

The US in early October introduced new measures that aim to restrict Chinese use of American technology and expertise in advanced chip manufacturing for computing and semiconductors. Two months later, the extent of upheaval to global supply chains remains to be seen.

The measures represent a further challenge to companies involved in the chip sector, or whose products rely on these crucial components to work. The new restrictions have the potential to significantly disrupt performance of commercial contracts across a range of sectors.

The industry has been experiencing weak demand caused by overstocked inventories and fears of a global recession. Now it finds itself the subject of growing political attention, with repercussions for many companies' business models.

The production of advanced chips is highly centralized, with various technologies and processes often being concentrated within just a handful of companies. Any measure that affects production lines or knowledge sharing can therefore have serious subsidiary effects for other industries or manufacturers that rely on these components.

So what kind of legal issues should companies be aware of in this event?

## What Does The Contract Say?

This sounds like an obvious point, but it could well be that the specific disruptive event, or its effects, are already prescribed for in the contract. For example, the contract might expressly set out what happens if government restrictions affect ongoing performance.

Contract provisions should be carefully scrutinized to understand how they might apply in respect of the specific controls that have been introduced.

## Can a Party Declare Force Majeure?

Force majeure provisions are commonly included in commercial contracts, often operating to relieve a party of its contractual obligations on the occurrence of certain unforeseen events. The availability of force majeure relief will invariably depend on the wording of the clause and its application to the facts.

However, a clause will not generally entitle the affected party to simply fail to act, and they may be required to try and find other ways to mitigate the effects of the disruption before relief can be claimed. This may overlap with difficult questions around whether the asserted force majeure event has actually caused a party to not be able to perform.

As such, this may represent fertile ground for disputes, as the effects of the new restrictions spread to different parts of the supply chain.

## Process for Resolving Disputes

Contracts where performance has been impacted will almost certainly prescribe a specific forum for resolving disputes, such as a court or through arbitration, and there will be different processes associated with each. The contract may also prescribe prior steps that parties are obliged to take before formal proceedings can be commenced, such as mediation or other alternative dispute resolution processes.

A failure to comply with such provisions may affect an aggrieved party's ability to progress its case, depending on what the law governing the contract says on the matter.

## Remedies for Nonperformance

Breaches of contract will often lead to an award of damages to compensate the innocent party. But many legal systems permit parties to vary or limit any entitlement to damages under their contract, or even exclude certain types of loss altogether.

This will call for careful reading of any such provisions, and an assessment of their impact and enforceability under applicable law. Other types of remedies may separately be needed. These could include an order compelling a party to perform their obligations, or a declaration from a court or tribunal about how the contract should work, or even that it has come to an end.

## Enforcement

Contracting parties will often be located in different jurisdictions. Once you have obtained a court judgment or arbitration award in your favor, what's next?

It may be a Pyrrhic victory if it cannot be enforced in the jurisdiction where the other party is operating, for example, because of domestic legal rules, undue delay, or expense associated with local procedures. Enforcement issues like these should inform a party's strategy from the outset of any dispute.

These are a handful of examples of the types of issues that may be seen as the impact of the new controls begins to be felt. The strategic importance of chips, the unique characteristics of the global market for them, and the scale and complexity of the supply chains that are dependent on them could all lead to more issues developing.

That is without considering the immense political significance of the industry, stretching back to the earliest days of Silicon Valley, which could prompt wider measures from governments across the globe. Parties with a firm grasp on their commercial contracts—and their rights under them—are likely to find themselves better-placed to navigate disruption.

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