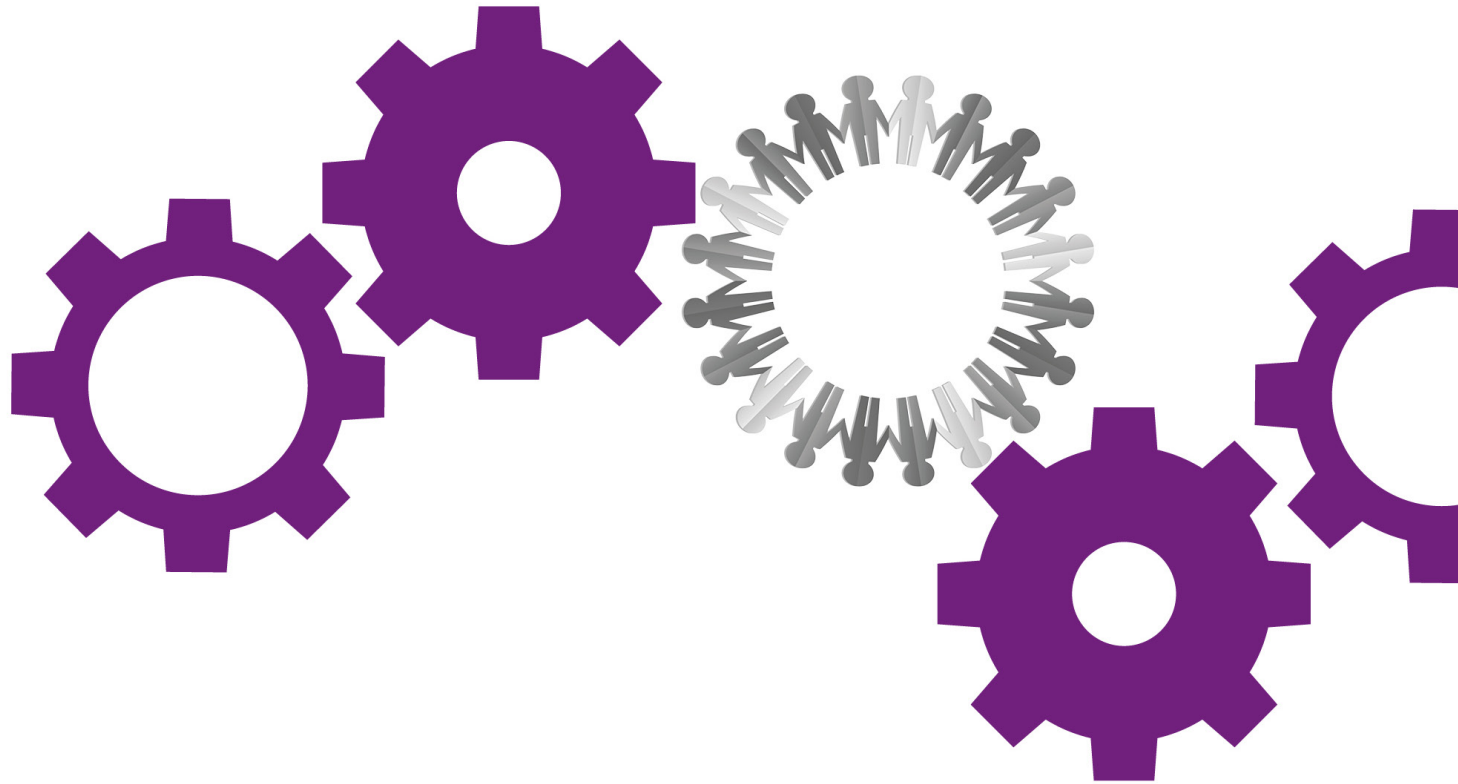


EVERSHEDS
SUTHERLAND



You're only as strong as your weakest link

Insulating your supply chain from failure risk



Global landscape

The global trading landscape continues to change rapidly. This creates new challenges for all businesses seeking to manage their supply chain and creates uncertainty for some suppliers, with the potential for financial instability and ultimately the risk of supplier insolvency. The typical issues of late or poor supply and financial distress are now supplemented by new headwinds such as cyber-attacks, extreme currency or commodity fluctuations, bribery, modern slavery, acts of terror and significant regulatory reform, which can have a catastrophic effect on those suppliers who are not prepared.

Protecting yourself against the risk of failure in your supply chain involves developing a supply risk management plan which operates on the assumption that "what can go wrong - will go wrong."



Negative impact

In recent times, lessons have been learned from the financial crisis and phrases such as "too big to fail" have been consigned to history. However, the loss of a key supplier through insolvency or financial distress can have an immediate and dramatic impact on your business, affecting future sales volumes, operating costs, creating operational losses, internal budgeting constraints and, in the worst case scenarios, share price volatility or redundancies.



Proactive management

In our experience many businesses are responsive to risk and do not always proactively seek to manage risk, either before a risk event happens, or when the warning signs appear.

The success of risk mitigation is often measured by businesses based upon the value difference between the total loss that would occur in a complete failure situation, and the amount that it actually costs to fix the problem before the total loss value crystallises. In reality, proactive management toward isolating the problem early and fixing the issue is a far more cost effective approach than allowing the issue to develop and then reacting to the crisis.



Early warning signs

Initiating your own risk assessment can help to identify issues before they arise and to prepare a remediation plan. In certain circumstances the position is clear in relation to issues such as supplier concentration. However, it is sensible to assess potential future risk by asking:

- what is the likelihood of something going wrong?
- what is the magnitude of the consequence if the issue develops?
- how quickly can the problem be resolved?

Warning signs from suppliers can present themselves in a number of ways but usually there are recurring themes in terms of:

- failure to deliver on time
- supplying defective goods or poor quality products
- urgent renegotiation of contract terms (particularly payment terms)
- changes in management behaviour
- late corporate filings
- court proceedings
- withdrawal of credit insurance
- market rumour and speculation over credit worthiness

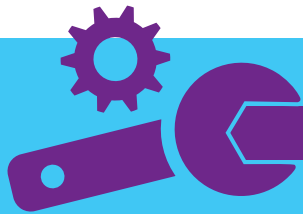
As soon as these warning signs come to the fore it is essential to make sure you act quickly and decisively.



Act quickly and investigate

If issues do arise with a supplier, steps should be taken to enable you to investigate its financial stability and to make sure that it is sufficiently robust financially to maintain supply. You should be able to extract information to assess financial performance, the risk of potential ransom payments being made in the future or an unplanned insolvency.

Whilst the insolvency of a supplier causes immediate issues it can also create opportunity. However, the commercial imperative is to act quickly to identify the risk and implement a solution. It is usually easier to resolve issues consensually although insolvency tools can be used for your benefit as a last resort.



How can we support?

Eversheds Sutherland has a wealth of experience in dealing with supply chain issues across the spectrum of sectors including Aerospace, Automotive, Construction, Education, Energy & Infrastructure, Financial Institutions, Food & Beverage, Health & Life Sciences, Leisure & Hospitality, Procurement, Public Sector, Retail and Technology & Telecoms.

We have successfully dealt with a multitude of issues for clients either based on early identification or in relation to corporate insolvency. Our experience includes:

- contract reviews and the variation of contracts to protect the continuation of supply
- supporting financial reviews and supplier audits
- future proofing supply terms for specific events
- funding arrangements for suppliers in financial difficulty including cashflow funding
- dealing with ransom payment requests from suppliers or insolvency practitioners
- partnering, joint venture and special purpose vehicle solutions
- managing the protection of proprietary claims and proprietary rights to assets
- bridging strategies to deliver the continuation of supply either within or outside a formal insolvency process
- escrow arrangements for key software or source codes required to maintain the continuation of supply
- trust arrangements to ring fence receipts or to protect cash balances
- protecting intellectual property rights and sensitive confidential information held by suppliers
- dealing with issues of fraud or theft within the supply chain
- employee incentive plans and employee/trade union relations with potential walk out or strike action by supplier staff
- customs, shipping, freight and port authority issues
- warehouse and distribution issues in order to support the continuation of supply
- protecting clients in relation to “pre-pack” sales by administrators
- negotiating trading terms or funding agreements for the continuation of supply with insolvency practitioners
- negotiating financial collateral arrangements with lenders or insolvency practitioners for the continuation of supply
- liberating assets in foreign jurisdictions in a total failure or insolvency scenario
- bribery and corruption issues arising out of agreements entered into by suppliers with third parties
- managing procurement issues in the public and private sector including process management and state aid

In our experience there is no single solution to supply chain issues. However, where issues are identified early the solutions are generally far simpler and more cost effective to implement. We have a broad range of skills and knowledge that you can draw upon and lawyers that can support you in resolving your supply chain issues.

eversheds-sutherland.com

© Eversheds Sutherland 2018. All rights reserved.
Eversheds Sutherland (International) LLP and Eversheds Sutherland (US) LLP
are part of a global legal practice, operating through various separate and
distinct legal entities, under Eversheds Sutherland. For a full description of
the structure and a list of offices, please visit www.eversheds-sutherland.com
DTUK001568_04/18