

# Mitigating legal risk in supply chain, logistics design

With continued threats to global supply chains, shoring up a business's legal position is non-negotiable.



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When supply chains are stressed, as they have been for the past three years due to Covid-19 and more recently the Ukraine conflict, companies need to be secure in the knowledge that the legal arrangements that underpin trade relationships are watertight.

This is particularly relevant in South Africa, where legislation changes frequently.

Contracting lies at the heart of supply chains. Not only do contracts govern the system of manufacturing, selling, importing, exporting and transporting goods, but they also aid in mitigating risk.

Alison Wixley, head of legal and risk at Bidvest Freight (the holding company for Bidvest International Logistics), says one of the big problems in South Africa today is a lack of understanding of how the contractual regime works.

"People often don't understand how the liabilities fit into the bill of lading from the carrier, or the contracts you might have

with your transporter," she says.

"You might get a small 'one-man band' transporter or forwarding agent along the chain who simply doesn't understand how everything fits in. The risk this can expose you to is that you might have gaps in your insurance cover because you haven't contracted correctly throughout the supply chain."

For BIL, as the logistics operator, for example, there are **two parts to the contractual chain: customers and subcontractors**.

"In terms of our customers, we have a very clear set of standard trading terms and conditions, based on the South African Association of Freight Forwarders (SAAFF) conditions, but over the years we have adapted them as and when the South African landscape has changed. That could be a change in case law or legislation, but also when we come across a new situation," Wixley says.

"You could have a claim, for example, where our STCs aren't quite clear on how to handle that issue. What we then do is build some sort of wording into our annual review so that if that situation arises again, it's now clear and everyone knows what to expect."

When it comes to subcontracting, there are very clear and specific subcontracting agreements that set out which party is liable for what aspect and who is responsible for taking out insurance.

"We also have a summary document that very clearly sets out what insurance cover we have and how our liabilities work. This is provided to clients and/or transporters so they know exactly who is liable in a particular situation."

According to Wixley, STC arrangements should be reviewed at least every two years, but if a major legislative change occurs, this might need to be done sooner.

"When it comes to contracts with clients, I would say these should be reviewed at least once a year."

Another legal risk is what is termed 'scope creep'. This occurs when a client might sign on to use a particular service and then later request additional services.

"The problem comes in when we go back to the contract and establish that these additional services are not covered. It could also happen that a claim occurs but when we go to the insurers to explain, for example, that a claim has arisen out of customs clearing activities if the contract only refers to transport services the claim may be repudiated."

Wixley also emphasises that businesses need to make sure they have an understanding of the potential risks of the business, which could be different. "If you're transporting cellphones, for example, you might need armed escorts. You need to identify the risks and then ask how these can be mitigated – by insuring or procuring armed escorts etc. If you do that up front, that mitigates a lot of the risks."