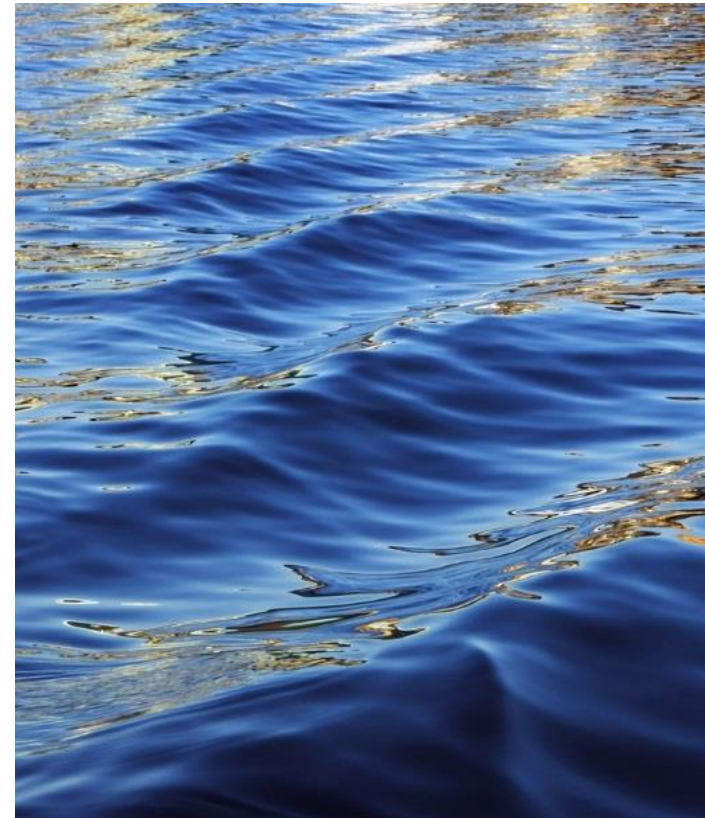


The consequences of
the COVID 19 outbreak
on the development of
renewable energy
projects in the MENA
region

Ahmed MEZIOU



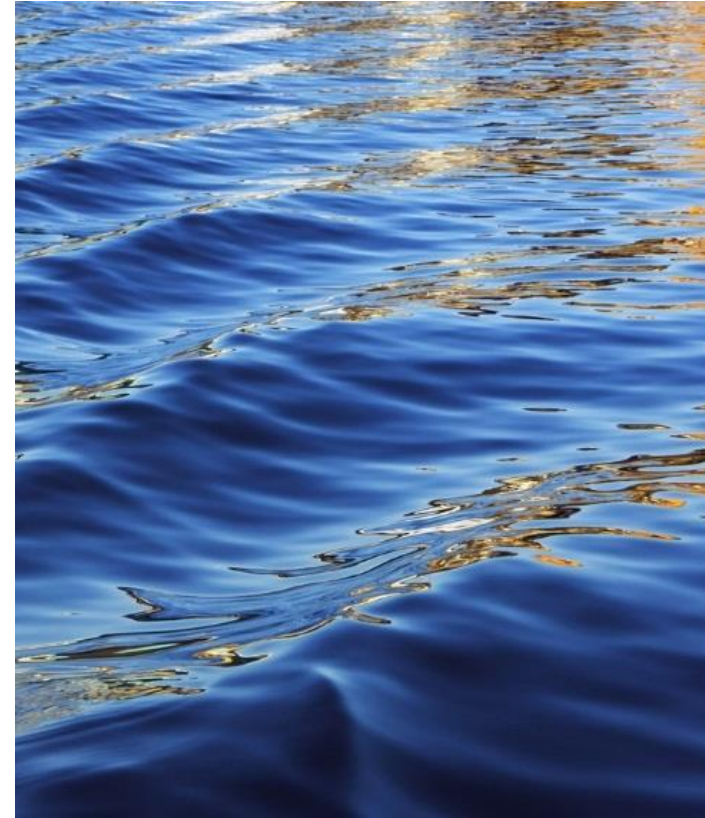


MAINTOPICS

- I. **Lessons learned from dealing with the consequences of the crisis on ongoing projects under construction and operation**
- II. **Impact of COVID 19 on the financing of future Renewable Energy projects**



Lessons learned from dealing with the repercussions of the crisis on ongoing projects under construction and operation.



PROJECTS UNDER CONSTRUCTION

- In many projects in MENA region, the disruption caused by COVID 19 created situations which resulted into delays in meeting key construction and work milestones and defaults under the funding arrangements.
- These situations would have had several critical consequences if these were not remedied on time through various project's restructuring.
- Example of possible consequences include LDs, loss of incentives, calls on bonds for delays to construction completion or termination for time limits exceeded.
- Most of developers and contractors were trying to seek reliefs under the relevant project documents (i.e Force Majeure (FM), Change in Law or Hardship clauses) to allow for time extension and compensation.
- **Would such attempts result into successful claims?**



PROJECTS UNDER CONSTRUCTION



- The starting point when seeking reliefs should be to look at the project and finance documents and discuss the consequences of the delays (i.e. exemptions, delay LDs, termination events).
- These agreements should reflect the parties' expectations and be in line with international best practices.
- A collaborative approach between all the parties is fundamental in such times as this helps establishing communication channels to respond to a quickly developing situation and free up crucial resources to focus on the required responses.

PROJECTS UNDER OPERATION

- Governments in MENA region continue to implement new legislation/regulations in response to the consequences of COVID-19.
- Governments might attempt to reduce electricity supply generated by independent power producers by issuing regulations and orders. This may be due to:
 - The fall in electricity demand caused by the containment measures taken by most of the countries; or
 - The fall in oil prices which may be seen as an opportunity for countries heavily relying on fossil fuels to postpone their energy mix objectives.
- Such attempt may not be successful or lawful and could constitute a Change in Law?



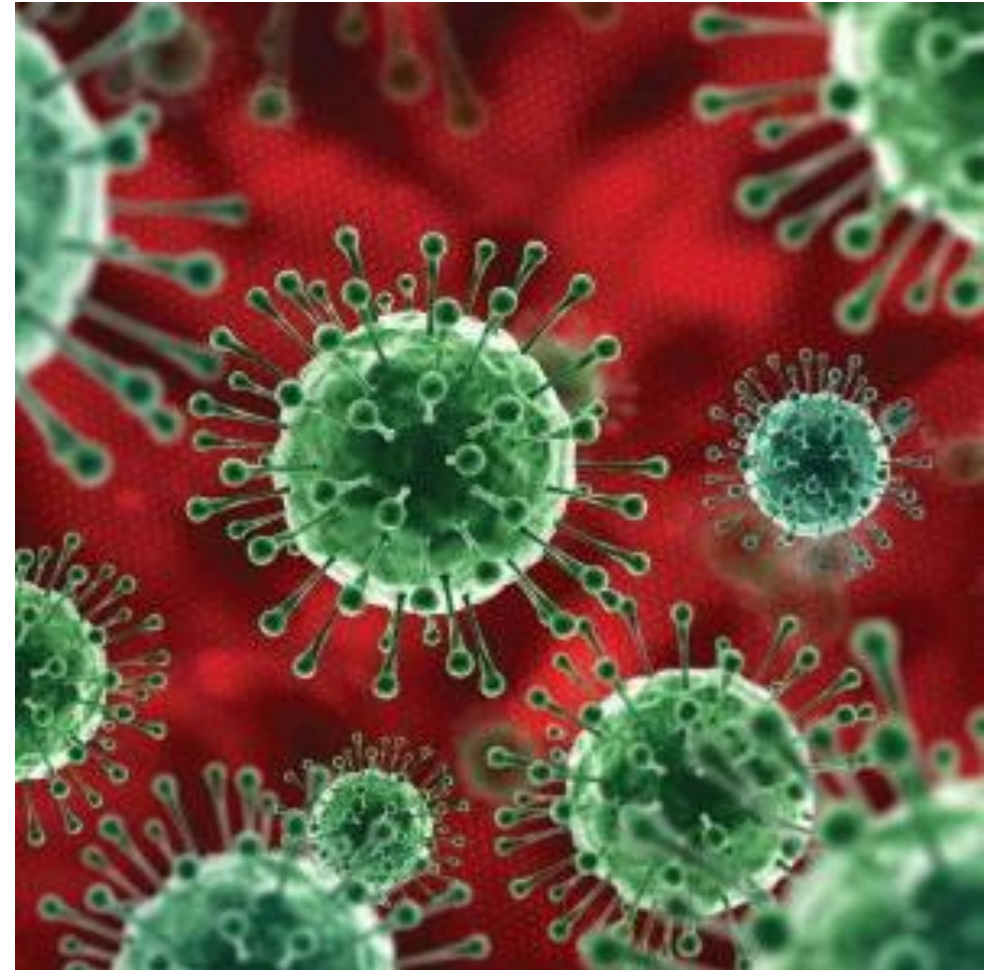


FORCE MAJEURE (FM) & CHANGE IN LAW (CiL)

Developers and Contractors should consider whether they can claim FM or CiL as a result of COVID-19-induced disruptions?

What is a Force Majeure (FM) ?

- An unforeseeable circumstance, such as the recent outbreak of the COVID-19, which may prevent a party from fulfilling its contractual obligations, may fall within the definition of “Force Majeure” in certain contracts and certain situations.
- Most of local laws in MENA countries provide for a definition of Force Majeure.
- No general principle of Force Majeure under English law.
- Project agreements (e.g PPPs) shall provide for a definition of Force Majeure.





What is a Change in Law?

General Definition: the occurrence, after a defined date (e.g the date of the agreement or the tender's submission date), of any of the following:

- (a) the adoption or taking effect of any law, rule, regulation or treaty,
- (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application of any of the above by any Governmental Authority; or
- (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority.

Changes in law or regulation driven by the COVID-19 outbreak may result in a widening of the scope of relief available, to the extent it can be shown that the issues affecting the project stem from such changes.

FM/CiL clauses and risk allocation?

FM and CiL clauses are specific to each agreement and operate as a risk allocation mechanism in order to govern situations which are beyond the control of the parties, such as the outbreak of diseases, war, or natural disasters.




What needs to be checked when invoking FM or CiL?

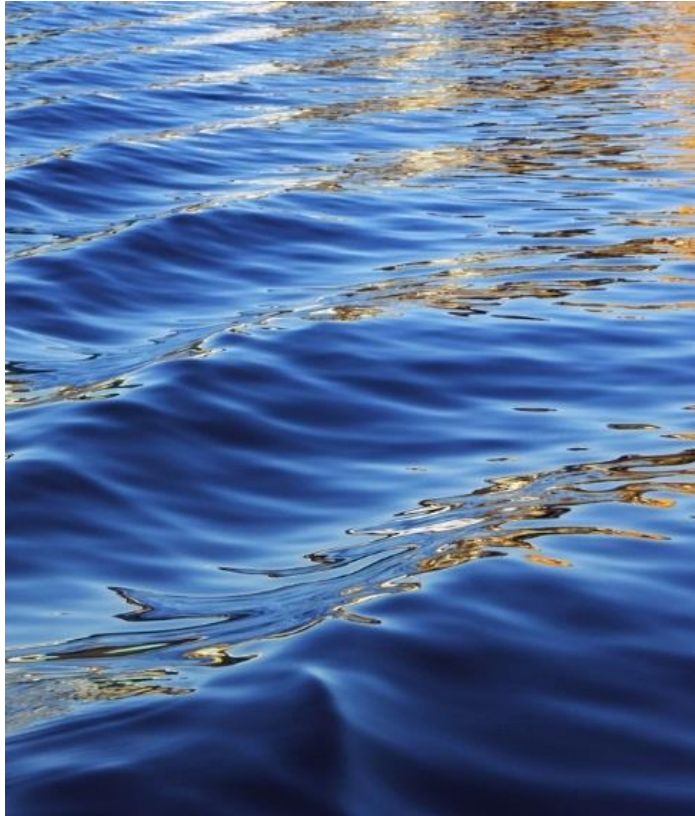


If Force Majeure or Change in Law is invoked, the developer/contractor should review the terms of the relevant agreements to determine:

- Whether there is a direct link between the outbreak and the impossibility to perform contractual obligations;
- what the notice periods are;
- if they are entitled to any compensation during the Force Majeure or Change in Law event;
- if there is an obligation to mitigate the effect of the Force Majeure or Change in Law event;
- whether insurances (business interruption insurance or FM insurance) may cover any of the expected losses;
- the rules governing early termination if the Force Majeure event persists.



**Impact of COVID 19 on the financing of
future Renewable Energy projects**



Impact of COVID 19 on the financing of future Renewable Energy projects

- Developers may take advantage of the existing low interest rate environment to further optimize their capital structure for energy infrastructure projects.
- The above should be balanced against a shrinking appetite by lenders given the high risk, low yield, potential massive recession and credit crunch.
- IFIs (e.g IFC and EBRD) are allocating multi-billion fast-track financing to assist private sector companies in their efforts to tackle COVID-19. Power sector is a priority.
- Developers have been approaching their lenders and explore any possibility to benefit from that program.



Impact of COVID 19 on the financing of existing Renewable Energy projects

- **First Objective:** Ensuring better liquidity for projects under construction:
 - Drawing the maximum of any committed and undisbursed facilities as long as this is still possible in the face of an increasing volatility created by COVID 19.
 - Injecting equity to enhance liquidity and assess the net debt position for the purpose of testing any financial ratios before the reporting time.



Impact of COVID 19 on the financing of future Renewable Energy projects

Second Objective: Improving the projects' capital structure:

- Managing the debt liability: developers may consider reducing the debt burden through debt buy-back. This could be achievable if developers could take advantage of the low interest rate environment.
- Obtaining financial information quantifying the consequences of COVID 19. Developers may need to stand ready to close financing once the market volatility storm clears.



*Thank You
for your attention.*



Ahmed MEZIOU



+971 54 792 4374 / +44 7447 053091



Meziou.ahmed@gmail.com

