

APAC Region: Managing Risk in a Volatile Market

Legal Issues to Consider and Manage in 2022/2023



Supply chain risk

Current supply chain shortages and restrictions, exacerbated by labour and materials cost inflation which continue from the Covid-19 pandemic.

Manage risks by:

- Actively reviewing robustness of supply chain in a crisis (at all tiers).
- Effective force majeure drafting and planning.
- Ensuring there is sufficient security for delivery obligations and carrying out regular credit checks on suppliers.



Termination risk

Volatile markets tend to result in additional termination risks:

Manage risks by:

- Review portfolio of key contracts for contracts at risk.
- Actively engage with counterparties to mitigate risk of termination for essential contracts.
- Utilise termination rights to escape onerous contracts.



Counterparty risk

Increased counterparty insolvency risk caused by market volatility.

Manage risks by:

- Conducting effective due diligence.
- Carrying out detailed assessments on creditworthiness.
- Ensuring financial security in the event of insolvency (on-demand bonds, letters of credit etc.).



Government intervention

The increasing export or import-related restrictions imposed by Governments.

Manage risks by:

- Considering fulfilment of contractual obligations.
- Reviewing contractual rights and ability to use alternative sources of supply.
- Careful consideration of trade portfolio.



EPC 'Hot market'

A perfect storm of under supply, over demand, inflation pressures, and legacy of the Covid-19 pandemic for the engineering procurement and construction market will require effective management of:

- Proper assessment of ability to deliver at tender stage.
- Contractual damages and incentives for 'on time' delivery.
- Managing project change.



Sanctions

Sweeping financial global sanctions as a result of Russia's War on Ukraine may impact your business. Manage risks by:

- Reviewing nexuses to Russia.
- Identifying sanctions which apply.
- Managing any business from a reputational and ESG-based perspective, and consider alternative options.



Price volatility

LNG spot price is at an all-time high, with potential volatility in all commodity markets.

Manage risks by:

- Careful consideration of counter-party non-delivery, force majeure/termination.
- Preparing for circumstances of an inability to deliver / accept delivery and whether any force majeure clause excuses performance.
- Check price review / reopener clauses in long-term agreements.
- Careful consideration of any impact on cost base and margin calls.



ESG transformation

The drive towards net zero and ESG expectations.

Manage risks by:

- Reviewing contractual arrangements for carbon neutral trading and contracting.
- Considering whether counter-party net zero and / or ESG commitments have adequate remedies in the event of breach.
- Managing regulatory changes and company policies.

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