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10 Key Issues to Managing an Effective Supply Chain



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10 Key Issues to Managing an Effective Supply Chain

1. Strengthening Supplier and Distributor Relationships
2. Managing the Risk of Financially Challenged Suppliers and Distributors
3. Addressing Potential and Actual Disputes
4. Preparing for Business Continuity and Disaster Recovery
5. Anticipating and Addressing Customs, Tariffs, and Other Trade Regulations
6. Addressing Compliance Risks and Advancing CSR/ESG Goals
7. Optimizing Tax Efficiency
8. Protecting Intellectual Property Rights
9. Complying with Antitrust and Competition Laws
10. Leveraging AI, Platforms and Other Technology to Innovate and Adapt

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Strengthening Supplier and Distributor Relationships

- Characteristics of strong relationships
 - Flexible, collaborative, agile, innovative and resilient
 - Strong team on both sides, with adequate staff, funding and support
 - Effective personal networks at many levels
- Foundational contract terms
 - Commitments for delivery, performance and payment
 - Incentives and allocations of risk
 - Managerial contracting provisions
 - Dispute resolution



Managing the Risk of Financially Challenged Suppliers and Distributors

- Evolution of financing
 - One vs. Ecosystem
 - Credit assessment goes beyond the borrower
 - Supply chain finance
 - Fintech as an enabler
- Restructuring and insolvency
 - Greater complexity
 - Greater cross border co-operation



Addressing Potential and Actual Disputes

- Supplier side issues: Continued performance; performance standards (quality, quantity); recalls and warranties; third-party claims
- Distributor side issues: Pricing; promotion and brand; competition rights; service and support levels
- Disputes occur within important ongoing relationships:
 - Informal dispute mechanisms; leverage contract remedies
 - Contracts incorporate remedies short of termination
- Disputes may require urgent remedies: TRO and preliminary injunctive relief may be key to protecting market or brand



Preparing for Business Continuity and Disaster Recovery

- Goal: Continued operations despite unexpected events
- Barriers: Cutting costs, “getting it done,” technical difficulty and no stakeholder
- Result: Lack of contractual preparation for “black elephant” events
- Solutions:
 - Specific BC/DR provisions
 - Dual sourcing
 - Risk-based financial analysis
 - Supply chain risk management as a stakeholder

Anticipating and Addressing Customs, Tariffs, and Other Trade Regulations

- *A Venn Diagram:* Political, commercial and regulatory risk
 - Political risk: Geo-political impacts via ongoing trade and political uncertainties, in some cases exacerbated by the pandemic
 - Commercial risk: Renewed spotlight on length and complexity of global supply chains
 - Regulatory risk: Regulation continues to increase despite the crisis and resourcing challenges
- Risk approach life cycle: Proactive, preventative and mitigation/response



Addressing Compliance Risks and Advancing CSR/ESG Goals

- Pre-COVID trends
 - Rise of the “Stakeholder” and broader definition of “Supply Chain”
 - Commercial case for compliance
- Covid-19 case study: Addressing impacts on supply chain risk profile
 - Elevation of reputational risks, social license to operate and ESG impacts
 - Pressure and perspective in the supply chain
 - Expanding expectations and emerging risks competing for resources
- Opportunities to mitigate risk and grow value
 - Leverage and value in holistic approaches



Optimizing Tax Efficiency

- Efficient supply chains are built in part on sound international tax planning
- COVID-19 requires multi-national entities to reassess tax planning
- Is transfer pricing consistent with evolving functionality?
- Does the international structure still work in light of employee dislocation?
- Are there other opportunities to improve the structure in light of depressed values and margins?



Protecting Intellectual Property Rights

- Patent rights: Licensing
- Trade secrets:
 - Ensuring confidentiality of information
 - Defining the trade secret
- Trademark: Brand protection, gray-market goods, quality and pricing limits
- Ensuring that suppliers hold and transfer all necessary rights
- Enforcing rights:
 - Claims against distributors or third parties
 - Importation restrictions, ex parte applications and other procedures



Complying with Antitrust and Competition Laws

- Supplier acquisitions and concentration restrictions
- Vertical restraints on distributors:
 - Exclusive or preferential supply agreements
 - Exclusive purchase agreements
 - Retail price maintenance
- Competition claims from terminated suppliers or distributors
- Competition claims from other parties



Leveraging AI, Platforms and Other Technology to Innovate and Adapt

- Technology, data and services supply chains
- Technology used for supply chain and distribution:
 - Artificial intelligence (AI) in supply chain management systems
 - Revenue-driving digital platforms
 - Automated factories, warehouses, distribution centers and vehicles
- Key challenges:
 - Specifications
 - Addressing change
 - Regulation
 - Exit



Supply Chain & Distribution Practice

- We help clients on supply chain and distribution contracting, compliance and disputes across the globe
- We have 70+ partners with deep experience in supply chains across 15 domestic and international offices
- For more information, visit www.mayerbrown.com and search “Supply Chain”
 - We will provide additional webinars/podcasts in the coming months covering these topics (and others) in greater detail



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