



Cut the risks of civil disruption

by David Toscano

War, riots, the collapse of governments: how can your contracts protect your project?

In recent months, demonstrations and violence fuelled by political turmoil have swept the Middle East and North Africa. Meanwhile, protests in London have caused damage to property and businesses. How can companies protect themselves from these kinds of risks?

JCT

The contractor can receive an extension of time to complete the works if delayed by civil commotion. This is likely to apply to damage caused during the recent London protests.

Force Majeure is also a Relevant Event but has restricted application as matters of war, strikes and government action are expressly dealt with elsewhere.

However, if protests were to escalate - as seen in Greece - force majeure may apply and the parties can terminate if, as a result, the works are suspended for an extended period.

FIDIC

The Red Book form addresses force majeure at sub-clause 19 with a non-exhaustive list including "war, hostilities (whether war be declared or not) ... rebellion, terrorism, revolution, insurrection, military or usurped power, civil war ... riot, commotion, disorder".

The definition is sufficiently broad so as to apply to events such as those seen across Yemen, Egypt and Libya as well as here in the UK.

The contractor will be excused from complying with those obligations effected by the event. The employer cannot refrain from making any payment falling due during the force majeure.

In the international context, claims for time and costs related to "rebellion, terrorism, revolution ... riot, commotion, disorder" must be in the country where the site is located so sites near borders could fall outside that provision.

If the force majeure event continues for 84 days or for multiple periods of more than 140 days, any party can terminate with the engineer determining the contractor's entitlement to payment for completed work and any consequential costs such as removal of plant and repatriation of staff.

NEC 3

The Compensation Events at Core Clause 60 include a broad description of force majeure events.

The event must “stop the contractor completing the works” and be one which an experienced contractor would have reasonably not allowed for at the contract date. Given recent events both here and abroad, contractors now preparing tender bids should consider what to ‘reasonably allow for’ in this regard.

If the contractor can meet the agreed completion date by an agreed method of acceleration, it will not be a force majeure.

However, if the contractor can prove it cannot accelerate to complete on time, it would be entitled to an extended completion date.

Insurance

A contractor’s all-risk insurance covers unforeseen loss of or damage to the works during the contract. However, policies will typically exclude consequential losses as well as risks relating to “any consequences of war invasion act of foreign enemy hostilities (whether war be declared or not) civil war rebellion insurrection or military or usurped power”.

Claims are always fact specific and insurers will look for evidence of the events falling within one of the excluded scenarios. While war is often obvious and apparent, the leading case of *Spinneys v Royal Insurance Co* looked to define the spectrum of escalating risk in between, from civil disturbance through to riot, tribal conflict, uprisings and civil war.

Again, the comparison between protests in London and Greece show the capacity for escalation of violence and damage, thereby crossing the lines of coverage and exclusions. Equally, the Middle Eastern ‘uprisings’ cross many of the factual boundaries set in *Spinneys* as the use of social media to communicate on the ground has meant that the shift from riot to revolution has been almost instantaneous.

Spinneys may also look outdated when applied to countries with no formal opposition such as Libya and Egypt where the identification of revolutionary leaders or groups is difficult.

There are ‘political risk’ products available in the London market but contractors and employers need to pay attention to the wording of exclusions to ensure they are getting the cover they are expecting.

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