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Assessing Material Adverse Event Clauses Amid Iran Conflict

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Two and a half months ago, Israel and the U.S. launched a series of strikes against Iran, aimed at regime change and targeting its nuclear and ballistic missile program. In retaliation, over the following weeks, Iran launched counterstrikes against Israel, U.S. military bases in the region, and military and civilian locations in Arab states.[1]

The conflict has had a catastrophic impact on businesses in the region, with losses estimated at up to $150 billion in the first month of the conflict alone, including in industries like oil and gas, hospitality and aviation.[2]

Against that backdrop, the current conflict in the Middle East has generated extensive commentary on force majeure and the conditions under which contractual performance may be excused. Less examined is a related but distinct mechanism: the material adverse effect clause.

With deals signed before the conflict, as regional asset values fall and lending facilities come under pressure, MAE determinations are now arising in real time. In this environment, where parties are reassessing their contractual positions, whether an MAE has been wrongfully invoked may be as consequential as whether it was validly established in the first place.

What is MAE?

An MAE clause is a contractually defined threshold that, once crossed, grants a party the specific right to exit a transaction, refuse a drawdown or demand repayment.[3]

It is a negotiated provision that reflects the economic bargain struck between the parties regarding who bears the risk of adverse events after the commercial agreement is signed.

MAE clauses have been tested by major market disruptions before. COVID-19 generated a wave of M&A disputes in which courts proved reluctant to find an MAE where deterioration was industrywide rather than target-specific, and the Russia-Ukraine conflict prompted similar analyses.

The current Middle East conflict presents the same fundamental questions, and although there is no bright-line rule, past decisions provide a framework for assessing the MAE definition, including carveouts, disproportionality, materiality and durational significance. These are considered below in the

context of transactions and lending.

The Transaction Context

Consider an acquisition of a regional hospitality asset signed in the final quarter of 2025, with closing scheduled for the second quarter of 2026. The buyer underwrote the transaction based on record occupancy rates, strong forward bookings and a buoyant regional tourism outlook.

However, the conflict has since materially altered each of these factors. Before the buyer can invoke MAE, a threshold question must be resolved. Does the clause permit reliance on the conflict?

MAE definitions typically exclude certain events from contributing to an MAE, which commonly include broader economic and industry risks, such as acts of war. Under these carveouts, a buyer cannot invoke MAE solely because a conflict has disrupted the target's business.

However, many MAE clauses contain a carveback. Even if an event is excluded, it may be brought back into scope if its effects on the target are disproportionate. To assess whether an effect is disproportional, it must be measured against a benchmark, such as a peer group or comparable businesses.

Assuming the carveout threshold is resolved, there must be an assessment of whether the impact is sufficiently material to cross the MAE threshold. There is no hard rule regarding the basis of materiality — revenue, earnings or value — so multiple metrics should be considered.

Similarly, the amount considered material, not to be confused with financial statement materiality for audit purposes, will depend on the facts of the matter and case law.

Then a further consideration is whether any decline in financial performance is durationally significant, which requires evaluating broader economic conditions and the nature of the decline.[4] Generally, an impact that is durationally significant will last for years, not months, but it ultimately depends on the specific circumstances and the nature of the transaction.

The layers of analysis required — i.e., carveout, disproportionality, materiality and duration — mean that an MAE determination is only as credible and robust as the underlying evidence and reasoning behind it. In the current environment, where deterioration has been rapid and widespread, that robustness will be tested.

The Lending Context

Consider the following hypothetical: A Persian Gulf-based real estate developer that secured a project finance facility in early 2025, with drawdown tranches scheduled throughout 2026. The facility was underwritten on the basis of projected timelines, sales revenues and a regional economic outlook that the conflict has since materially disrupted.

The developer requests its next tranche. The lender must decide whether to continue funding and consider the implications for the amounts already advanced.

Unlike M&A agreements, MAE clauses in loan agreements are generally not subject to the carveout events described above. Lenders are typically focused on the borrower's ability to service the debt, and

the MAE analysis in a lending context is correspondingly more direct.

Has the borrower's financial condition deteriorated sufficiently to impair repayment capacity? This distinction is significant in the current environment. The current conflict, which may constitute a carveout event in an M&A agreement, may not provide the same level of protection to a borrower under a loan facility. Therefore, a lender may be able to invoke MAE on the basis of financial deterioration alone.

In financing and credit agreements, MAE may appear in two distinct forms if the borrower's financial condition has materially deteriorated since the lending facility was agreed. First, as a condition to drawdown, it gives a lender the right to refuse funding. Second, as an event of default, it gives the lender the right to accelerate or demand repayment of the outstanding debt.

To establish MAE in the lending context, a key issue is whether the borrower's cash flow remains sufficient to service the debt and its asset values continue to support the security.[5]

The absence of a defined threshold does not reduce the demands placed on the evidence. The analysis must be grounded in the specific terms of the facility agreement and the credit underwriting assumptions on which it was based, rather than a generic market view.

These principles were articulated in 2013 decision in Grupo Hotelero Urvasco SA v. Carey Value Added SL, where the Commercial Court, Queen's Bench Division of the High Court of Justice of England and Wales, set out that the adverse effect must significantly affect the borrower's ability to repay, must not be temporary and cannot be based on circumstances known to the lender at the time of the agreement.[6]

The lending context introduces a consideration that does not arise in mergers and acquisitions. The lender faces a two-sided risk. A lender who wrongly refuses to fund an undrawn commitment or demands repayment may face a claim from the borrower for breach of the loan agreement.

Conversely, a lender who advances funds to a materially deteriorated borrower may face stakeholder criticism for failing to exercise available protections.

When MAE Is Wrongfully Invoked

An MAE determination is not always made in good faith. A party that invokes MAE without a sufficient financial basis, such as using the conflict as an exit from a deal or agreement that had become commercially unattractive for other reasons, may itself be in breach of contract.

The innocent party then may have a damages claim. In this context, the MAE threshold analysis moves to damages assessment, but the underlying financial work is closely connected.

The damages arising from a wrongful MAE invocation can be substantial and complex. Take the 2021 Cineplex v. Cineworld decision.[7] There, the Ontario Superior Court ruled that Cineworld wrongfully terminated its agreement to acquire Cineplex. It relied, in part, on the COVID-19 pandemic as an MAE event, and awarded Cineplex CA$1.24 billion ($905.6 million) in damages based on lost synergies.[8]

In the current environment, where the Middle East conflict is already prompting parties to reassess their contractual positions, the question of whether an MAE has been wrongfully invoked is likely to be as

consequential as whether it was validly established in the first place.

Concluding Thoughts

In the current Middle East environment, where disruption has been rapid and unevenly distributed across sectors and businesses, the issues discussed above will determine whether an MAE threshold is credibly established or successfully challenged.

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[1] UK Parliament, House of Commons Library, "Israel/US-Iran conflict 2026: Background and UK response", published 24 April 2026.

[2] United Nations ESCWA, "Conflict and its shockwaves: escalation of a crisis in the Arab region", dated March 2026.

[3] Generally, MAE is used in the context of M&A agreements, whereas Material Adverse Change is used in loan agreements. For the purposes of this article, we also refer to MAE in the context of loan agreements.

[4] Refer to Hexion Specialty Chemicals v. Huntsman Corp. (Delaware Court of Chancery, 2008), Akorn Inc. v. Fresenius Kabi AG et. al. (Delaware Court of Chancery, October 2018), and IBP, Inc. v. Tyson Foods, Inc. (Delaware Court of Chancery, 2001). For reference, the decision in Akorn Inc. v. Fresenius Kabi AG et. al. considered that a 40% decline in profits and a 20% decline in value was evidence of an MAE.

[5] Refer to Pan Am Corp. v. Delta Air Lines, Inc. (US District Court, Southern District of New York, 1994), Grupo Hotelero Urvasco SA v. Carey Value Added SL (England and Wales High Court, Commercial Court, 2013), and BNP Paribas SA v. Yukos Oil Co (England and Wales High Court, Chancery Division, 2005). While an MAE was not found in each of these cases, they provide insight into the key considerations assessed in a lending context.

[6] Refer to Grupo Hotelero Urvasco SA v. Carey Value Added SL (England and Wales High Court, Commercial Court, 2013).

[7] Refer to Cineplex Inc. v. Cineworld Group plc (Ontario Superior Court of Justice, December 2021).

[8] Both parties appealed this decision.