6.1 Economic hardship

Over the life span of a contract, a wide spectrum of factors from the rise in costs to depreciation of a mutually specified currency might affect the economics of contractual arrangements. This, as seen in common cases of economic force majeure or hardship, might at times lead to a sharp increase in the cost of performance to the detriment of one of the parties. As a matter of principle, in the event of such economic hardship, the parties must adhere to the terms of their agreement and the affected party, therefore, cannot claim the right to refuse performance, merely since contract becomes unprofitable. The underlying premise of this principle lies in the assumption that, whatever its magnitude, economic fluctuation is a foreseeable risk, which should have been, in one way or another, allocated by contracting parties, who possessed, or expected to possess adequate knowledge of the complexity of commerce. As Dalhuisen rightly puts it, the unwelcoming attitude of courts and tribunals towards claims of force majeure by professional merchants arises from the fact that the concept of force majeure is theoretically intended to protect weaker parties and in the case of professionals such a protection is not needed.

 [...]
also should be made here is that in the application of the imputability test to cases, in which a state or a state-owned company is a party, international tribunals might also cast an eye on international law aspects of investment cases, i.e. what was seen in some strike-related cases.

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Referring Principles:
- VI.3 - Force majeure
- VIII.1 - Hardship: Requirements