SQUIRE PATTON BOGGS

De-risking Your Supply Chain

UK – 2025

There are an almost infinite variety of issues that can arise within the supply chain. Minor irritants that historically may have just made business a bit more difficult to transact can, cumulatively exert significant pressure on a business. Additionally, an over reliance on a third party or failure to spot the weakest links could have a significant impact on the smooth running of a business.

To help identify risk areas and mitigate the potential impact of those, we have produced this quick guide to help identify and manage supplier risk.

Identifying the Risk

Every supply chain is different. A mapping process can identify risk areas, assess the likelihood and potential impact of identified pinch points, and allow you to develop contingency plans for worst-case scenarios.
Look out for:

- **Signs of supplier stress** – Has a key supplier failed to deliver on time or has quality declined? (See "How to Stress Test Your Supplier")
- **Sole suppliers and limited alternatives** – Do you have a sole supplier arrangement or are you too reliant on a key supplier? Have you looked for viable alternatives?
- **Contract review** – Do your supply contracts robustly protect you in the event of supplier failure? Can you terminate if you need to, or renegotiate price or other terms? (See "Key Contractual Protections" below)
- **Geopolitical issues** – What connections does your supplier (and its suppliers) have to Russia, Belarus or Ukraine? Examine the materials and components you receive from your suppliers to identify links in the chain that may suffer from trade blacklists, the imposition of or increases in tariffs, blacklisting and other trade restrictions.
- **Import/Export challenges** – Be aware of factors such as tax and duties increases, delays at borders, changes in VAT registrations and other tax requirements, changes in customs practices and changes to product certification and registration regimes.
- **Compliance risks** – Do you monitor counterparties' IT, data protection, anti-bribery and corruption (ABC) compliance and their product safety history to mitigate the risk of fines for non-compliance and expensive product recalls? Do you look out for potential environmental, social and governance (ESG) issues to avoid reputational damage?

How to Stress Test Your Supplier

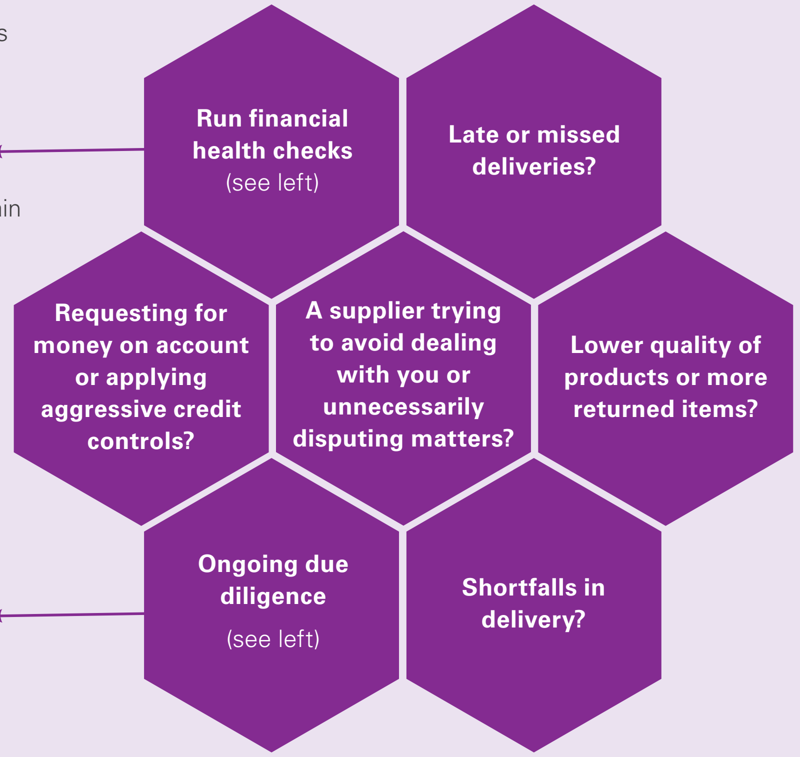
Be vigilant for any early warning signs and changes in behaviour:

Regularly Conduct Credit Checks

- Review public financial information: Are accounts being filed late? Is the financial position of the supplier worsening?
- Check ce-filing and/or call the central index to monitor whether a notice of intention to appoint administrators has been filed- act quickly to obtain maximum protection
- Check Companies House and *The Gazette* for the appointment of insolvency practitioners
- Monitor news/social media reports

Ongoing Due Diligence

- Do staff shortages and reliance on temporary labour mean shortfalls in training standards?
- Are there empty shelves?
- Focus on safety culture and compliance record, ingredient/component quality and safety risks.
- Check for potential human rights violations or environmental breaches.



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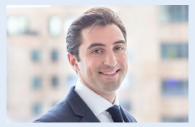

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Mitigating Risks and Managing Supply Chain Stress

Be proactive, rather than reactive. You can de-risk a threat before it occurs or manage the risk with the least damage (financial or reputational) to your business:

Alternative sourcing (dual/local/multi) – Dual/multi-sourcing of products mitigates the risk of an unexpected issue with a key supplier. Identify practical issues that could make it difficult to move to a new supplier. Moving to local suppliers can also reduce logistical issues and delays where suppliers are based overseas.

Shorten the chain – Explore different distribution channels, platforms, technologies, products, sources, etc. Acquiring a key supplier and integrating them into your business through an merger and acquisition (M&A) process will give you more control (see "Opportunistic M&A").

Finance options – If cash flow is a problem for a supplier, introduce a funder or consider providing bridging funding directly (with appropriate protections).

Renegotiate contract terms – Are you tied into a fixed-cost contract that is no longer competitively priced? Does the contract address raw material/product price increases or pass on freight costs? Consider renegotiating key contracts to ensure that they contain sufficient contractual protections (see "Key Contractual Protections").

Litigation – Have you been "gazumped" or otherwise let down? Should you bring a claim against a supplier for breach of contract or to terminate the contract?

Key Contractual Protections

- **Termination** – Ensure provisions are robust and can be enforced at the earliest opportunity. Have exit plans in place.
- **Insolvency** – Ensure that insolvency provisions are up to date, appropriate for the jurisdiction and take effect early enough in the insolvency process.
- **Retention of title** – Be aware of any such provisions and assess their likely effectiveness.
- **Payment terms** – Can these be flexed to support a stressed supplier or improved to support your business?
- **Price increases** – Do the terms address how price/cost increases and how the impact of currency fluctuations can be mitigated and/or shared?
- **Specific issues** – Do you need to address specific identified issues (e.g. delays, materials/staffing shortages, travel restrictions and costs).
- **Tariffs** – Who will bear the cost of any new duties/tariffs imposed and associated additional administrative and logistical costs? Delivery terms (e.g. EXW, c.f. or DDP) may take on added importance.
- **Sanctions** – Assess risks of the blacklisting of companies and other trade restrictions. Can arrangements that become unlawful be terminated?
- **Financial health protections** – Ensure contracts are signed with the group company against whom financial due diligence has been performed and seek parent company guarantees, where appropriate.
- **Compliance and processes** – Include protections on "hot topics" such as data protection, IT and cybersecurity, ABC, product safety (and product recall) and ESG.

Opportunistic M&A

Deal drivers to opportunistic supply chain M&A:

Potential Benefits

Saving that business could save you future stress (as well as providing growth)

Lighter due diligence, if you know the business, management and products

Chance to leverage scale (e.g. to get more efficient logistics or better pricing)

Key Considerations

Need to understand the fundamental challenge the business faces

Who else do they supply? Any competition or National Security and Intelligence Advisor (NSIA) concerns?

Could convertible debt be an alternative (rather than a full acquisition)?