Jürgen Klowait, 224.

Under Article 171(2) QCL, the obligor is allowed to request contract renegotiation with the aim of rebalancing the contract. Accordingly, contract renegotiation should qualify as a privilege of the obligor.

In light of the requirements of the principle of good faith (Article 1338(3) ICC)[95] as well as the need to harmonize Indonesian domestic law with international standards,[96] Articles 6.2.1–Article6.2.3 UP on hardship may apply in Indonesia;[97] the obligor may request contract renegotiation[98] in international as well as in domestic contracts.[99] Deddy Effendy, Chicha Chairunnisa, and Cucu Yanti have stated that:

> Indonesia is also subject to the substance in UNIDROIT, one of which is the hardship principle in international contracts. The principle is expected to provide convenience and solutions to the parties if they experience a difficult obstacle in fulfilling or completing achievements in international contracts.[100]

Rizki Kurniawan and Zakiah Noer have stated that "the principles of contract law developed by this organization [i.e., UNIDROIT] may be applied in Indonesia, specifically in Articles 6.2.2 and 7.1.7 Unification du droit private."[101] Furthemore, in the first place, Article 97(1) SCTL entitles the obligor to request the obligee to enter into renegotiation of the original terms of the contract with a view to adapting them to changed circumstances. It expressly states that "… the obligor—without undue delay—is entitled to request the other party to enter into renegotiations." Again, this means that the obligor is privileged to request contract renegotiation in changed circumstances.[102]

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[95] Deddy Effendy, Chicha Chairunnisa, and Cucu Yanti, "Application of Unidroit Hardship Principles to Renegotiate International Contracts Due to COVID-19," Hammurabi Code: Journal of Law and Human Rights 1, no. 1 (September, 2024): 9. doi: https://doi.org/10.58905/xxxx.xxxx.x

[96] Tiurma Allagan, Dinda Himmah, and Tazqia Al-Djufri, 255.

[97] Ahmad Redi, 9; Mona Minarosa, 525; Akhmad Cahyono, Togi Pangaribuan, and Vivika Raumanen, 359–360.

[98] Rizki Kurniawan and Zakiah Noer, 145; Deddy Effendy, Chicha Chairunnisa, and Cucu Yanti, 9.

[99] Deddy Effendy, Chicha Chairunnisa, and Cucu Yanti, 10.

[100] Effendy, et.al., 7.

[101] Rizki Kurniawan and Zakiah Noer, 145.

[102] Adnan Sarhan, "The Mechanism for Emergency Conditions in the New French Contract Law," *UAEU Journal of Sharia and Law* 36, no. 90 (2022): 41; Wen Sun, 183.

However, taking into consideration the clear wording of Article 97(3) SCTL[103] and Article 6.2.3(3) (applicable to Indonesia) as well as the requirements of the good faith principle acknowledged in all jurisdictions under consideration here, the obligor's request to renegotiate the contract terms is a prerequisite for court intervention.[104] The obligor should first initiate the contract renegotiation process; renegotiation "shall be carried out by deliberation as far as possible to avoid settlement through the courts."[105] The obligor may only resort to the court when such renegotiation fails.[106]

2. Notice of Changed Circumstances

Article 97(1) SCTL does not expressly state that a notice of the change in circumstances should be given by the obligor to the obligee. QCL (Article 171(2)) and ICC do not include a direct provision on contract renegotiation or on the notice of the circumstances that destroyed the contract equilibrium. However, the duty to give such notice[107] is based on the principle of good faith[108] that requires cooperation between the parties;[109] the notice can be viewed as the first appearance of the parties' cooperation.[110] According to Pascale Lorfing, "*It is a permanent cooperation that supposes an active behaviour illustrated by the obligation to inform of every event which could be an obstacle to the good execution of the contract.*"[111]

Generally, the notice precedes the obligor's request for contract renegotiation. If not, the request should include the notice by the obligor to the obligee of the change in circumstances.[112] Article 6.2.3(1) UP (applicable to Indonesia) states that "The request [for renegotiation] … shall indicate the grounds on which it is based."

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[103] Article 97(3) SCTL states that 'Upon failure to reach agreement within a reasonable time, the court may …."

[104] Muhammed Sakr, 350; cf. Sergio Long, 76.

[105] Pardomuan Gultom and Rumainur, 94.

[106] Adnan Sarhan, 42; Daoud Hajaj, 178.

[107] Dian Cahyani, 11.

[108] Halima Bendriss, 255; Abd-Errahim El-Salmani, "The Renegotiation Clause in International Commercial Contracts," *Revue de Droit Commercial* 5, no. 6 (2019): 111; Ndubuisi Nwafor and Chidi Lloyd, 72–73; Pardomuan Gultom and Rumainur, 89.

[109] Hasan Kazhem and Fatimeh Dahsh, 96; Abd-Errahim El-Salmani, 110; Accaoui Lorfing, 38, 40–42; Pardomuan Gultom and Rumainur, 93; Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 352.

[110] Muhammed Sakr, 367; Pardomuan Gultom and Rumainur, 94.

[111] Accaoui Lorfing, 45.

[112] Muhammed Sakr, 366; Husam-Eddin Hasan, 107.

The request to renegotiate the original contract terms may be made in any form[113] and by any means.[114] This notification by the obligor to the obligee of the change in circumstances may be made orally or in writing. It may be made via an official warning or by registered letter with acknowledgement of receipt. It may also be effectuated by a cable, telex, fax, or any other quick communication method (e.g., email).[115]

Since the onus of the establishment of such notice is on the shoulders of the obligor, the obligor—to ease establishment of this notice—is advised to make it in writing.[116] Based on the importance of this notice, the legislatures in Qatar, Saudi Arabia, and Indonesia are advised to expressly stipulate that an obligor alleging the occurrence of an event that renders performance of its obligation excessively onerous shall without delay notify the obligee in writing. The request to renegotiate (the notice) initiates the obligee's duty to mitigate the loss resulting from the changed circumstances.[117] In addition, it declares the start of the contract renegotiation process. Only after such notice has been given can the obligee consider entrance into contract renegotiation with the obligor.

3. Request for Renegotiation "Without Undue Delay"

Under Article 97(1) SCTL and Article 6.2.3(1) UP (applicable to Indonesia), a request for contract renegotiation shall be made "without undue delay." This is in line with the requirements of good faith[118] in QCL, SCTL, and ICC. Upon the occurrence of a supervening event, the obligor should request the obligee to renegotiate the contract as quickly as possible,[119] that is, "at the earliest possible opportunity."[120] To decide whether or not the request for renegotiation is made within the correct time, all conditions surrounding the case shall be taken into consideration.[121]

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[113] Adnan Sarhan, 39; Muhammed Sakr, 350.
[114] Muhammed Sakr, 367.
[115] Halima Bendriss, 255.
[116] Cf. Pardomuan Gultom and Rumainur, 94.
[117] Accaoui Lorfing, 49.
[118] Ndubuisi Nwafor and Chidi Lloyd, 75–76; Pardomuan Gultom and Rumainur, 89.
[119] Official Commentary, Article 6.2.3, Comment no 2; Peng Guo, 17; Dian Cahyani, 11; cf. Pardomuan Gultom and Rumainur, 94.
[120] Ewan McKendrick, "Hardship (Articles 6.2.1 – 6.2.3)," in *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC), 2nd ed.*, edited by Stefan Vogenauer (Oxford University Press, 2015): 819–820.
[121] Muhammed Sakr, 368.

For instance, the term of the contract will affect the time of the request for renegotiation. If the contract has a long period of time, greater latitude may be given to the obligor in comparison to contracts of shorter duration.[122] Likewise, the nature of the event shall be considered. If the event is of an unfolding nature that develops over time, more latitude may be given to the obligor.[123]

Nevertheless, the obligor might not lose its right to request renegotiation should it fail to act without undue delay upon the occurrence of the event.[124] But any delay in requesting renegotiation may affect the determination of the existence of a changed circumstances situation and its consequences for the contract at issue.[125]

Under the QCL, SCTL, and ICC general rules, a delay in requesting renegotiation may also result in the obligor's civil liability. The obligee may ask for redress of any loss caused by the obligor's failure to request contract renegotiation in due time.[126] However, if the changed circumstances alleged by the obligor are so obvious (as with the COVID-19 pandemic), the obligor—based on the requirements of the good faith principle—should be relieved from such liability for damages.[127]

4. Indication of the Grounds for the Request for Renegotiation

As with the notice, QCL (Article 171(2)), SCTL (Article 97(1)) and ICC do not expressly obligate the obligor to indicate the grounds on which its request for renegotiation is based.[128] However, the requirements of the principle of good faith require the obligor to do so.[129] In addition, Article 6.2.2(1) UP (applicable to Indonesia) expressly requires that the request include causes for renegotiation.

The notice of changed circumstances should indicate the reasons it is excessively onerous for the obligor to perform—that is, indicate the reasons performance of the obligation in the original form threatens the obligor with

[122] Ewan Mckendrick, 820.
[123] Ewan Mckendrick, 820; Official Commentary, Article 6.2.3, Comment no. 2.
[124] Official Commentary, Article 6.2.3, Comment no. 2.
[125] Official Commentary, Article 6.2.3, Comment no. 2; Peng Guo, 17.
[126] Muhammed Sakr, 369.
[127] Sakr.
[128] In contrast, Article 6-2-3(1) of UNIDROIT Principles 2016 expressly provides so.
[129] Hasan Kazhem and Fatimeh Dahsh, 96.

exorbitant loss.[130] This would enable the obligee to better assess whether the request for renegotiation is justified.[131]

This notice may also contain the procedures the obligor suggests for addressing the changed circumstances[132] as well as the legal consequences of the obligee's refusal to renegotiate within a reasonable period of time.[133] By virtue of such notice, the obligee will enter into renegotiation with knowledge of the new circumstances surrounding the contract.[134]

Under Article 41 SCTL and Article 2.1.15 UP (applicable to Indonesia), the obligor should provide the obligee with all information necessary[135] for it to determine whether the obligor is really entitled to request renegotiation of the contract. The parties should cooperate with each other.[136] If the obligor's request fails to provide some information, the obligee may ask for it. The obligor shall give such additional information "without undue delay."[137]

An ungrounded request for renegotiation shall be considered as not being made within the required time. However, obvious grounds for the alleged change in circumstances need not be stated in the request to renegotiate the original contract.[138] A failure by the obligor to indicate the grounds on which its request for renegotiation is based may affect the determination of the existence of a case of changed circumstances[139] and its consequences for the contract.[140] The court may order the obligor to perform its (exceedingly burdensome) obligation without any change.[141]

B. Response to Renegotiation Request

The obligee generally responds to the obligor's request for contract renegotiation; otherwise, the obligee would be met with legal consequences. Upon such a request from the obligor, the obligee bears the duty to mitigate the obligor's serious loss resulting from the changed circumstances.

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[130] Kazhem and Dahsh. *See also* Abd-Elkareem Abd-Elkareem and Zeiman Saed, 207.
[131] Official Commentary, Article 6.2.3, Comment no. 2; Peng Guo, 18.
[132] Muhammed Sakr, 365; Alaa-Eddin El-Khasawneh, 651; Jürgen Klowait, 227; Pardomuan Gultom and Rumainur, 94.
[133] Adnan Sarhan, 42.
[134] Hasan Kazhem and Fatimeh Dahsh, 96. Abd-Errahim El-Salmani, 110.
[135] Abd-Errahim El-Salmani, 111.
[136] Hasan Kazhem and Fatimeh Dahsh, 96; Daoud Hajaj, 185; Jeswald Salacuse, 324; cf. Pardomuan Gultom and Rumainur, 95.
[137] Ewan Mckendrick, 820; cf. Peng Guo, 18.
[138] Hasan Kazhem and Fatimeh Dahsh, 100.
[139] Peng Guo, 18.
[140] Official Commentary, Article 6.2.3.
[141] Peng Guo, 18.

1. Response to Renegotiation Request: A Duty of the Obligee?

QCL (Article 171(2)), SCTL (Article 97), and ICC do not expressly oblige the obligee to respond to the request for contract renegotiation. Thus, some legal writers believe that the obligee may accept or reject the obligor's request for renegotiation without being held liable.[142] However, based on the general principles of good faith and cooperation between parties,[143] the obligee must—as soon as possible[144]—positively react to a well-grounded request,[145] unless it has a good excuse not to do so.

Conversely, insistence by the obligee on performance of the original contract collides with the requirements of good faith.[146] By doing so, the obligee abuses its right to require performance.[147] In this context, Dian Cahyani has stated that:

> the principle of justice demands that the contract be renewed or terminated fairly, rather than forcing the parties to remain in compliance with a contract that is no longer in accordance with their basic assumptions when they originally entered into the agreement.[148]

Fikri Skd and Sanusi Sanusi argue that "*if one of the parties refuses to restore the balance of the contract due to a change in the fundamental circumstances, the refusal can be said to be contrary to justice.*"[149] The principle of *exceptio non adimpleti conctractus* is known in all jurisdictions at issue. Article 191 QCL and Article 114 SCTL expressly adopt this principle and make it applicable to all bilateral contracts. Based on Article 1478 ICC, which adopts this principle

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[142] Adnan Sarhan, 41; Jeswald Salacuse, 321.

[143] Official Commentary, Article 6.2.3; Natia Chitashvili, 94. Pardomuan Gultom and Rumainur, 96.

[144] Muhammed Sakr, 379; Abd-Elkareem Abd-Elkareem and Zeiman Saed, 208; Pardomuan Gultom and Rumainur, 96.

[145] Abd-Elkareem S. Abd-Elkareem and Zeiman R. Saed, 208, 212; Wen Sun, 182; cf. Akhmad Cahyono, Togi Pangaribuan, and Vivika Raumanen, 371.

[146] Wen Sun, 187; Rizkia, 102.

[147] Wen Sun, 187; Jorge Gonzalez, 5; Florin Sandu, 64; Dian Cahyani, 7.

[148] Dian Cahyani, 6.

[149] Fikri Skd and Sanusi Sanusi, 102. See also Pardomuan Gultom and Rumainur, 91.

concerning sale contracts, and Article 7.1.3 UP (withholding performance), courts in Indonesia acknowledge the application of same.[150]

Thus, the refusal by the obligee to enter into renegotiation enables the obligor to decline to perform its obligation until the obligee performs its own contractual responsibilities.[151] The obligor will resort to the court to adapt the contract to meet this refusal by the obligee to renegotiate.[152] Should the obligor perform its excessively onerous obligation, the obligor may ask for compensation. Such compensation includes the difference between the agreed-upon performance and the performance rendered excessively onerous by changed circumstances.[153]

2. Obligee's Duty to Mitigate the Obligor's Serious Loss

Upon notice by the obligor to the obligee of changed circumstances, the latter should take all reasonable measures to mitigate the former's serious loss resulting from these new circumstances.[154] Although QCL (Article 171(2)), SCTL (Article 97), and ICC do not expressly oblige the obligee to mitigate the loss, the obligee must cooperate with the obligor.[155] To preserve the contract and to keep a good relationship with the obligor,[156] the obligee should do everything possible to prevent an increase in the obligor's liability for damages resulting from its nonperformance.[157]

Article 7.4.8 UP (applicable to Indonesia) expressly requires the obligee to mitigate harm. In addition, Articles 1239–1252 ICC allow the obligee to request compensation for direct costs, losses, and interests resulting from the

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[150] Yeni Triana, Tri Putra, and M. Yusuf, "Enhancing Legal Safeguards in Bankruptcy: The Role of Exceptio Non Adimpleti Contractus in Balancing Creditor–Debtor Relations," *Journal of Ecohumanism* 3, no. 8 (2024): 3148–3155. doi: 10.62754/joe.v3i8.5805. See also Rafly Inzaghia, Prita Amaliab, and Purnama Trisnamansyah, "Action that Can be Taken by the Parties as a Result of Differences in the Right to Suspend Performance Regulated in CISG 1980 and Indonesia Contract Law," *Jurnal Poros Hukum Padjadjaran* 5, no. 2 (2024): 248–268.

[151] Muhammed Sakr, 381.

[152] Adnan Sarhan, 47; Peng Guo, 19.

[153] Muhammed Sakr, 381.

[154] Alaa-Eddin El-Khasawneh, 655.

[155] Alaa-Eddin El-Khasawneh, 655; Accaoui Lorfing, 48; Pardomuan Gultom and Rumainur, 95.

[156] Pardomuan Gultom and Rumainur, 95.

[157] Muhammed Sakr, 371.

obligor's default.[158] Under Article 263 QCL, as well as under Articles 80 and 137 SCTL, the amount of damages includes all direct losses suffered by the obligee.

To be direct, the loss must be a natural consequence of the obligor's failure to perform its obligation. Such loss shall be considered a natural consequence if the obligee is not able to avoid it by making the effort that a reasonable person in the same conditions would normally make. Accordingly, any loss the obligee could have avoided by taking reasonable steps should be an indirect, non-compensable loss.

The reasonable measures to mitigate losses vary according to the conditions surrounding the related contract, including the nature of the obligee (whether a professional or not).[159] Such measures may include an acceptance by the obligee to pay a higher price, to change the place in which the obligor has to perform its obligation, to preserve the sold goods, or to make a replacement transaction. All reasonable costs incurred by the obligee when taking reasonable measures to mitigate losses should be reimbursed. Based on the requirements of the good faith principle, the obligor—the one who benefited from such measures by the reduction of its liability in damages—should eventually endure such costs.[160]

3. Conduct of Renegotiation

Renegotiation must be conducted in good faith.[161] Although QCL (Article 171(2)), ICC, and SCTL (Article 97) do not expressly state this, the requirements of the good faith principle should guide not only the obligor's request for contract renegotiation and the obligee's response to such request but also both parties' conduct during the contract renegotiation.

Article 41 SCTL and Article 2.1.15 UP (applicable to Indonesia) directly require contract negotiation to be made in good faith. It makes no difference whether parties negotiate the entire original contract or they renegotiate some terms of that contract to restore its equilibrium. The parties' renegotiation to adapt the original contract to changed circumstances shall be dealt with as a negotiation to adapt the parties' original contract.

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[158] *See* Evan Rahmandito et al., "Legal Review of Court Decision Number 26/Pdt.G/2024/Pn Sbr: Case Study of Default in Contract Agreement," *Journal of World Science* 4, no. 1 (January 2025): 1731–1736.

[159] Muhammed Sakr, 373.

[160] Sakr., 374.

[161] Pardomuan Gultom and Rumainur, 95.

The principle of good faith includes, *inter alia*, the duty of cooperation between the parties. Accordingly, the obligor must only request contract renegotiation when circumstances have actually changed;[162] it may not request renegotiation as a purely tactical maneuver.[163] Equally, once contract renegotiation has been requested by the obligor, the obligee must react honestly. The obligee should accept any well-grounded request for renegotiation.

Further, to materialize the basic aim of contract renegotiation—namely adaptation of the contract to changed circumstances—the obligor and the obligee must conduct such renegotiation in a constructive manner.[164] In particular, they should refrain from any form of obstruction.[165] Both parties must do everything possible to continue renegotiation:[166] Each party should be committed to the renegotiation sessions; it should also take the other party's proposals seriously.[167]

C. Consequences of Conducting Renegotiation: No Right to Withhold Performance

Article 97(2) SCTL states that "The request for renegotiation does not entitle the obligor to withhold performance." In line with Article 1195 FCL, Article 97(2) SCTL requires the obligor, in all events, to continue to perform its obligations during contract renegotiation. Changed circumstances presuppose that although performance of the obligor's obligation has become excessively onerous, it is still achievable. Should this performance be rendered impossible, then this will qualify as a case of force majeure in which the obligor is relieved from performing its obligation.[168]

Under Article 97(2) SCTL, it does not matter how long such renegotiation would last[169] or how extraordinary the changed circumstance would be. This

[162] Official Commentary, Article 6.2.3; Peng Guo, 19.

[163] Abd-Errahim El-Salmani, 111–112; Peng Guo, 19; cf. Pardomuan Gultom and Rumainur, 95.

[164] Official Commentary, Article 6.2.3; Amin Dawwas, 14.

[165] Official Commentary, Article 6.2.3; Peng Guo, 19.

[166] Amin Dawwas, 14.

[167] Alaa-Eddin El-Khasawneh, 654.

[168] M. Muskibah, Y. Yetniwati, S. Sasmiar, and A. M. Holish, "Force Majeure During COVID-19 Outbreaks: Case of the Cancellation and Termination of Government Construction Contracts," *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 135. https://doi.org/10.15294/jils.v8i1.68937; Fikri Skd and Sanusi Sanusi, 94–95.

[169] Abd-Elkareem Abd-Elkareem and Zeiman Saed, 208.

legal provision aims at safeguarding the binding force of contract;[170] it prevents dilatory claims that delay performance.[171]

In contrast, under Article 6-2-3(2) UP (applicable to Indonesia), the request for renegotiation does not in itself entitle the obligor to withhold performance. This only means that the entitlement of the obligor to withhold performance does not follow from making the request for renegotiation.[172] However, the obligor may be entitled to do so based on other reasons. For instance, if the consequences of the occurrence are sufficiently extraordinary, the obligor may withhold performance of its part of the contract.[173]

Thus, consensual renegotiation as a remedy for changed circumstances may generally be invoked even when the obligor has performed its obligation. However, under QCL, ICC, and SCTL, the obligor that performs its obligation without invoking any remedy for the changed circumstances, including contract renegotiation, is most likely assuming the risk that the requirements of the doctrine of changed circumstances are not met.[174] Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli argue that:

> If the debtor does not submit a request for renegotiation (keep silent), or the creditor has asked for clarification regarding the late fulfillment of achievements, but the debtor does not respond, then the debtor is considered capable of carrying out the fulfillment of achievements.[175]

In this sense, the Egyptian Court of Cassation clearly indicated that:

> The meaning of the text of Article 147(2) ECC is that the theory of changed circumstances only applies to the obligation, or any part of it, that has not yet been performed. In contrast, what was performed before the changed circumstances expires by the way of fulfilment; this should not subject to the provisions of changed circumstance.[176]

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[170] Abd-Elkareem Abd-Elkareem and Zeiman Saed, 208; Muhammed Sakr, 351.
[171] Adnan Sarhan, 39; Husam-Eddin Hasan, 154.
[172] Ewan Mckendrick, 820.
[173] Official Commentary, Article 6.2.3; Ewan Mckendrick, 820; Seema Deshwal and Dr. Ritu, 13; Florin Sandu, 64.
[174] Ingeborg Schwenzer and Edgardo Muñoz, 170.
[175] Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 354.
[176] Egypt Court of Cassation, Civil, Decision no 502, judicial year 39, dated June 9, 1975. https://eastlaws.com/

As previously stated, the obligor's duty to continue performing its obligation regardless of its request to renegotiate serves the goal of keeping the contract on solid footing. However, this entails some risks; an opportunistic obligee may use some tactics to prolong the renegotiation process to benefit more from the changed circumstances.[177] Instead of denying renegotiation and thereby allowing the obligor to withhold performance, the obligee may in bad faith accept the obligor's offer to renegotiate with an intention to make renegotiation last as long as possible in order to make the obligor perform its obligation.[178]

Such tactics truly infringe on the principle of good faith and thereby make the obligee liable. However, because it is quite difficult to establish this bad intention of the obligee, the SCTL, ICC, and QCL should be reformed to expressly determine a ceiling on the time allowed for contract renegotiation. Like Article 6-2-3(2) UP, the SCTL, ICC, and QCL may also expressly allow the obligor to withhold performance in exceptional, extraordinary changed circumstances.

D. Consequences of Ending Renegotiation

The parties' duty to start contract renegotiation is an obligation of best efforts (not one of results); the parties are only obligated to conduct renegotiation in good faith. Thus, renegotiation may or may not succeed. The parties may reach an agreement rebalancing their contractual interests according to changed circumstances; the parties may also fail to conclude such agreement.

1. Success of Renegotiation: The Parties Make an Agreement to Restore Contract Equilibrium

As the parties consensually agreed on the original contract, they may also agree to adapt this contract to restore its economic equilibrium that was damaged by a supervening event. Like the original contract, the parties' agreement to restore the original contract equilibrium is binding. Under Article 171 QCL, Article 1338 ICC, and Article 94(1) SCTL, the parties may agree to modify their original contract.

Restoration of the contract's economic equilibrium may be realized by the parties' agreement to reduce the obligor's excessively burdensome obligation, to increase the obligee's reciprocal obligation, or to apply both solutions

[177] Muhammed Sakr, 351; cf. Sergio Long, 76.
[178] Adnan Sarhan, 39–40.

simultaneously. The parties may also agree to suspend performance of the contract until the (temporary) supervening event disappears.

2. Failure of Renegotiation: The Parties Fail to Make an Agreement to Restore Contract Equilibrium

If the parties fail to reach an agreement that adapts the contract to changed circumstances, they may instead agree to terminate the contract.[179] The parties may determine the date and conditions for such termination. Generally, Article 171(1) QCL, Article 1338 ICC, and Article 94(1) SCTL allow the parties to agree to revoke their contract by mutual consent.

If the parties have not agreed to adapt or terminate the contract,[180] the "judge"/"court" may—under Article 171(2) QCL, Articles 1244 and 1338(3) ICC, and Article 97 SCTL—intervene to adapt the imbalanced contract. Naturally, the court will not intervene upon its own motion but upon the request of either party.[181] Recourse to the court by the obligor or the obligee to adapt the contract to restore its equilibrium qualifies as a last resort.[182]

There is no predetermined mathematical equation for adaptation; rather, the situation varies according to the circumstances of each case, the interests of both parties, and the extent of the impact of the unforeseen event on performance. Notably, unlike the ICC,[183] no party is allowed under QCL and SCTL to ask the court to terminate the contract due to the change in circumstances.

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[179] Hasan Kazhem and Fatimeh Dahsh, 102; Moulay Zakaria and Ramzi Mehani, 714; Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 355.

[180] Adnan Sarhan, 47; Fikri Skd and Sanusi Sanusi, 96.

[181] Muhammed Al-Qarni, 1549; Fikri Skd and Sanusi Sanusi, 96; Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 354. *See also* Qatar Court of Cassation, Civil Rulings, Civil and Commercial Circuit, Decision no 74/2007, dated November 27, 2007; Egypt Court of Cassation, Civil, Decision no 368, judicial year 29, dated March 26, 1964; Egypt Court of Cassation, Civil, Decision no 187, judicial year 29, dated July 2, 1964; Egypt Court of Cassation, Civil, Decision no 170, judicial year 34, dated July 3, 1968; Egypt Court of Cassation, Civil, Decision no 248, judicial year 46, dated December 21, 1981; Egypt Court of Cassation, Civil and Commercial Circuit, Decision no 8714, judicial year 80, dated January 21, 2015; Egypt Court of Cassation, Unpublished, Civil, Commercial and Economic Circuit, Decision no 12633, judicial year 87, October 19, 2022. https://eastlaws.com/.

[182] Daoud Hajaj, 178–179; Ahmed Awad, 417; Sergio Long, 76.

[183] Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 354.

a. Adaptation of the contract by court

In Qatar, Saudi Arabia and Indonesia, the court enjoys broad discretionary power to meet the changed circumstances.[184] According to the surrounding conditions and after taking into consideration the interests of both parties, the court may return the obligor's exceedingly burdensome obligation to a reasonable extent.[185]

In a dispute on a contract for the Construction, Operation, and Management of the Gas Tower Building that was signed in February 1997 prior to the emergence of the monetary crisis witnessed in Indonesia, the Supreme Court in its Decision No. 1787 K/Pdt/2005[186] applied the principles of justice and fairness to decline the creditor's right to terminate the contract and demand a remedy from the debtor on the grounds of the debtor's default in continuing the construction work despite the economic impact caused by the monetary crisis that significantly increased the price of building materials. Since the Court found that the economic crisis could be classified as force majeure, it then obliged the debtor to complete the revision process of the contractual terms initiated by both parties in line with the emergent circumstance and the feasibility of the project.

In its Decision No. 285PK/Pdt/2010,[187] the Indonesian Supreme Court accepted the notion of contract alteration due to a change in circumstances for the sake of justice, fairness, and propriety. The Court determined the amount of the contractual balance that the parties must accept.

The court may also suspend performance of the excessively burdensome obligation.[188] In case no 439001967 for the year 1443 AH, the Saudi Commercial Court (3rd Commercial Circuit) affirmed that:

> The Circuit hearing the dispute may restore the burdensome obligation to the reasonable extent. The Circuit's authority in this

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[184] Ahmed Shlebik, "The Unexpected Situations Theory: Its Basis and Conditions," *Jordanian Journal of Islamic Studies* 3, no. 2 (2007): 188; Moulay Zakaria and Ramzi Mehani, 714; cf. Natasya Sugiastuti et al.; Fikri Skd and Sanusi Sanusi, 96. *See also* Egypt Court of Cassation, Unpublished Civil Decision no 13739, judicial year 91, dated May 8. 2023; Egypt Court of Cassation, Unpublished Civil Decision no 1348, judicial year 93, dated May 25, 2024. https://eastlaws.com/.

[185] Ahmed Awad, 411; Fikri Skd and Sanusi Sanusi, 96; Saudi Supreme Court, decision no 45/m, dated 8/5/1442H, https://2u.pw/aFU2lZub.

[186] Cited in Fikri Skd and Sanusi Sanusi, 96.

[187] Cited in Fikri Skd and Sanusi Sanusi, 99; Taufiq Adiyanto, 106.

[188] Ahmed Shlebik, 188; Saudi Supreme Court, decision no 45/m, dated 8/5/1442H, https://2u.pw/aFU2lZub; Rizki Kurniawan and Zakiah Noer, 141; Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 354.

> regard is broad; it may consider increasing the corresponding obligation, reducing the burdensome obligation, or suspending the performance of the contract or some of its conditions.[189]

Thus, to restore the contract equilibrium, the court may decide to decrease the obligor's original obligation[190] in terms of quality or quantity.[191] In a supply contract, for instance, if a pandemic resulted in the shut-down of the factories producing the agreed goods, the court may reduce the quantity of such goods to be delivered by the supplier to the buyer.

The court may also order an increase of the (obligee's) reciprocal obligation to make it just and equitable under new circumstances.[192] In the supply contract affected by the pandemic, the court may increase the price the buyer has to pay for the goods to be delivered. If necessary to restore the contract's economic equilibrium in line with justice and fairness between the parties,[193] the court may apply both solutions simultaneously.[194] The court may reduce the quantity of the goods to be delivered by the supplier and increase to a fair extent the price the buyer has to pay in exchange.

In all events, the court should make a fair distribution of the losses between the obligor and the obligee.[195] The ordinary increase in the performance costs should be borne by the obligor itself[196]—even if the obligor could not have reasonably anticipated such increase at the time of contract conclusion.[197] Any further increase in such costs—that is, any abnormal costs resulting from the supervening event—should be distributed between the parties.[198]

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[189] Saudi Commercial Court (3rd Commercial Circuit), Case no 439001967 for the year 1443 AH. https://eastlaws.com/.

[190] Ahmed Shlebik, 189.

[191] Zekri Imene, 557.

[192] Gharbi Brahim, 1059; Ahmed Awad, 411.

[193] Zekri Imene, 549.

[194] Muhammed Al-Qarni, 1534; Zekri Imene, 557.

[195] Gharbi Brahim, 1066; Zouak Nadjette, 1483; Akhmad Cahyono, Togi Pangaribuan, and Vivika Raumanen, 376.

[196] Zouak Nadjette, 1477; Muhammed Al-Qarni, 1536. *See also* Egypt Court of Cassation, Civil, Decision no 166, judicial year 37, dated December 20, 1973; Egypt Court of Cassation, Civil, Decision no 502, judicial year 39, dated June 9, 1975; Egypt Court of Cassation, Unpublished Civil Decision no 13121, judicial year 89, dated August 29, 2020. https://eastlaws.com/.

[197] Sergio Long, 65.

[198] Gharbi Brahim, 1060; Ahmed Awad, 412. *See also* Egypt Court of Cassation, Civil, Decision no 142, judicial year 37, dated 20 December 1973; Egypt Court of Cassation, Civil, Decision no 166, judicial year 37, dated December 20, 1973; Egypt Court of

In addition, in the case of temporary events, the court may order a suspension of contract performance[199] until the supervening event disappears[200] provided that such suspension will not result in gross harm to the obligee.[201] For instance, if the price of raw materials radically increases due to a supervening event, the court may suspend performance of the contractor's obligation to construct a building until such event disappears.

On an occasion in which the buyer could not continue paying the installments due to the COVID-19 pandemic, the Commercial Court in Saudi Arabia (3rd Commercial Circuit) indicated that:

> The Circuit believes that the financial rebalancing of the contract is the—temporarily—suspension of its sixth clause … which stipulates: (In the event that the second party fails to pay the instalments as described above, the first party has the right to oblige the second party to pay the full amount of the debt due to it in one payment).[202]

b. Termination of the contract by court?

In Indonesia, the court may adapt or terminate the contract according to the change in circumstances.[203] In its decision No. 2905 K/Pdt/2014, the Supreme Court "recognized that a very significant change in circumstances … could be a basis for modifying or canceling the contract."[204] Contract termination in some extraordinary supervening circumstances may truly be the best remedy. However, we believe that Indonesian courts recognize such a remedy because courts generally adjudicate cases of changed circumstances under the principle of force majeure (Articles 1244 and 1245 ICC).

Cassation, Civil, Decision no 502, judicial year 39, dated June 9, 1975. https://eastlaws.com/.

[199] Abd-Elkareem Abd-Elkareem and Zeiman Saed, 206; Rizki Kurniawan and Zakiah Noer, 141; Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 354.

[200] Zouak Nadjette, 1477; Ahmed Awad, 413; Zekri Imene, 556; Mochamad Fadlan and Dwi Fidhayanti, "Covid-19 Pandemic as an Event of Force Majeure in Agreements (Case Study of Indonesian Court Decisions," *Journal of Islamic Economic Law* 8, no. 2 (November 2024): 129. 10.21111/aliktisab.v8i2.12955.

[201] Gharbi Brahim, 1059; Alaa-Eddin El-Khasawneh, 640; Muhammed Al-Qarni, 1551.

[202] Saudi Commercial Court (3rd Commercial Circuit), Case no 439001967 for the year 1443 AH. https://eastlaws.com/

[203] Junaidi Junaidi, Mila Surahmi, and Desmawaty Romli, 354. Fikri Skd and Sanusi Sanusi, 102–103; Deddy Effendy, Chicha Chairunnisa, and Cucu Yanti, 8.

[204] Cited in Dian Cahyani, 8.

In addition, Article 6.2.2(3) UP (applicable to Indonesia) expressly allows the court—in cases of hardship—to "terminate the contract at a date and on terms to be fixed."

In contrast, pursuant to Article 171(2) QCL and Article 97(3) SCTL, neither the obligor nor the obligee may ask the court to terminate the contract; similarly, the court may not—by its own motion—terminate the contract due to changed circumstances.[205] QCL and SCTL allow such a remedy only in case of force majeure in which performance of the obligor's obligation becomes impossible. Under Articles 188 and 110(1) thereof, respectively, in synallagmatic contracts (i.e., contracts binding on both parties and imposing reciprocal obligations), if the fulfilment of the obligor's obligation has become impossible due to a foreign cause beyond its control, then such obligation as well as the reciprocal obligation shall cease and the contract shall automatically rescind—that is, by operation of law.

In cases of changed circumstances, the fulfilment of the contractual obligation is very onerous but still achievable. Therefore, QCL and SCTL reserve the automatic rescission of contract to cases of force majeure and prescribe the remedy of contract adaptation by court to cases of changed circumstances.[206] In this regard, the Qatari Court of Cassation concluded that:

> If the exceptional event renders performance of the obligation impossible, then in this case this event is considered to have reached the level of force majeure, and accordingly the obligor's obligations and the corresponding obligations of the other party cease, and the contract is automatically rescinded. However, if the impact of this event does not reach the degree of force majeure and the impossibility of performing the obligation, … i.e., the performance of the contractual obligation is not impossible, but only [excessively] onerous for the obligor, the judge may, in this case, at the request of the obligor, and according to the circumstances and after balancing the interest of the parties, restore the onerous obligation to the reasonable extent.[207]

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[205] Alaa-Eddin El-Khasawneh, 640; Ahmed Awad, 413.

[206] R. A. Martin Rothermel, "Ereignisse (Coronavirus, Brexit, Embargos, Zölle, u.a.) und höhere Gewalt, Unmöglichkeit, Wegfall der Geschäftsgrundlage, Hardship, Frustration in BGB und in anderen Rechtsordnungen – braucht es eine Klausel?" *Internationales Handelsrecht*, no. 3 (2020): 71.

[207] Qatar Court of Cassation, Civil Rulings, decision no 335/2021, dated September 29, 2021. https://eastlaws.com/ *See also* Qatar Court of Cassation, Civil Rulings, Civil and Commercial Circuit, decision no 74/2007, dated November 27, 2007; Qatar Court of

Surprisingly, QCL and SCTL allow the parties to terminate some nominated contracts in case of changed circumstances. For instance, Article 632(1) QCL and Article 442(1) SCTL[208] expressly allow the lessee and the lessor in some leased contracts to ask the court to terminate the contract when an unforeseen circumstance arises in connection with either party; the terminating party shall indemnify the other party for any loss resulting from such termination.

In application of Article 632(1) QCL, the Qatari Court of Cassation affirmed that:

> The stipulation in Article 632(1) QCL … indicates that the legislator allowed both the lessee and the lessor to terminate the lease contract before the expiry of its term for the unforeseen emergency excuse that makes the continuation of the lease burdensome for it.[209]

Article 147(2) ECC, the historic origin of Article 171(2) QCL, was inspired by Article 269 of the Polanyian Obligations Law (POL) and Article 1467 of the Italian Civil Law (ICL).[210] Regarding termination of contract in cases of changed circumstances, Article 147(2) ECC surprisingly did not follow Article 269 POL and Article 1467 ICL.

Article 269 POL states that in cases of changed circumstances, "the court may, if it deems it necessary, in application of the principles of good faith, and after balancing the interest of the parties, determine the method of the obligation, or determine its amount, and even order the termination of the contract."[211] Under Article 1467 ICL, if an extraordinary and unforeseeable event renders performance of one of the parties exceedingly onerous, that party may request termination of the contract.[212]

Cassation, Civil Rulings, Civil and Commercial Circuit, decision no 257/2018, dated July 5, 2018; Qatar Court of Cassation, Civil Rulings, decision no 737/2021, dated December 28, 2021; Saudi Supreme Court, decision no 45/m, dated 8/5/1442H, https://2u.pw/aFU2lZub; Saudi Court of Appeals (8th Appeals Circuit), Appeal in Case no 4470381243 for the year 1444 AH; Egypt Court of Cassation, Civil, Decision no 27, judicial year 1, dated January 14, 1932. https://eastlaws.com/.

[208] *See also* Article 476 SCTL (Contracting Agreement) and Article 577 SCTL (Farming Partnership Contract).

[209] Qatar Court of Cassation, Civil Rulings, decision no 180/2011, dated November 15, 2011. https://eastlaws.com/

[210] Ahmed Shlebik, 177; Ahmed Awad, 353, 439.

[211] Ahmed Shlebik, 190.

[212] Shlebik., 174.

Termination of contract in changed conditions is also acknowledged by the UNIDROIT Principles. Article 6.2.3(4) UP states that, "If the court finds hardship it may, if reasonable, (a) terminate the contract at a date and on terms to be fixed." Islamic law knows contract termination in changed circumstances. Article 443 of the *Mejella*—that is, the Ottoman Civil Code for the year 1876—allows termination of the lease contract in case of changed circumstances.[213]

In addition, in its resolution No. 23 (7/5) on emergency circumstances and their impact on contractual rights and obligations, the Council of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation concluded that the judge may terminate the contract with regard to what has not been performed if it is deemed that termination is more suitable and easier in a particular case, with fair compensation to the obligee to redress a reasonable part of its loss suffered from the termination of the contract so that justice is achieved between the parties without burdening the obligor.[214]

Before the enactment of SCTL, the Saudi courts used to refer to this resolution that expressly allows the aggrieved party to ask the court to terminate the contract in changed circumstances.[215] Unfortunately, SCTL—the law in force in Saudi Arabia now—does not do so.

The Council of the International Islamic Fiqh Academy, in its resolution No. 241 (3/25) concerning the Impact of Covid-19 Pandemic on Sharia Rulings of Transactions, Contracts, and Financial Obligations, reaffirmed the possibility to terminate the contract in changed circumstances. It expressly stated that "the Covid-19 pandemic is considered one of the emergency excuses that allow for contractual obligations to be reviewed, either by postponement, cancellation, termination, or otherwise."[216]

Adaptation of contract by court results in the preservation of the parties' contract.[217] However, termination of the contract may be the only fair solution in some extraordinary, changed circumstances, particularly when contract adaptation is "illegal, impracticable or unreasonable"[218] for either party. Additionally, the existence of the remedy of contract termination would

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[213] The general rules therein grant broad authority to review contracts in times of hardship, enabling the removal of excessive harm that occurred. See, e.g., articles (17–22).

[214] Retrieved from https://iifa-aifi.org/en/49692.html

[215] *See*, e.g., Saudi Court of Appeals (8th Appeals Circuit), Appeal in Case no 4470381243 for the year 1444 AH; Saudi Commercial Court (3rd Commercial Circuit), Case no 439001967 for the year 1443 AH; and Saudi Commercial Court (4th Commercial Circuit), Case no 4381751 for the year 1443 AH. All available at: https://eastlaws.com/

[216] Retrieved from https://iifa-aifi.org/en/49692.html

[217] Lu Wang, 207; Jorge Gonzalez, 5; Natia Chitashvili, 68.

[218] Natia Chitashvili, 75.

persuade the obligee to enter into renegotiation[219]—which is the best remedy to correct changed circumstances.

Therefore, this extreme remedy (contract termination) should be allowed, at least as a last resort. Article 171(2) QCL, the ICC, and Article 97(3) SCTL should be reformed to expressly open the door for termination of contract in changed circumstances. Termination here does not necessarily have to be immediate and of the entire contract. The court may amend some contractual terms according to the surrounding conditions and context under penalty of termination in the event of nonperformance; it may also terminate the contract on the date it deems appropriate for the interests of both parties.[220]

When terminating the contract, the court should not impose the risk on the obligee's shoulders only;[221] the court may order fair compensation to the obligee to redress a reasonable part of its loss suffered from contract termination.[222]

Conclusion

In conclusion, it is worth emphasizing that, whereas Article 171(2) QCL expressly acknowledges only a judicial apparatus for changed circumstances (adaptation of contract by court), Article 97 SCTL recognizes two remedies: judicial and extrajudicial (consensual). In Indonesia, although ICC does not directly recognize changed circumstances, courts—on some occasions involving hardship—have endorsed contract renegotiation by parties.

In the first place, the parties may renegotiate the original contractual terms to restore the contract's economic equilibrium. Should such renegotiations fail to rebalance the contract terms, the aggrieved party may request the court to adapt the contract to changed circumstances. As for the judicial apparatus, both Article 171(2) QCL and Article 97 SCTL do not entitle the aggrieved party to ask the court to terminate the contract. Even in cases of extraordinary, changed circumstances, the court may only reduce the obligor's excessive obligation to a reasonable level. In contrast, courts in Indonesia may declare the contract terminated in hardship situations.

QCL (Article 171(2)), ICC, and SCTL (Article 97) do not directly stipulate that the obligor must notify the obligee about the change in

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[219] Jorge Gonzalez, 3–4.

[220] Fikri Skd and Sanusi Sanusi, 96; Natasya Sugiastuti et al.

[221] Natia Chitashvili, 91.

[222] Resolution No. 23 (7/5) on emergency circumstances and their impact on contractual rights and obligations, the Council of the International Islamic Fiqh Academy of the Organization of Islamic Cooperation. https://iifa-aifi.org/ar/44186.html

circumstances. Nor do they obligate the obligee to mitigate the loss resulting from changed circumstances.

Accordingly, it is suggested that article 171(2) QCL be changed to entitle the obligor to request the obligee to renegotiate when changed circumstances occur. The ICC should also be reformed to introduce a direct legal text on hardship to allow renegotiation by the contracting parties to rebalance contractual rights and duties according to changed circumstances. Like Article 97 SCTL, Article 171(2) QCL, and the ICC should focus in the first place on friendly solutions. They should expressly enable the obligor to invite the obligee to enter into contract renegotiation. Both the obligor and the obligee should renegotiate in good faith with the aim of restoring the contract's economic equilibrium. QCL (Article 171(2)), ICC, and SCTL (Article 97) should be reformed to clearly state that upon the change in circumstances, the obligor must notify the obligee of the occurrence of the supervening event that rendered performance of the obligor's obligation excessively burdensome. Such notice will make the obligee take all necessary steps to mitigate the obligor's excessively onerous obligation; it also enables the obligee to prepare itself for renegotiation to restore contract equilibrium.

As to the mitigation of the loss resulting from the changed circumstances, QCL, ICC, and SCTL should expressly require the obligee to take all reasonable measures to realize this result. Otherwise, the obligee may not ask for compensation for any loss resulting from the obligor's nonperformance that could have been avoided by taking reasonable steps. Obviously, this duty implies the requirements of good faith and cooperation between the contracting parties. In addition, QCL (Article 171(2)), ICC, and SCTL (Article 97) should be reformed to open the door for termination of contract in changed circumstances. In harmony with resolution No. 23 (7/5) of the Council of the International Islamic Fiqh Academy, the court should be allowed to terminate the unperformed part of the contract if the court deems that such termination is more suitable and easier in the extraordinary cases of changed circumstances. In order not to impose the risk only on the obligee's shoulders, the court may order fair compensation to the obligee to redress a reasonable part of its loss suffered from the termination of contract.

In accordance with the UP Preamble, the UNIDROIT Principles stand as a model to be followed by national legislatures. Law drafters and lawmakers in Qatar, Saudi Arabia, and Indonesia are advised to take advantage of Articles 6.2.2 and 6.2.3 UP on hardship. The legislature in Qatar and Saudi Aeabia may change the text of Articles 171(2) QCL and 97 SCTL, respectively, to be totally in accord with the provisions of the UNIDROIT Principles, particularly as

regards the grounded request for contract renegotiation, notice of the change in circumstances, and contract termination.

Compared to QCL and SCTL, the ICC is rigid. It covers force majeure but ignores hardship. To fill this legislative gap, the Indonesian legislature is called upon to make new, direct legal texts on hardship. The consensual, pre-judicial renegotiation model (acknowledged by SCTL and UP) should be adopted in the ICC. In fact, the Indonesian legislature may copy the provisions of Articles 6.2.2 and 6.2.3 UP in their entirety to cover definition, conditions, and legal consequences of hardship. Such law reforms would bring all jurisdictions at issue here in harmony with international standards as embodied in the UNIDROIT Principles. Eventually, this would better serve parties' interests, legal certainty, and justice.

References

Abd-Elkareem, Abd-Elkareem S., and Zeiman R. Saed. "Developments in the Theory of Contingencies. Study in light of Legislative Decree No. (131) of 2016 amending French Civil Law with Comparison to Iraqi Civil Law." *College of Law Kerbala University – Risalat al-Huquq Journal* 12, –no. 2 (2020): 199–217.

Adiyanto, Taufiq. "Dealing with Unexpected Circumstances: Judicial Modification of Contract under Indonesian and Dutch Law." *Hasanuddin Law Review* 5, no. 1 (2019): 102–119. doi: 10.20956/halrev.v5i1.1508.

Allagan, Tiurma M, Pitta, Dinda R. Himmah, and Tazqia Aulia Al-Djufri. "Supervening Events in Indonesian Commercial Contracts and Notes on the UNIDROIT PICC in Relation to Covid-19 Health Crisis." *Journal of Central Banking Law and Institutions* 1, no. 2 (2022): 237–266. https://doi.org/10.21098/jcli.v1i2.14

Al-Qarni, Muhammed. "Judicial Jurisprudence to Process Effects of Corona virus Pandemic to Contracts." *Journal of Umm Al-Qura University for Shari'ah Sciences and Islamic Studies* 83 (2020): 1495–1570.

Awad, Ahmed. "The Contractual Rebalancing According to The Theory of Emergency Conditions Between Judicial and Legislative Intervention—A Comparative Study." *Al-Azhar University – Journal of Jurisprudential and Legal Research* 37, no. 1 (2022): 351–450.

Bendriss, Halima. "Renegotiating Contracts: A Study in light of UNDROIT Principles and National Legislation." *Biskra University, Algeria – Jurisprudence Review* 13, no. 2 (2021): 249–266.

Brahim, Gharbi. "Addressing Bad Conditions in the Implementation of International Trade Contracts in Accordance with Algerian Legislation and International Agreement." *University of Djelfa – Journal of Law and Humanities Sciences* 15, no. 3 (2022): 1056–1071.

Cahyani, Dian. "Hardship Doctrine Regarding Fulfillment of the Performance of an Agreement." *Pena Justisia Media Komunikasi dan Kajian Hukum* 22, no. 1 (2022): 1–14. doi: 10.31941/pj.v22i3.3615.

Cahyono, Akhmad Budi, Togi Marolop Pradana Pangaribuan, and Vivika Dyatri Raumanen. "A Change of Circumstances and Contract Adjustment: Indonesian Law and Beyond." *Journal of Indonesian Legal Studies* 10, no. 1 (2025): 349– 390. doi: https://doi.org/10.15294/jils.v10i1.1592.

Chitashvili, Natia. "Substantive Legal Prerequisites of Hardship and Scale of Legitimate Intervention of the Court into the Private Autonomy." *Journal of Law (TSU)* 2021, no. 2 (2021): 61–112.

Dawwas, Amin. "Precontractual Liability Under the New Saudi Civil Transactions Law: A Comparative Study." *Journal of Law and Sustainable Development* 13, no. 1 (2025): 1–28. https://doi.org/10.55908/sdgs.v13i1.4136

Deshwal, Seema, and Dr. Ritu, "Contractual Exemption Theories of Force Majeure and Hardship in International Law." *International Journal of Law Management & Humanities* 5 (2022): 8–20.

Dewanti, Rizky Febri, Pujiyono Pujiyono, and Yudho Taruno Muryanto. "The Implementation of Good Faith Principle of Precontract in Common Law and Civil Law Country." *International Journal of Law* 7, no. 4 (2021): 225–228. doi: https://doi.org/10.33448/rsd-v10i16.23621.

Ding, Chunyan, "Retaining Contractual Equilibrium through the Doctrine of Change of Circumstances: What Can Be Learned from Chinese Experiences?" *Erasmus Law Review* 3 (2023): 139–153.

Effendy, Deddy, Chicha Chairunnisa, and Cucu Yanti. "Application of Unidroit Hardship Principles to Renegotiate International Contracts Due to COVID-19." *Hammurabi Code: Journal of Law and Human Rights* 1, no. 1 (September 2024): 6–10. doi: https://doi.org/10.58905/xxxx.xxxx.x

El-Khasawneh, Alaa-Eddin. "Legal Aspects of the Obligation to Renegotiate and Review of Contracts (A Study in French and Jordanian Laws, UNIDROIT Principles of International Commercial Contracts and Principles of European Contract Law)." *Kuwait University – Journal of Law* 38, no. 1 (2014): 617–678.

El-Salmani, Abd-Errahim. "The Renegotiation Clause in International Commercial Contracts." *Revue de Droit Commercial* 5, no. 6 (2019): 97–114.

Fadlan, Mochamad Lailul, and Dwi Fidhayanti. "Covid-19 Pandemic as an Event of Force Majeure in Agreements (Case Study of Indonesian Court Decisions)." *Journal of Islamic Economic Law* 8, no. 2 (November 2024): 119–138. 10.21111/aliktisab.v8i2.12955.

Giancaspro, Mark. "The Rule for Contractual Renegotiation: A Call for Change." *University of Western Australia Law Review* 37, no. 2 (2014): 1–30.

Gonzalez, Jorge Arturo. "The Hardship Provisions of the UNIDROIT Principles as an Instrument for Post-COVID Economic Recovery." *European Journal of Commercial Contract Law* 13, no. 1 (May 2021): 1–10.

Gultom, Pardomuan, and Rumainur. "Contract Renegotiation Due to the Covid-19 Pandemic from the Hardship Perspective." *Indonesian Journal of Law* 15, no. 1 (2022): 79–99. doi: 10.33331/ilj.v15i1.86.

Guo, Peng. "Effects of Hardship under the UNIDROIT Principles: Problems and Solutions." *Vindobona Journal of International Commercial Law and Arbitration* 25, no. 1 (2021): 1–24.

Hage, M. Y., and P. K. Ningrum. "Corrective Justice and Its Significance on the Private Law." *Journal of Indonesian Legal Studies* 7, no. 1 (2022) 1–30. https://doi.org/10.15294/jils.v7i1.46691

Hajaj, Daoud. "The Renegotiation Clause in International Commercial Contracts: An Attempt to Save the Contract from Cessation." *Revue ISTICHRAF pour les Etudes et les Recherches Juriddigues* 18 (2022): 165–192.

Harris, Lauren. "Frustration in Crisis: How the Spanish Doctrine of Rebus Sic Stantibus Can Inform a Post-Pandemic Reexamination of English Contract Law Approach to Hardship." *Trinity College Law Review* 26 (2023): 38–59.

Hasan, Husam-Eddin. "The Renegotiation Clause as a Rebalancing Mechanism in Investment Contracts." *College of Law Mansoura University – Journal of Legal and Economic Research* 62 (2022): 62–184.

Imene, Zekri. "Contractual Equilibrium Mechanisms in the Implementation Phase of Commercial Contracts: Contract Economics Confronting Contractual Equilibrium." *Journal of Namibian Studies* 40 (2024): 541–564.

Inzaghia, Rafly Nauval, Prita Amaliab, and Purnama Trisnamansyah. "Action That Can be Taken by the Parties as a Result of Differences in the Right to Suspend Performance Regulated in CISG 1980 and Indonesia Contract Law." *Jurnal Poros Hukum Padjadjaran* 5, no. 2 (2024): 248–268.

Junaidi, Junaidi, Mila Surahmi, and Desmawaty Romli. "Force Majeure or Hardship Principle in Termination of Employment During the Covid-19 Pandemic." *SASI* 28, no. 3 (2022): 344–357. https://doi.org/10.47268/sasi.v28i3.941

Kazhem, Hasan, and Fatimeh Dahsh. "Mechanism Renegotiate Contract in International Trade." *College of Law Kerbala University – Risalat al-Huquq Journal* 9, no.1 (2017): 75–112.

Klowait, Jürgen. "Nachverhandlung(spflicht) bei eskalierten Rahmenbedingungen – Teil 1." *Zeitschrift für Konfliktmanagement* 23, no. 6 (2020): 224–228.

Kurniawan, Rizki, and Zakiah Noer. "A Contract Reviewed from the Perspective of Civil Law in Indonesia may be Delayed due to Force Majeure." *Iblam Law Review* 4, no. 1 (2024): 135–148. doi: 10.52249.

Long, Sergio García. "The Influence of the Italian Model of Hardship in Latin America and International Trade (with some Notes from Social Sciences)." *Uniform Law Review* 28, no. 1 (2023): 57–77. https://doi.org/10.1093/ulr/unad015

Lorfing, Pascale Accaoui. "The Contractually Unforeseen Renegotiation." *International Business Law Journal* 1, (2010): 35–56.

Makaarim, Arvhia Marella, Almas Sabrina, and Reza Farhan. "The Principle of Freedom of Contract in Practice: Between the Theory and Reality of Economic Inequality in Indonesia." *Advances in Social Humanities Research* 3, no. 5 (2025): 384–392.

McKendrick, Ewan. "Hardship (Articles 6.2.1–6.2.3)." In *Commentary on the UNIDROIT Principles of International Commercial Contracts (PICC), 2nd edition*, edited by Stefan Vogenauer. Oxford University Press, 2015.

Minarosa, Mona. "The Principles of International Trade Contract as Reference of Indonesian Contract Law." *European Research Studies Journal* XXI, no. 2 (2018): 514–526.

Muskibah, M., Y. Yetniwati, S. Sasmiar, and A. M. Holish. "Force Majeure During COVID-19 Outbreaks: Case of the Cancellation and Termination of Government Construction Contracts." *Journal of Indonesian Legal Studies* 8, no. 1 (2023): 129–158. https://doi.org/10.15294/jils.v8i1.68937.

Nadjette, Zouak. "The Theory of Contingent Conditions and its Applications in International Contracts." *University of Laghouat – Academic Journal for Legal and Political Research* 5, no. 2 (2021): 1467–1489.

Nurhasanah, Neneng, Ahmad Hasan Ridwan, and Uus Rustiman. "Force Majeure from the Perspective of Islamic Economic Law: A Critical Review of Shari'ah Banking's Response to COVID-19 in Indonesia." *Manchester Journal of Transnational Islamic Law & Practice* 20, no. 2 (2024): 137–149.

Nwafor, Ndubuisi, and Chidi Lloyd. "Re-imagining the Doctrines of Hardship and Exemption/Force Majeure under the CISG and UNIDROIT Principles of International Commercial Contracts." *Global Journal of Comparative Law* 8 (2019): 52–79.

Redi, Ahmad. "Renegotiation of Work Contract and Work Agreement of Coal Mining Undertaking in Indonesia: Legal Aspect of Renegotiation Vs *Pacta Sunt Servanda* Principle." *SSRN Electronic Journal*, January (2013): 1–25. doi: 10.2139/ssrn.2292865, available at: https://ssrn.com/abstract=2292865.

Rizkia, Nanda Dwi et al. "The Impact of the Covid-19 Pandemic on the Implementation of Commercial Contracts Reviewed in Civil Law." *PAULUS Law Journal* 6, no.1 (2024): 91–105.

Rothermel, R. A. Martin. "Ereignisse (Coronavirus, Brexit, Embargos, Zölle, u.a.) und höhere Gewalt, Unmöglichkeit, Wegfall der Geschäftsgrundlage, Hardship, Frustration im BGB und in anderen Rechtsordnungen – braucht es eine Klausel?" *Internationales Handelsrecht* 3 (2020): 89–97.

Sakr, Muhammed. "Changed Circumstances and Renegotiations in International Commercial Contracts." *College of Law Menoufia University – Journal of Legal and Economic Research* 3, no. 59 (2024): 341–392.

Salacuse, Jeswald, "Renegotiating Existing Agreements: How to Deal with Life Struggling Against Form." *Negotiation Journal* 17, no. 4 (2001): 311–331.

Sandu, Florin Iulian. "Brief Comparative Examination of the Understanding of Hardship Theory in Recent Times." *Romanian Arbitration Journal* 15, no. 2 (April–June 2021): 58–80.

Sarhan, Adnan. "The Mechanism for Emergency Conditions in the New French Contract Law." *UAEU Journal of Sharia and Law* 36, no. 90 (2022): 21–54.

Schwenzer, Ingeborg, and Edgardo Muñoz. "Duty to Re-negotiate and Contract Adaptation in Case of Hardship." *Internationales*

Handelsrecht 20, no. 4 (2020): 150–163. https://doi.org/10.9785/ihr-2020-200406

Shlebik, Ahmed. "The Unexpected Situations Theory: Its Basis and Conditions." *Jordanian Journal of Islamic Studies* 3, no. 2 (2007): 169–198.

Skd, Fikri Farokhi, and Sanusi Sanusi. "Application of Hardship Rule under the UNIDROIT Principles of International Commercial Contracts in Indonesia." *Student Journal of International Law* 2, no. 1 (2022): 85–105. doi: 10.24815/sjil.v2i1.21739.

Sudarwanto, A. L. Sentot et al. "Position of Freedom of Contract Principle in Forestry Partnership Policy." *Journal of Legal, Ethical and Regulatory Issues* 24, no. 5 (2021): 1–11.

Sugiastuti, Natasya Ynita et al. "Chapter 11: Hardship as a Defense to Non-performance of Contract: Can it be Applied in Indonesian Contract Law?" In *Global Digital Era, Social, Peace & Business Perspectives in Society*, edited by Muhammad Ali Tarar et al. NCM Publishing House, January 2024.

Sun, Wen. "The Renegotiation in Change of Circumstances." *US–China Law Review* 21, no. 5 (2024): 181–190. doi:10.17265/1548-6605/2024.05.001

Triana, Yeni, Tri Anggara Putra, and M. Fadly Daeng Yusuf. "Enhancing Legal Safeguards in Bankruptcy: The Role of Exception on Adimpleti Contractus in Balancing Creditor–Debtor Relations." *Journal of Ecohumanism* 3, no. 8 (2024): 3148–3155. doi:10.62754/joe.v3i8.5805.

UNIDROIT. "Official Commentary." In *2016 UNIDROIT Principles of International Commercial Contracts*, available at https://www.unilex.info/principles/text.

Uribe, Rodrigo, and Álvaro Olivares. "Economic Limits to Contractual Performance: From Hardship to the Excessive Costs of Specific Performance." *Uniform Law Review* 27, no. 1 (2022): 21–36. https://doi.org/10.1093/ulr/unac004

Wang, Lu Lan. "Force Majeure, the Principle of Change of Circumstances, and the Doctrine of Frustration during the COVID-19 Pandemic: The Case of Commercial Leases and Judicial Responses in China and New Zealand." *Peking University Law Journal* 11, no. 3 (2024): 199–220.

Zakaria, Moulay, and Ramzi Mehani. "COVID 19 and its Impact on Contractual and Labour Relations in Algeria and Turkey and the Kingdom of Saudi Arabia." *Algerian Journal of Law and Political Sciences* 6, no. 1 (2021): 691–714.

Justice cannot be for one side alone, but must be for both.

Eleanor Roosevelt

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