

Middle East Crisis - Impacts on Businesses, Supply Chains and Liability Management

Over the past three decades, global commerce has been shaped by eight “black swan” events, including the Asian Financial Crisis, the Dot-com crash, SARS, the Global Financial Crisis, the COVID-19 pandemic, the Ukraine conflict, and Liberation Day tariffs. With the recent addition of the geopolitical tensions in the Middle East, half of these “black swan” events have now occurred within the past six years.

The cycles between such events are shortening, and volatility and uncertainty are becoming structural features of the global business environment rather than exceptional occurrences. In this environment, businesses can no longer operate on the assumption of prolonged periods of stability. Instead, businesses must reassess their business and trading models to ensure resilience in the face of constant geopolitical risk and economic volatility.

This article discusses the key impacts of the current Middle East crisis on businesses, supply chains and liability management, and highlights the legal and contractual considerations that companies should review.

Macro Issues - Uncertainty, Volatility, and Structural Change

At a macro level, geopolitical crises create uncertainty and volatility across markets. Businesses cannot control macroeconomic or geopolitical developments, but they must understand these developments to adjust their strategies and risk management frameworks accordingly.

Geopolitical conflicts such as the recent tension in the Middle East affects global trade in several ways. These include disruptions to supply chains and shipping routes, increased insurance and logistics costs, commodity price volatility, and trade restrictions through tariffs, sanctions and export controls. These commercial effects will bring with them major legal implications.

Because globalisation has resulted in highly integrated supply chains, disruptions in one part of the world will have cascading effects across multiple industries and jurisdictions. Furthermore, supply chains are often more complex than simply a buyer and a seller. A typical supply chain may involve multiple tiers of suppliers, manufacturers, assemblers, storage providers, transport providers, distributors and end customers. Disruptions can occur at any point in the supply chain. Businesses should therefore map their entire upstream and downstream supply chains and identify potential points of vulnerability.

Micro Issues - “Just-in-Time” vs “Just-in-Case” Business Models

For many years, businesses focused on efficiency through “just-in-time” inventory and lean supply chains. While this model reduces costs and improves efficiency during stable periods, it is highly vulnerable to disruptions.

Recent geopolitical and economic events have highlighted the need for a shift towards a “just-in-case” model, which emphasises resilience and continuity rather than maximum efficiency. This can include:

- Maintaining inventory buffers;
- Diversifying supply chains and logistics routes;
- Regionalising supply chains rather than relying on a single global source;
- Stockpiling key raw materials;
- Hedging commodity and currency exposure.

Although these measures may increase short-term costs, they may significantly reduce operational and financial risks in the long term. In an environment where uncertainty is increasingly becoming the norm, businesses should move away from planning solely for efficiency and instead plan for resilience.

Trading Strategies and Contractual Protections to Mitigate Price Volatility

One of the immediate effects of geopolitical crises is price volatility, particularly in commodities such as oil and gas. Businesses must focus on their trading strategies and contractual protections to mitigate the risk of price volatility.

Common trading strategies and contractual protections include:

- Adopting contracts of shorter terms and commitment periods;
- Hedging arrangements such as commodity collars;
- Price adjustment;
- Cost allocation;
- Material delay and substitution;
- Change order mechanisms;
- Force majeure;
- Change in law;
- Hardship;
- Material adverse change;
- Termination rights;
- Tariffs allocation; and
- Sanctions and export control.

Another significant impact of the Middle East conflict is disruption to shipping routes, particularly the Strait of Hormuz, which is a critical global shipping route for oil and liquefied natural gas. Shipping disruptions raise several legal and contractual issues in the sphere of shipping law, including on:

- War risk clauses and insurance;
- Deviation and safe port clauses;
- Force majeure clauses and the doctrine of frustration; and
- Price adjustment clauses.

Businesses should carefully review their existing and future contracts to determine whether they are sufficiently protected in the current environment. It may be insufficient to rely on templated clauses, which were drafted on the assumption of economic stability, in today's unstable economic climate. Some of the salient provisions will be analysed in detail below.

Force Majeure and Frustration

Force majeure clauses are commonplace in commercial contracts. These clauses allow obligations to be delayed, modified or terminated if performance of the contract becomes impossible by prescribed events beyond the parties' control.

Businesses reviewing force majeure clauses in their agreements should take note of the scope and limits of such clauses. For instance, whether the event at hand fits within the definition of "force majeure" as defined in the clause, the level of causation required, whether there are any strict notice requirements that must abide by, any requirement to mitigate damages, and the duration which obligations can be delayed for.

Under Singapore law, it is generally not sufficient that performance has become more expensive or more difficult. What is required is a "radical event that prevents the performance of the relevant obligation (and not merely making it more onerous)".¹ The event must thus also not have been contemplated or be reasonably foreseeable to occur. In light of the increased prevalence of black swan events, one key consideration for drafting force majeure clauses is to consider whether what is "reasonably foreseeable" now encompasses more extreme events.

Where there is no force majeure clause, parties may instead seek to rely on the doctrine of frustration to terminate the contract. Similarly, the event must be beyond the control of the parties for frustration to apply.

Sanctions and Export Control

Geopolitical conflicts are often accompanied by sanctions and export controls. These are likely to be caught by sanction and export control clauses in agreements, which enables parties to suspend or even terminate performance if a transaction violates applicable sanctions or export control laws. Sanctions and export control clauses have the potential reach of affecting even payment obligations of banks under letters of credit.²

Such clauses in contracts must be carefully reviewed. Businesses should take note of the relevant definitions to see if the imposed sanctions and export controls are caught by the corresponding clauses. They must also review prescribed trigger thresholds for such clauses to activate.

Insurance

Businesses should review their insurance contracts and consider bespoke structured insurance solutions, as their present insurance coverage may be insufficient in today's climate to cover the increased uncertainties and risks. This can include insurance for business interruptions, supply chain disruptions, litigation risks, non-payment, blocking and trapping of stranded assets, and political risk. As such bespoke solutions may attract higher insurance premiums, businesses should also consider updating the allocation of cost structures for the increase in premiums.

Structural and Contractual Mismatches

The importance of reviewing and assessing the contractual provisions above is elucidated by the problem of structural and contractual mismatches in contractual agreements.

¹ *Ser Kim Koi v GTMS Construction Pte Ltd* [2023] 1 SLR 1097 at [77].

² Shook Lin & Bok, Client Update, Impact of Sanctions Clauses on Letters of Credit – *Kuvera Resources v JP Morgan* [2023], available at [Impact-of-Sanction-Clauses-on-Letters-of-Credit-Kuvera-v-JP-2023.PDF](#).

For example, a company may purchase goods from a supplier under a contract containing a broad force majeure clause, but on-sell the goods to its customer under a contract containing a narrow force majeure clause. Following the current Middle East tensions, the supplier may be able to suspend performance under their contract with the company, but the company may not be able to suspend performance to its customer. This can result in the company being unable to fulfil its obligations to its customer, raising further concerns of breach of contract.

Businesses should therefore review their upstream and downstream contracts together to ensure that risk allocation is properly aligned between all stakeholders.

Liability Management

The ongoing Middle East crisis and its disruption to global trade and commerce will inevitably impact many corporations negatively. Corporations should take immediate steps to determine their potential liabilities amid trade disruptions and assess available approaches in dealing with outstanding liabilities. This can include restructuring options.

The Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**") is Singapore's primary legislation governing corporate insolvency and restructuring. The restructuring framework under the IRDA focuses on three key components: mechanisms facilitating restructuring, the moratorium regime, and rescue financing (or priming).

The IRDA provides for restructuring mechanisms as an alternative to winding up. For instance, the scheme of arrangement framework empowers creditors to devise a composition with the company that will be more beneficial than the likely default alternative of liquidation of the company. The court can also grant judicial management orders to a company, with a goal to allow companies in financial trouble an opportunity to rehabilitate or preserve the company's business as a going concern.

Companies can apply for a moratorium to restrain creditor actions where the company is proposing a scheme of arrangement or where it has entered judicial management. The company may also obtain an automatic 30-day moratorium on application of a scheme of arrangement or judicial management, while the court considers the full application. The moratorium can restrain legal proceedings, enforcement of security, winding-up proceedings, appointment of receivers, and repossession of goods.

The IRDA also provides for rescue financing to be extended to a company during a scheme of arrangement or judicial management. If such rescue financing precedes the company's insolvency, the debt arising from such rescue financing could rank at the same or a higher priority than existing security interests, provided adequate protection is given to those creditors. These provisions improve access to funding and increase the likelihood of successful restructuring.

Where the restructuring attracts cross-border elements, corporations should be cognisant of the UNCITRAL Model Law on Cross Border Insolvency (1977), which has been adopted in the IRDA. The UNCITRAL Model Law facilitates cooperation and coordination between courts and insolvency appointment holders of different states, such as through granting recognition of foreign restructuring proceedings and relief to assist these proceedings in enacting states.

Conclusion

The current Middle East crisis together with the other recent geopolitical events are likely to have a long-term and permanent impact on international commercial and trade. Businesses must adapt to a world characterised by increased geopolitical risk, business and supply chain disruptions, and economic volatility.

The traditional globalisation model built on efficiency and “just-in-time” supply chains may gradually give way to resilience focused “just-in-case” business models. Businesses should review their business and trading model, supply chains, contracts, financing arrangements, and insurance coverage to ensure that risks are properly managed and allocated. Companies that proactively do so will be better positioned to navigate ongoing geopolitical uncertainty and structural changes in international commerce.

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