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Supply Chain Risks Cause Challenges and Provide Opportunities

Authors: Felix Faerber

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In light of ever-growing complex business arrangements, companies are increasingly dependent on cross-border supply chain networks. Supply chains networks, which usually encompass development, sourcing, production, procurement and logistics related to goods and services (or a mixture of the foregoing), face disruption due to ever-changing global developments. These networks have been impacted by governmental measures to continue combating the COVID-19 pandemic, the Russian invasion of Ukraine, and raw material and labor shortages. Due to these, supply chain management and the ability to timely address challenges have become critical to companies' ability to operate in numerous industries.

Challenges

When addressing supply chain management, many companies are faced with a myriad of challenges, including:

- **Fragile supply chains.** Focus on reduction of costs has created fragile supply chains riddled with fragmented processes and that lack flexibility.
- **Disruption to supply chains.** Despite wide ranging efforts from the private and public sectors, experts expect that disruptions to supply chains due to global developments will neither abate nor normalize in the near future.

With a bleak outlook for improvement, companies have sought means of complying with obligations for projects. Even with best efforts, such compliance is often hindered by a company being unable to provide products or perform services due to disruptions in its supply chain. This hinderance may impact not only a company's direct customer but also other parties down a supply chain. A classic example is an inability to perform of a lower tier supplier in the automotive industry resulting in production line stoppages at the original equipment manufacturer with often catastrophic financial implications. Considering negative effects, companies have resorted to drastic measures to avoid or limit disruption, such as air freight for supplies and increased safety stock requirements.

Opportunities

While continuing challenges pose risks, companies have an opportunity to address lingering issues in supply chain systems through a reassessment of contractual arrangements, including the following.

- **Force majeure rights.** Force majeure rights, which are usually intended as a temporary relief from contractual obligations due an unexpected event, have been frequently sought to address supply chain issues. Because of a lack of statutory standards, force majeure rights largely depend on agreed upon terms between parties. If these terms are ambiguous – such as unclear covered events, exceptions or mitigation responsibilities – believed force majeure rights can be meaningless. To address force majeure and similar risks, poorly crafted contractual arrangements can be reassessed, avoiding mistakes and disruptions for future projects.

- **Pricing structures.** While traditionally prices are fixed and may only be adjusted periodically, due to frequent changes in raw material prices and availability, parties may account for such challenges by creating parameters for relevant events affecting prices and threshold amounts allowing future adjustments, such as a five percent or ten percent increase in steel over a six-month period.
- **Limitation of liability and potential capping of damages.** Even though "limitation of liability" provisions are found in most contracts, parties often neglect to appreciate the impact of such provisions. Rather than using standard language, companies ought to focus on likely scenarios, such as line stoppages and severe damages from late deliveries. In turn, mindful drafting of liability language can provide certainty and allow parties to plan for potential disruptions.

Despite ongoing supply chain risks, companies have opportunities to position for long term success and cost savings by reassessing contractual obligations with suppliers. For more information on how to assess your supply chain risks contact, please contact [Felix Faerber](#) or any member of the Baker Donelson Global Business Team.