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Industry Update

The Middle East Conflict: Key Legal Considerations for Investors and Commercial Operators

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This alert has been updated to reflect developments through April 14, including the April 8 U.S./Iran ceasefire, the U.S. naval blockade of the Strait of Hormuz, the Houthi threat to the Bab el-Mandeb Strait, Iranian drone strikes on Amazon Web Services (AWS) data centres in the UAE and Bahrain, and broader supply chain disruption affecting industrial inputs.

At a Glance

- Maritime transit through the Strait of Hormuz remains effectively closed despite the April 8 ceasefire, and the U.S. declared a naval blockade on April 12. The simultaneous Houthi threat to the Bab el-Mandeb creates a dual-chokepoint scenario that may significantly strengthen force majeure claims.
- The conflict affects companies across energy, shipping, infrastructure, construction, technology, manufacturing and financial services sectors. Beyond oil and gas, critical industrial inputs including aluminium, helium, fertilisers and petrochemical feedstocks are disrupted, and Iranian drone strikes on AWS data centres have caused cascading outages across banking, payments and enterprise software in the region.
- Companies should review force majeure, change in law, cost escalation, material adverse change (MAC) and insurance provisions across their contract and investment portfolios, issue protective notices, and document disruptions and mitigation efforts contemporaneously.
- For future contracts and investments, parties should consider whether standard contractual terms sufficiently address the dual-chokepoint risk and whether bespoke provisions are required to allocate the specific risks arising from the conflict.
- Investors who have not yet closed transactions should assess whether material adverse change provisions may be triggered and consider the implications of the current uncertainty for deal terms and risk allocation.

Disruption to a Critical Shipping Corridor

The conflict continues to cause significant disruption to the supply of materials, equipment and goods throughout the region. Maritime transit through the Strait of Hormuz, through which approximately one-fifth of the world's oil supply passes each day along with substantial volumes of LNG and petrochemical feedstocks, has been effectively closed since Feb. 28. Restrictions on vessel transit are delaying cargo movements, disrupting global procurement chains and affecting the delivery of critical equipment across infrastructure, industrial and technology projects.

For companies reliant on maritime transport through the Gulf, these disruptions raise immediate questions about contractual performance. Depending on the duration and intensity of future phases of the conflict, disruptions may become prolonged, impacting long-term arrangements.

Update: The Ceasefire and the US Naval Blockade

On April 8, the U.S. and Iran agreed to a two-week ceasefire brokered by Pakistan, under which Iran was to reopen the Strait. The ceasefire proved fragile. Iran attempted to control traffic and impose tolls, and by April 9 ships were again being prevented from transiting. On April 12, Iran and the U.S. walked away without a deal, and the United States declared a naval blockade. The Strait remains effectively closed, with approximately 230 loaded oil tankers waiting inside the Gulf. Parties who have invoked force majeure should not withdraw claims on the basis of the ceasefire alone.

A Second Chokepoint: The Bab el-Mandeb

The Bab el-Mandeb Strait, an 18-mile-wide passage between Yemen and Djibouti/Eritrea controlling access to the Suez Canal, is now under threat. Yemen's Houthi movement entered the conflict in late March 2026, and senior Houthi officials have stated that closing the Bab el-Mandeb is among their options. The Houthis have demonstrated this capability previously, reducing Bab el-Mandeb transit by over 50% and Suez Canal transits by approximately 70% between 2023 and 2025.

With Hormuz blocked, the alternative route for Gulf exports has been the East to West Pipeline to the Red Sea port of Yanbu. However, approximately 30 tankers near Yanbu are within Houthi strike range. If both chokepoints are disrupted simultaneously, all Europe to Asia maritime traffic must route around the Cape of Good Hope, adding 10 to 14 days each way.

Where Contractual Pressure Is Likely to Emerge

- **Energy and commodity markets** are typically affected most immediately. Long-term supply and offtake agreements, including for crude oil, liquefied natural gas (LNG) and refined products often contain strict delivery and performance obligations, including take-or-pay commitments and availability guarantees. Restrictions affecting vessel loading or transit may therefore affect the ability of sellers to meet delivery obligations under these agreements and raise questions regarding whether any delivery failures qualify as force majeure, whether diversion or substitution rights are available and how make-up rights will operate following missed deliveries. QatarEnergy has already declared force majeure on long-term LNG delivery contracts with South Korea, China, Italy and Belgium. Asian plastics producers have similarly declared force majeure on naphtha-based production as petrochemical feedstock supplies have been severed.
- **Shipping and maritime contracts** may also come under pressure. Vessel delays and availabilities, route changes and increased war-risk insurance premiums may affect performance under charterparties and related cargo agreements. These issues frequently arise where vessels remain technically able to transit the region, but operational constraints or insurance costs affect voyage scheduling. War-risk insurance premiums and protection and indemnity (P&I) club exclusions for the Gulf region have become a major practical issue, as many marine insurers now require specific endorsements or warranties for designated war risk zones, and the cost of compliance may itself become a ground for contractual dispute.
- **Large construction and infrastructure projects** may encounter similar challenges where specialized equipment (including turbines, transformers or high-voltage electrical components) cannot be delivered on schedule. Delays affecting global supply chains may operate to jeopardize project milestones and completion timelines, and alternative procurement arrangements may result in price increases. We are already seeing a reluctance on the part of contractors on ongoing procurements to commit to lump sum pricing, particularly in relation to materials that have been impacted by the ongoing disruptions. In addition, the practical challenge of performing construction work in a conflict zone where energy infrastructure may be targeted should not be overlooked.
- **Technology and digital infrastructure** have emerged as a new area of significant concern. On March 1, Iranian drones struck three AWS data centres, two in the UAE and one in Bahrain, causing structural damage, power failures, fire and water damage from suppression systems. The strikes impaired two of three cloud availability zones in the UAE region and one in Bahrain, defeating standard multizone redundancy models. The resulting outages affected major banks, as well as payments platforms, ride-hailing services and enterprise software providers. Dozens of AWS services in the region remain unavailable over a month later.

Standard commercial property and business interruption insurance policies frequently exclude acts of war, meaning cloud providers and their customers may bear substantial uninsured losses.

- **Manufacturing and industrial supply chains** face disruption extending far beyond oil and gas. The Gulf Cooperation Council (GCC) is a major source of industrial inputs upstream in global manufacturing, including aluminium,¹ helium,² fertilisers³ and petrochemical feedstocks such as methanol and naphtha. Recovery times for disrupted manufacturing and distribution operations could stretch to five months or more.
- **Financial services and investment portfolios** face a complex web of risks. Asset managers should consider operational disruptions at portfolio companies dependent on Gulf-sourced inputs or Gulf-hosted infrastructure, covenant compliance under financing arrangements where project milestones or revenue targets are at risk, insurance adequacy across the portfolio and the potential for cascading force majeure claims through supply chains that may reach portfolio companies several tiers removed from the Gulf. Loan agreements, project finance covenants and investment mandates with GCC involvement should be reviewed for material adverse change and force majeure provisions.

Why Force Majeure Clauses Matter

Force majeure is one method of determining how the parties to a contract have allocated the risk of an unexpected disruption that is beyond their control. At its core, a force majeure clause is a risk allocation mechanism. It reflects a negotiated agreement between the parties about who bears the consequences when performance becomes impossible or materially hindered by circumstances outside either party's control.

Force majeure clauses operate to relieve an affected party from their contractual obligations. In the absence of such relief, depending on the governing law of the contract, the affected parties would either (i) have to rely on statutory provisions (which are often not clearly detailed or tailored to the specifics of a particular contract) or (ii) be subject to default, breach and contractually-stipulated penalties, such as delay liquidated damages. Some agreements also permit termination if the force majeure event continues beyond a prolonged and defined period.

Force Majeure Under English Law

Given that a significant proportion of commercial contracts across the GCC, including project contracts, offtake agreements, charterparties, cloud service agreements and supply contracts, are governed by English law, the treatment of force majeure under English law warrants specific attention.

No Implied Doctrine of Force Majeure

English law does not recognise force majeure as a general legal doctrine. Unlike many civil law jurisdictions, there is no statutory or implied right to relief from contractual obligations on grounds of supervening impossibility or impracticability. Parties must rely exclusively on the contractual clause. If no clause exists, there is no force majeure remedy. English courts interpret force majeure provisions strictly in accordance with their terms. They will not imply additional qualifying events, will not read in broader relief than the clause provides and will expect strict compliance with all procedural requirements.

The Doctrine of Frustration

The closest common law equivalent is the doctrine of frustration. A contract may be discharged where, without the fault of either party, a supervening event renders performance impossible, illegal or radically different from what was contemplated at the time of contracting. The threshold is high, requiring that performance has become "radically different" from what was originally undertaken.⁴ Mere increase in expense, delay or inconvenience is insufficient.

Frustration operates as an all-or-nothing remedy, discharging the contract entirely rather than suspending obligations or providing graduated relief. This is a significant practical limitation. In the context of long-term commercial agreements, parties typically prefer the flexibility of a contractual

force majeure regime (which can provide for suspension, extension of time, cost-sharing and ultimately termination) over the blunt instrument of frustration. Where a contract contains a force majeure clause, English courts are generally reluctant to apply frustration in parallel, treating the clause as evidence that the parties have made their own provision for supervening events.

Key Considerations for the Current Conflict

Interpreting ‘Prevention’ vs. ‘Hindrance’

English courts distinguish sharply between clauses requiring that the event *prevent* performance and those requiring only *hindrance* or *delay*. A “prevention” clause imposes a strict threshold, requiring the party to show it was unable to perform, not merely that performance became more difficult or expensive.⁵ The dual-chokepoint scenario is relevant here. Where both Hormuz and Bab el-Mandeb are compromised, it may be substantially easier to argue that maritime delivery is genuinely *prevented*, not merely hindered, because no commercially viable maritime route may be available. Having said that, it is still possible to argue convincingly, based on the relevant facts, that the disruption to the Strait of Hormuz qualifies as a force majeure event in itself.

Causation

The party seeking relief must demonstrate a causal connection between the event and the failure to perform. English courts apply the “but for” test, meaning the party must show it *would have* performed but for the force majeure event.⁶ This requires a specific causal link between the particular disruption and the failure to perform under the specific contract. In the data centre context, for example, an AWS customer invoking force majeure in a downstream contract would need to demonstrate that drone strikes on specific facilities caused the service outage that prevented its own performance. Contemporaneous documentation of the causal chain is essential.

Mitigation Under English Law

English law imposes a duty to mitigate. The standard is generally “reasonable steps” (or, depending on the clause, “reasonable endeavours” or “all reasonable endeavours”). The latter formulation is more onerous. However, neither standard requires a party to accept ruinous cost, fundamentally restructure its operations or assume risks to the safety of personnel and assets. Where both Gulf chokepoints are compromised, the range of commercially reasonable mitigation options may be significantly narrowed, and parties should carefully consider whether available alternatives are commercially realistic within the meaning of the clause.

Foreseeability and Contracts Entered Into After the Start of the Conflict

Many force majeure clauses require the event to have been unforeseeable at the time of contracting. For contracts entered into before Feb. 28, the onset of the war and the closure of the Strait likely satisfy this requirement. For contracts entered into after that date, counterparties may argue the disruption was a known risk. The Houthi dimension adds nuance. Even parties who were aware of the Hormuz closure when contracting in March 2026 may not have foreseen the dual-chokepoint scenario. The Houthi entry into the conflict occurred in late March and explicit threats to close Bab el-Mandeb intensified in early April. There may therefore be an argument that the dual-chokepoint scenario, as distinct from the Hormuz closure alone, constitutes a separate and unforeseeable development.

Force Majeure Under GCC Civil Law

Civil law systems prevalent across the GCC, including the UAE, Qatar and Saudi Arabia, do provide statutory relief in cases of force majeure and, in some jurisdictions, analogous hardship doctrines where changed circumstances render performance excessively onerous. The UAE Civil Code, for example, addresses both impossibility of performance⁷ and the court’s discretion to reduce oppressive obligations where exceptional unforeseen events make performance a serious threat to a debtor.⁸ However, the statutory provisions are broadly drafted and do not reflect the specific risk allocations negotiated between sophisticated commercial parties. It therefore remains standard

practice in the region to address force majeure and related relief expressly in the underlying contract and to structure entitlements around the specific obligations, timelines and commercial arrangements agreed between the parties.

For these reasons, this alert focuses primarily on contractual entitlements. That said, the governing law of a contract will always operate in the background, and in some cases statutory provisions may supplement, limit or interact with the contractual regime in ways that are not immediately apparent. Specific legal advice on the applicable law position is recommended where the stakes are significant.

When Force Majeure Relief May Be Available

There is no definitive rule for determining what constitutes force majeure or when force majeure may be invoked. The circumstances constituting force majeure and whether relief is available depends on the language of the relevant contract and the specific circumstances affecting performance.

Although the language of force majeure provisions varies between agreements, most force majeure provisions require that the relevant event (i) be beyond the reasonable control of the affected party, (ii) occur on or after a specified date (usually tied to signing of the contract) and be unforeseeable at such date, (iii) prevent, delay or materially hinder performance of the relevant contractual obligation and (iv) not be avoidable through the exercise of reasonable diligence.

Many clauses also include examples of qualifying events that may either be exhaustive or illustrative only. Examples of events typically included are war or hostilities, acts of terrorism or sabotage, blockades, government action including embargoes or sanctions, or disruptions affecting transportation infrastructure. Many force majeure regimes also specify exclusions from the force majeure definition, including economic hardship or price increases, upstream supply shortages and equipment failure not caused by a force majeure event.

Past conflicts in the Middle East predictably resulted in force majeure being invoked by companies operating in the region. For instance,

- **The Tanker War (1984 to 1988).** During the Iran-Iraq War, attacks on vessels in the Gulf led to widespread invocation of force majeure across oil supply agreements and charterparties. War risk insurance premiums spiked dramatically, and many sellers claimed inability to load or transit. This is the closest historical parallel to the current situation and generated substantial arbitral case law on the causation and mitigation requirements under force majeure clauses. The arbitral precedents from this period, particularly on whether increased cost of alternative routing constitutes “prevention” or merely “hindrance”, are likely to be re-examined in the context of the current conflict. Notably, the current disruption is more severe than the Tanker War. During the 1980s, shipping continued through the Gulf despite the risk, whereas the Strait is now effectively closed.
- **Iranian sanctions (2012 onwards).** When EU and U.S. sanctions effectively closed Iranian oil off from Western buyers, force majeure and change-in-law clauses were both invoked across long-term supply agreements. The key disputes centred on whether sanctions constituted a government action force majeure event or a change in law, and whether buyers or sellers bore the risk of regulatory intervention. This precedent is directly relevant given the current imposition of a U.S. naval blockade and the potential for further sanctions and export controls.

The Dual-Chokepoint Scenario: Questions for Force Majeure Analysis

The simultaneous threat to both the Strait of Hormuz and the Bab el-Mandeb raises several questions that parties will need to consider in assessing the strength and scope of force majeure claims.

Mitigation. A counterparty resisting a force majeure claim may argue the claimant should have mitigated by rerouting through the Red Sea and Suez Canal corridor. If the Houthi threat forecloses this alternative, affected parties will want to consider whether this materially narrows the range of commercially reasonable mitigation options and strengthens their position that no viable alternative route was available.

The impossibility threshold. Many clauses require the event to *prevent* performance, not merely make it more expensive. When only Hormuz was blocked, counterparties could argue, albeit not always convincingly, that rerouting was possible, even if costly, making it a hardship issue rather than impossibility. With both chokepoints threatened, affected parties may have a stronger basis to argue that goods effectively cannot move in or out of the Gulf by sea through normal commercial channels. Whether this rises to genuine impossibility will depend on the facts and the contractual language.

Multiple independent causes. The involvement of multiple independent actors, including Iran, the United States, the Houthis and potentially further GCC governments, means the disruption arises from several independent causes. Parties will want to consider whether this reinforces the argument that the disruption was beyond any commercial party's control.

Physical destruction of infrastructure. The drone strikes on AWS data centres demonstrate that the conflict is not limited to maritime disruption. Physical damage to critical commercial infrastructure creates potential force majeure events that are analytically distinct from the chokepoint closures, and parties affected by such events will face a different set of considerations regarding causation and documentation.

Whether a force majeure clause can be invoked as a result of the conflict will depend primarily on four issues: (i) the scope of the force majeure definition and the operative clause itself, (ii) whether the disruption prevents performance under the contract (or merely makes it more expensive and burdensome), (iii) whether a clear causal connection exists between the disruption and the failure to perform and (iv) whether contractual requirements have been complied with, such as obligations to provide timely notice and substantiating documents and to take steps to mitigate or overcome the impacts of the force majeure event.

Scope of the Clause

The starting point is the wording of the force majeure clause itself. Some clauses contain detailed lists of qualifying events, while others rely on broader language referring to circumstances beyond the parties' reasonable control. Clauses that expressly refer to war, blockades, government action or disruptions affecting transportation routes may be easier to engage in the current circumstances.

Even where an event may qualify as a force majeure event, other requirements may operate to prevent or reduce contractual entitlements. For example, the force majeure definition may require that the relevant event occurred on or after the effective date of the contract. For contracts yet to be entered into (but where execution is imminent and there is a reasonable likelihood of the relevant obligations being impacted), this requirement may operate to prevent entitlement under the force majeure regime. Further, requirements for the relevant event to be unforeseeable may operate to prevent entitlement where the conflict had already commenced at the time of contracting.

Threshold for Non-Performance

Many clauses require that the event prevent performance, rather than merely make it more expensive or operationally difficult. Where shipping routes remain technically open but subject to delays, rerouting or higher insurance costs, the distinction between genuine impossibility and increased cost or inconvenience often becomes central.

Causation

The party seeking to rely on the clause must typically demonstrate that the disruptive event directly affected its ability to perform the relevant contractual obligation. Where alternative suppliers or transportation routes remain available, counterparties may argue that the contractual threshold has not been satisfied.

Mitigation Obligations

Across construction, procurement and offtake contracts, mitigation obligations frequently determine whether contractual relief applies. Parties invoking force majeure are typically required to use reasonable endeavours to overcome or mitigate the effects of the event. In practice, mitigation may involve exploring alternative shipping routes or rerouting shipping or logistics, identifying substitute equipment or suppliers, adjusting logistical arrangements or construction sequencing, and/or identifying temporary operational workarounds where feasible. Disputes frequently arise over what constitutes commercially reasonable mitigation, particularly where mitigation measures involve substantial cost. For example:

- Must a supplier procure replacement fuel or feedstock at significantly higher market prices?
- Should a contractor source substitute equipment at materially higher cost to maintain the project schedule?
- Can an operator prioritise domestic infrastructure resilience over export commitments?

These questions often become central in disputes arising from force majeure events.

Notice Requirements

Most force majeure clauses also contain strict procedural requirements, including prompt initial notification and periodic detailed updates regarding the impact of the event, steps being taken to mitigate or overcome the event, and requirements for the affected party to provide substantiating documents and evidence. Failure to comply with those requirements may affect the availability of contractual relief and operate to prevent an affected party from obtaining contractual relief.

In practice, disputes over force majeure rarely turn on a single factor. Courts and counterparties typically assess the contractual wording, the factual circumstances affecting performance and the steps taken by the affected party to manage the disruption.

Looking Beyond Force Majeure Provisions and Practical Steps for Companies

While force majeure provisions may go some way to addressing the effects of the conflict on existing projects and commercial arrangements, they do have their limitations. Therefore, parties looking to enter into contracts following the outbreak of the conflict may seek to include specific bespoke provisions outside the force majeure regime to address the conflict and related relief entitlements.

Escalations resulting from the conflict may also lead to changes in export controls regimes, sanctions or boycott regimes, emergency governmental directives to prioritize local supply or other forms of government intervention, including changes in laws. The U.S. naval blockade declared on April 12 is itself a form of government action that may engage change in law provisions. Where such changes in laws or government action or restrictions occur, the impacts to and relief available for affected parties will often be dealt with under a change in law regime that sits outside of the force majeure provisions in a contract and may be subject to different conditions, notification requirements and relief entitlements. It is also typical for contracts to provide greater relief, particularly in respect of additional cost, in case of changes in law as compared to force majeure. In fact, during COVID-19, change in law claims, where available, were preferred over force majeure claims.

Material Adverse Change Clauses and Pending Transactions

Investors who have signed but not yet closed acquisitions, joint ventures or other investment transactions should carefully assess whether material adverse change (MAC) or material adverse effect (MAE) provisions in their transaction documents may be triggered by the conflict. MAC clauses are commonly included in purchase agreements, subscription agreements and investment mandates to allow a buyer or investor to withdraw from or renegotiate a transaction if a material adverse change occurs between signing and closing.

Whether the current conflict triggers a MAC clause will depend on the specific language of the provision. Key questions include whether the clause is drafted broadly enough to encompass regional armed conflict, supply chain disruption or the closure of critical maritime corridors, and whether any carve-outs apply. Many MAC clauses exclude general market conditions, changes in law or conditions affecting an industry as a whole, which may limit their applicability. However, where the conflict has a disproportionate impact on the specific target company or asset relative to others in the relevant industry or region, there may be a stronger argument that the MAC threshold has been met.

Investors should also consider the interaction between MAC clauses and other conditionality provisions. Representations and warranties that were accurate at signing may no longer be accurate at closing. Material contracts of the target company may themselves be subject to force majeure claims or termination. Insurance coverage may have lapsed or become prohibitively expensive. Regulatory approvals may be delayed or complicated by sanctions and export controls. Each of these developments may independently give rise to a right not to close, depending on the transaction documents.

For transactions currently under negotiation, the conflict should prompt a careful review of MAC definitions, conditionality packages and risk allocation provisions to ensure they adequately reflect the current environment.

Insurance Considerations

The conflict has created significant insurance complications. War-risk insurance premiums for the Gulf region have increased dramatically since Feb. 28. P&I clubs and marine insurers are reviewing coverage, and many require specific endorsements or warranties. Standard marine cargo insurance policies may contain war exclusions or geographic limitations. Standard commercial property and business interruption insurance policies frequently exclude acts of war, a point of acute significance following the AWS data centre strikes. Companies should review their insurance arrangements to determine (i) whether existing policies cover losses arising from the conflict, (ii) whether war-risk endorsements are required and at what cost, (iii) whether business interruption insurance covers supply chain disruption caused by the closure of maritime chokepoints or the destruction of cloud infrastructure and (iv) whether contractual obligations to maintain specific insurance levels can still be met at commercially reasonable cost. Where insurance costs have become prohibitive, this may itself be relevant to the force majeure or hardship analysis.

Identify Supply-Chain Exposure

Disruption affecting a major maritime corridor can affect multiple tiers of suppliers and contractors. Companies should identify shipments currently transiting the region, cargo scheduled to load at affected ports and suppliers whose logistics routes depend on Gulf shipping lanes. Mapping these dependencies helps determine which contractual obligations may be at risk and where delays may propagate through the supply chain. It is also important to consider the practical impacts of a delay on the supply chain, even if force majeure relief is granted. Suppliers and contractors may face cash flow issues due to delays caused by the conflict and, therefore, may need to consider ways in which they may ease some of this pressure. One obvious example, on construction projects, is to release a part of the retention in lieu of a retention bond.

For asset managers and investors, the assessment should extend across the portfolio to identify companies with dependence on Gulf-sourced raw materials (including indirect dependence through Tier 2 and Tier 3 suppliers), cloud infrastructure or data residency obligations in the GCC, and financing arrangements containing material adverse change triggers linked to operational performance or regional stability. Vulnerabilities frequently lie deeper in the supply chain than the first tier of direct vendors.

Review Force Majeure, Change in Law, and Other Similar Clauses and Notice Requirements

Force majeure and change in law provisions often impose strict procedural requirements, including prompt notice once an event affects performance. Companies should review the relevant provisions in supply, procurement, EPC, shipping, offtake and technology services agreements to determine how

disruption events are defined and what threshold must be met before performance may be suspended. It is important to not assume that simply because an event appears to be a force majeure event, the relevant contractual provisions would bite. In fact, in certain cases, other remedies may be more appropriate or beneficial. For example, in certain cases a well-drafted cost escalation mechanism for certain key materials may be easier to trigger than a force majeure clause if the impact is mainly higher costs.

Document Disruptions and Their Impact

Where contractual performance may be affected, companies should be documenting the disruption caused and the impact created in a proper and timely manner so that they have all the necessary evidence and supporting documentation. They also may consider issuing protective notices to preserve contractual rights while the scope of disruption becomes clearer. At the moment, we expect many companies are issuing protective notices. From experience, many of these notices may not lead to eventual claims if the parties are able to mitigate or absorb the impact of the relevant event.

Assess Mitigation Options

As mentioned above, many force majeure provisions require the affected party to take reasonable steps to mitigate the impact of the disruption. Companies should therefore evaluate whether any such mitigation options are available. Maintaining contemporaneous records of mitigation efforts, including alternative logistics arrangements considered, may be important if counterparties later challenge reliance on the clause. Also, some force majeure clauses provide that costs of implementing mitigation measures will be split between the parties (for example, if they exceed an agreed threshold), and a detailed record of such costs would be of utmost importance in such circumstances.

Evaluate Downstream Contractual Risk

Disruption affecting one contract may create risk under related agreements. Delays in the delivery of materials or equipment may affect project milestones under EPC contracts, delivery obligations under supply agreements or covenants under project financing arrangements. Companies should therefore assess whether disruption in one part of the supply chain could create broader contractual risk across the project or transaction structure. That said, while there may be impact downstream or upstream, the relevant contractual provisions under those agreements should be analysed independently to understand the extent of the risk and any gaps.

Looking Ahead

The trajectory of the conflict and its broader implications for regional and global commerce remain difficult to predict. As of April 14, the April 8 ceasefire has effectively collapsed, Iran and the U.S. have walked away without a deal, the United States has imposed a naval blockade, the Houthis are threatening a second critical maritime chokepoint, AWS data centres in the region remain partially offline and critical industrial supply chains are under severe strain. Oil prices are nearing US\$100 per barrel. The legal and contractual consequences will continue to evolve rapidly.

What is clear is that the legal and contractual consequences will continue to evolve as the situation develops, and that early and proactive engagement with counterparties, advisors and insurers will be critical to managing exposure effectively. Companies that take steps now to audit their contractual positions, preserve their rights through timely notice, and document disruption and mitigation efforts will be better placed to navigate both the immediate disruption and any protracted consequences that follow.

For those parties entering into new contracts in the current environment, careful drafting of force majeure, change in law and cost escalation provisions will be essential to ensure that risk is appropriately allocated from the outset. Standard force majeure language that references “war” or “hostilities” in general terms may be insufficient to address the specific dual-chokepoint risk. Parties should consider bespoke provisions expressly addressing the closure or restriction of the Strait of Hormuz and/or the Bab el-Mandeb; naval blockades; nonstate actor disruption to Red Sea shipping; physical attacks on digital or industrial infrastructure; the imposition of transit tolls or conditions on

vessel passage; the unavailability of war-risk insurance at commercially reasonable rates; and data centre outages caused by military action.

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If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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¹ GCC provides approximately 8% of global supply of aluminium. Europe sources 20% of imports from the region and as a result, prices are up 9%.

² Qatar provides 30% of global supply of helium, which is critical for semiconductor manufacturing and MRI systems. Prices are up 35% following attacks on the Ras Laffan complex.

³ More than 27% of global ammonia exports, 22% of phosphates and 45% of sulphur pass through the Strait. Urea prices are up 26% from the start of the conflict.

⁴ Davis Contractors Ltd v Fareham Urban District Council [1956] AC 696.

⁵ Classic Maritime Inc v Limbungan Makmur Sdn Bhd [2019] UKSC 43.

⁶ Id.

⁷ Article 273 provides that an obligation is extinguished if the debtor establishes that performance has become impossible due to a cause beyond his control.

⁸ Article 249.

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