MAC Clauses and Geopolitical Risk:
Practical Guidance for Gulf Dealmakers

For transactional lawyers advising on acquisitions in the UAE, Saudi Arabia, and the wider GCC, the environment demands a fundamental reassessment of how risk is allocated between signing and closing. Standard Material Adverse Change (MAC) clauses are proving largely inadequate to address the risks that parties actually face. This article examines the limitations of conventional MAC drafting, proposes practical alternatives, and addresses the enhanced due diligence considerations that the current sanctions environment demands.

The Limitations of Standard MAC Clauses

The purpose of a MAC clause is to permit a buyer to terminate an acquisition agreement or refuse to complete if the target business suffers a sufficiently serious deterioration between signing and closing. In practice, however, invoking a MAC clause is notoriously difficult, and the current geopolitical environment is exposing the limitations of many standard formulations.

A further challenge arises from the customary carve-outs found in most negotiated MAC definitions. These typically exclude adverse effects resulting from changes in general economic conditions, industry-wide developments, changes in geopolitical conditions or the outbreak of hostilities, and changes in applicable law or regulation.

While intended to allocate systemic risks to buyers, in the current environment these carve-outs often exclude the very risks that parties are most concerned

Moving Beyond Boilerplate: Specific and Quantifiable Triggers

The solution is not to abandon MAC clauses but to draft them with greater specificity. That means negotiating specific, quantifiable triggers that provide genuine protection while remaining commercially acceptable to sellers.

Revenue or EBITDA thresholds represent one of the most straightforward approaches. A clause providing that a decline in trailing twelve-month revenue of more than 25% (or EBITDA of more than 40%) constitutes a Material Adverse Change, notwithstanding any general carve-outs, gives both parties a clear and measurable standard.

The precise thresholds will depend on the volatility of the target's business, the length of the signing-to-closing period, and the relative bargaining power of the parties, but the principle of quantification remains applicable across a wide range of transactions.

Customer and contract-specific triggers offer another avenue. Where a target's value is substantially dependent on a small number of key relationships, the loss of a key customer or the termination of a material contract can be defined as a standalone MAC event.

This approach is particularly relevant for businesses with concentrated revenue exposure to sectors directly affected by the conflict, including defence contractors, logistics providers and hospitality groups dependent on specific source markets.

Supply chain and infrastructure triggers address the practical realities of the current environment. A provision specifying that the closure of a defined shipping route for more than 30 consecutive days, or the imposition of insurance premiums exceeding a specified threshold for regional transit, constitutes a MAC event gives buyers meaningful protection against specific risks.

Sellers may resist such provisions as overly broad, but they have the advantage of focusing the parties' attention on actual, foreseeable contingencies rather than abstract legal standards.

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Interim Operating Covenants: Permitting Abnormal but Necessary Actions

Standard interim operating covenants typically require the target to operate "in the ordinary course of business" and to refrain from taking specified actions without buyer consent. However, a target business operating in the Gulf today may need to take actions that would ordinarily constitute covenant breaches but are commercially essential.

Stockpiling inventory in anticipation of supply chain disruptions, accelerating payments to secure supplier relationships, drawing down on credit facilities as a precautionary measure, or terminating contracts with counterparties subject to sanctions, all of these actions may be necessary for prudent management but may technically violate standard interim covenants.

The solution is to build appropriate flexibility into the covenants themselves. Carve-outs permitting the target to take actions "reasonably necessary to respond to the effects of geopolitical disruptions" can provide flexibility, though they should be accompanied by notice and consultation requirements to keep the buyer informed.

More specifically, parties can pre-agree certain permitted responses, a defined quantum of inventory accumulation, a list of pre-approved alternative suppliers, or a specified level of precautionary borrowing that may be undertaken without further consent.

Bridging the Valuation Gap: Earn-Outs and Deferred Consideration

From the current conflict, a substantial valuation gap has emerged between buyers and sellers. Sellers, particularly founders and private equity sponsors who built their businesses during the boom years of 2022 to 2024, remain anchored to pre-conflict multiples.

Buyers, by contrast, are pricing in the full range of 2026 downside scenarios and demanding significant discounts.

Earn-out structures offer a mechanism for bridging this gap by deferring a portion of the purchase price and making it contingent on the target's post-closing performance.

If the seller's projections prove correct, they receive additional value; if not, the buyer is protected from overpaying. In the current environment, earn-outs are increasingly becoming a standard feature of Gulf dealmaking.

Yet earn-outs are not without risks, and several drafting points deserve particular attention.

First, metric selection is critical. Revenue-based earn-outs are simpler to measure and less susceptible to manipulation, but they may reward top-line growth. EBITDA-based earn-outs better capture value creation but require detailed agreement on accounting policies, treatment of one-time items, and allocation of overhead in integrated businesses.

In an inflationary environment, parties must also consider whether metrics should be adjusted for price-level changes.

Second, post-closing covenants. Protecting the seller's ability to earn the contingent consideration is essential. At a minimum, the buyer should covenant to operate the business in good faith and in a manner consistent with past practice, to refrain from taking actions intended to reduce earn-out payments, and to provide the seller with regular financial reporting and audit rights.

More robust protections might include ring-fencing the acquired business as a separate reporting unit, restrictions on related-party transactions that could divert revenue, and dispute resolution mechanisms that provide a realistic path to enforcement.

Third, acceleration and floor provisions. These can address the risk that external events beyond party’s control, such as a further escalation of regional hostilities, prevent the target from achieving earn-out thresholds through no fault of management.

A provision accelerating the maximum earn-out payment upon a change of control or establishing a floor payment in the event of specified force majeure events, protects sellers against downside risk.

> **"Earn-outs are increasingly becoming a practical solution to valuation uncertainty, allowing parties to complete transactions today while sharing the risk of tomorrow.“**
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> Luis Soares de Sousa
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> Senior Associate

Sanctions Risk and Enhanced Due Diligence

The current conflict has been accompanied by a dramatic expansion of economic sanctions and, for acquirers of Gulf-based businesses, sanctions compliance has moved from a back-office function to a front-line due diligence consideration.

The key question is no longer simply whether the target is currently in compliance with applicable sanctions, but whether the target, or its customers, suppliers, or beneficial owners, has exposure to persons or activities that may become sanctioned in the future. "Sanction ability" should therefore be factored into valuation assessments and transaction structuring.

Beneficial ownership tracing has become essential. The Gulf's role as a regional trading and financial hub means that businesses often have complex ownership structures involving holding companies in multiple jurisdictions.

Acquirers must map these structures comprehensively, with particular attention to, connections to persons or entities associated with sanctioned governments or organisations, and to jurisdictions subject to comprehensive sanctions regimes.

Acquisition agreements should include provisions facilitating access to records, cooperation covenants, and clear allocation of responsibility for pre-closing compliance matters.

Working Capital and Closing Mechanics

Finally, careful consideration should be given to working capital provisions and closing mechanics in light of current market conditions. Standard working capital adjustment mechanisms assume that "normal" working capital can be defined by reference to historical averages, but the current environment has rendered historical patterns unreliable.

A target that has prudently stockpiled inventory in anticipation of supply chain disruptions will show elevated working capital relative to historical norms, but this elevation represents sound management rather than artificial balance sheet inflation.

Conversely, a target that has depleted inventory or accelerated receivables collection to generate cash may show depressed working capital that does not reflect sustainable operating levels.

Parties should address these distortions in advance, whether through specific adjustments to the target working capital figure, exclusion of specified line items from the working capital calculation, or a normalised reference period predating the onset of hostilities.

Standard closing conditions requiring the absence of any law, order, or injunction prohibiting the transaction may be triggered by sanctions developments that do not, in fact, prevent closing but create technical compliance questions.

Materiality qualifiers, knowledge qualifiers, and specific carve-outs for sanctions-related developments which do not impact the legality of the transaction may be appropriate.

Conclusion

The current geopolitical environment presents challenges for Gulf dealmakers that cannot be addressed through standard documentation.

MAC clauses drafted in more stable times are proving inadequate; interim covenants designed for ordinary-course operations are creating friction; and valuation gaps between buyers and sellers are threatening to stall transactions entirely.

Yet deals continue to close, and the region's fundamental attractions, its strategic location, its deep capital markets, its favourable tax and regulatory environment, and the resilience of its institutions, remain intact.

For practitioners willing to move beyond boilerplate and engage seriously with the specific risks that the current moment presents, there are opportunities to structure transactions that protect clients' interests whilst enabling value-creating combinations to proceed.

Specificity is the key: specific MAC triggers that can actually be invoked, specific covenants that permit necessary crisis responses, specific earn-out mechanics that align incentives, and specific due diligence protocols that address sanctions risk.

In uncertain times, precision in drafting is the best protection transactional lawyers can offer.

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