

# Legal Update

## Pricing Non-Delivery: Damages Under Singapore Law in a Volatile Commodities Market

The Strait of Hormuz, through which roughly one-fifth of the world's oil supply flows, is not only a vital maritime chokepoint but also a region housing infrastructure critical to global supply chains, and remains deeply entangled in Middle Eastern geopolitical tensions.<sup>1</sup> These tensions in West Asia have driven predictable increases in commodity prices, significantly disrupting global supply chains and prompting sellers and traders to capitalise on opportunities to maximise profits while, understandably, mitigating losses.

Notwithstanding fluctuations in hostilities and recent indications of a possible ceasefire, global supply chains have already sustained a seismic shock, particularly in relation to contractual performance in an increasingly volatile environment. This Legal Update examines the legal challenges in recovering damages from sellers under commodity contracts and, more broadly, contracts for the sale of goods, against the backdrop of widespread and cascading supply chain disruptions. It also offers practical guidance on responding to supplier non-delivery and highlights key considerations for sellers in managing the risks and consequences of potential breaches.

### 1. Damages for Refusal of Delivery

The heightened risk landscape arising from tensions in the Strait of Hormuz presents significant commercial challenges which may not necessarily meet the contractual thresholds for force majeure, but nonetheless create conditions in which performance of delivery obligations becomes commercially strained or impracticable. Absent other contractual mechanisms that adjust parties' rights and obligations in response to changed circumstances, global supply chain disruptions can be particularly acute for sellers, especially where they are unable to secure upstream goods required to fulfil downstream delivery commitments.

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<sup>1</sup> Dunn C and Barden J, "Amid Regional Conflict, the Strait of Hormuz Remains Critical Oil Chokepoint - U.S. Energy Information Administration (EIA)" (U.S. Energy Information Agency, June 16, 2025) <<https://www.eia.gov/todayinenergy/detail.php?id=65504>> accessed April 9, 2026.

In the context of the Strait of Hormuz tensions, parties reliant on supplies from the region have, in some instances, paused deliveries or sought to limit or terminate contractual obligations across several exposed sectors, including:

- **Hydrocarbon energy:** Crude oil, LNG, and refined petroleum products are among the primary commodities exposed to disruptions arising from instability in the Strait of Hormuz, a key transit chokepoint for global energy flows. Operational disruptions and heightened security risks have affected regional infrastructure and shipping routes, such as QatarEnergy's Ras Laffan Industrial City, one of the world's largest LNG hubs which has halted production.<sup>2</sup> Moreover, even perceived risks to supply continuity can drive price volatility and contractual stress across energy markets.
- **Petrochemicals and plastic feedstocks:** Any disruption or constraint in hydrocarbon supply has a cascading effect on derivative commodities such as ethylene, polyethylene, and other downstream chemical inputs.<sup>3</sup> Reduced feedstock availability and increased input costs can lead to systemic shortages, production slowdowns, and pricing dislocations across manufacturing value chains.
- **Transshipment and logistics:** Beyond rising energy costs and their impact on contract profitability, parties may also face increased war-risk insurance premiums and higher freight rates, which are not always fully accounted for in existing contractual pricing structures.<sup>4</sup> These upstream cost pressures can render performance under sub-contracts commercially unviable, increasing the likelihood of renegotiations, delayed performance, or termination.
- **Commodities markets (general):** More broadly, geopolitical tensions in critical transit regions such as the Strait of Hormuz tend to amplify volatility across global commodities markets, including metals, agricultural products, and bulk commodities.<sup>5</sup> Price fluctuations, supply uncertainty, and shifting trade flows can place significant strain on contractual performance, particularly where contracts lack robust price adjustment or risk allocation mechanisms.

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<sup>2</sup> Kimball S, "Iran Strikes Halt Qatar LNG Output, Shaking Global Energy Markets" CNBC (March 2, 2026) <<https://www.cnbc.com/amp/2026/03/02/qatars-state-owned-energy-company-halts-lng-production-after-iran-drone-attacks.html>> accessed April 9, 2026.

<sup>3</sup> UN Conference on Trade and Development, "Strait of Hormuz Disruptions: Implications for Global Trade and Development" (UN Trade and Development (UNCTAD), March 10, 2026) <<https://unctad.org/publication/strait-hormuz-disruptions-implications-global-trade-and-development>> accessed April 8, 2026.

<sup>4</sup> Marshaine, "How the Iran Conflict Is Disrupting Global Supply Chains" Oxford College of Procurement and Supply (March 20, 2026) <<https://www.oxfordcollegeofprocurementandsupply.com/how-the-iran-conflict-is-disrupting-global-supply-chains/>> accessed April 10, 2026

<sup>5</sup> Chu B, "Strait of Hormuz: How Closure Could Affect Food, Medicines and Smartphones" (BBC News, March 27, 2026) <<https://www.bbc.com/news/articles/c4gjxv5g19no>> accessed April 10, 2026.

## A. Singapore Law on Measuring Damages for Refusal of Delivery

As a general principle, damages for breach of contract are compensatory and are intended to place the innocent party in the position it would have been in had the contract been properly performed. In the context of a contract for the sale of goods, this means that the buyer is entitled to receive goods of the agreed quantity and quality, and where this does not occur, to be compensated accordingly.

In situations where further negotiations for performance are not fruitful and the context precludes specific performance claims, a buyer may have to recoup its losses by seeking damages through litigation or arbitration, depending on the specific contract's dispute resolution clauses. Under Singapore law, the measure of damages for refusal to deliver goods is governed by s 51 of the Sale of Goods Act ("**SOGA**").

Parties seeking damages for non-delivery of goods will need to consider the commercial realities which underpin their losses and the applicable legal considerations. Key questions include:

- Whether there is an available market for the goods which were not delivered (and where multiple markets offer goods in substitution, which market is most appropriate);
- What is provided for in the contract in relation to sub-contracts or onward obligations for the Buyer; and
- Whether the buyers need to take reasonable efforts to mitigate their losses?

## B. Available Market Consideration

In our view, the Singapore courts have historically favoured the buyer's perspective when determining which market relevantly constitutes the available market for the goods. A market which is deemed available to the buyer not only requires the presence of sellers but also whether it was the most commercially reasonable for the buyer.<sup>6</sup>

In *Shri Bajrang Power*, the defendant failed to deliver steel-making pig iron and subsequently terminated the contract.<sup>7</sup> Following the non-delivery, the claimant mitigated its loss by

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<sup>6</sup> *Shri Bajrang Power and Ispat Ltd v Steel Corp Ltd* [2025] SGHC 107 ("**Shri Bajrang Power**").

<sup>7</sup> *Id.* at [3].

procuring steel scrap from the Indian market for its steel production, rather than sourcing pig iron from overseas suppliers which were technically available.<sup>8</sup>

The Singapore High Court held that the Indian steel scrap market, despite being a substitute and more expensive, was the appropriate reference point for mitigation, as it was the most readily accessible option available to the claimant in the circumstance.<sup>9</sup> The Court emphasised that the relevant market for assessing mitigation is not necessarily the theoretical or global market, but the one that offers the claimant a practical and reasonable means of replacement.

The key takeaway from *Shri Bajrang Power* is that in assessing mitigation, the “available market” is determined by commercial reality and accessibility. A claimant is not required to pursue less practical or more burdensome alternatives but must act reasonably without overreaching into profit-making from the breach.<sup>10</sup>

### C. Measure of Damages

Where there is an available market for the goods, the *prima facie* measure of damage is the difference between the contract price and the market price of the goods at the time when delivery ought to have taken place. This principle is embodied in s 51(3) of the SOGA.<sup>11</sup>

A different measure of damages may arise where it was within the reasonable contemplation of both parties at the time of contracting that the goods were intended for onward sale under a sub-contract of the same or similar nature. In such circumstances, the buyer may only be entitled to recover loss of profits and any liability incurred under the sub-contract as consequential losses.<sup>12</sup>

In *Gimpex*, the dispute concerned the delivery of coal that did not meet the specified quality, resulting in the claimant’s *de facto* rejection in accordance with the contractual terms after its sub-contracted buyer refused the coal.<sup>13</sup> Although the claimant had entered into a sub-sale arrangement with a third party for the undelivered coal, the Court held that such downstream arrangements did not displace the applicable measure of damages, as they were not within

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<sup>8</sup> *Id.* at [4].

<sup>9</sup> *Id.* at [18].

<sup>10</sup> *Shri Bajrang Power* at [19].

<sup>11</sup> *Gimpex Ltd v Unity Holdings Business Ltd and others* [2015] SGCA 8 at [215] (“*Gimpex*”).

<sup>12</sup> *Gimpex* at [216].

<sup>13</sup> *Id.* [23].

the reasonable contemplation of the parties at the time of contracting, and accordingly loss of profits from the sub-sale was not the appropriate basis for assessing damages.<sup>14</sup>

Such reasoning, however, left room for recovery of loss of profits and consequent losses as the applicable measure of damages where sub-contracts considerations have in part defined the contractual relationship between seller and buyer.<sup>15</sup> In this regard, the applicable test is whether, at the time of contracting, both parties knew or reasonably contemplated that the goods were being purchased for a specific onward transaction, such that a breach would likely result in a claim for loss of profits. This may be established where the seller was aware of a sub-sale.<sup>16</sup> As stated above, in *Gimpex*, the absence of knowledge of the sub-contract, including its terms, was a factor weighing against allowing recovery on that basis.

To conclude on this issue, absent mutual contemplation or any contractual provision that contemplates a sub-sale, the measure of damages remains the *prima facie* measure under s 51(3) of SOGA, *i.e.*, the difference between the contract price and the market price of the goods at the time when delivery ought to have taken place.

## 2. Substitute Transactions

Notwithstanding the market-difference approach to assessing damages for non-delivery, substitute transactions undertaken may not necessarily influence the measure of damages. Parties responding to a refusal to deliver should therefore carefully consider their duty to mitigate, its impact on the quantum of recovery, and the necessity for any such mitigation measures.

### No general obligations to enter substitute transaction

As explained by Toulson J in *Dampskibsselskabet "Norden" A/S v Andre & Cie SA*<sup>17</sup>, which was relied on by the High Court of Singapore in *TCL Industries (Malaysia) Sdn Bhd v ICC Chemical Corp*,<sup>18</sup> albeit in a different context, states that: “[t]he availability of a substitute market enables a market valuation to be made of what the innocent party has lost, and a line thereby to be drawn under the transaction. Whether the innocent party thereafter in fact enters into a substitute contract is a separate matter.”<sup>19</sup> The assessment of damages is

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<sup>14</sup> *Id.* at [216].

<sup>15</sup> See also: *Brown Noel Trading Pte Ltd v Donald & McArthy Pte Ltd* [1996] SGCA 74 at [48]- [59].

<sup>16</sup> *Gimpex* at [216].

<sup>17</sup> [2003] 1 Lloyd's Rep 287

<sup>18</sup> [2007] SGHC 211

<sup>19</sup> *Id.* at [42].

therefore objective and does not depend on whether the innocent party in fact enters into a substitute transaction.

Accordingly, the innocent buyer is not necessarily required to purchase substitute goods in order to recover damages. Once there is an available market, the innocent buyer has a choice whether to enter the market or to stay out of it. However, that choice is independent of the breach, and the defaulting seller is not liable for the consequences of any subsequent market movements following that choice. Nor is the innocent buyer required to give credit for any favourable market movements.<sup>20</sup>

While an innocent party may freely decide how to respond to a breach, the Singapore courts adopt a more disciplined approach when assessing damages. The High Court's decision in *Shri Bajrang Power* reflects a reluctance to award more than the claimant's actual loss. In that case, where the buyer mitigated by purchasing steel scrap in place of undelivered pig iron, the Court preferred the claimant's actual replacement costs over a notional market-difference measure.<sup>21</sup> This reflects a broader principle: while the market-difference approach relies on a legal fiction of immediate market substitution, reliance on actual substitute transactions enables the court to award compensation without conferring a windfall. That said, it remains an open question whether the outcome in *Shri Bajrang Power* might have differed had Toulson J's observations in *Dampskibsselskabet "Norden" A/S v Andre & Cie SA* were before the Court.

While it remains unclear whether an innocent party must enter the market where one is available, doing so may effectively fix the measure of damages. In such cases, courts may be inclined to assess loss by reference to the actual substitute transaction rather than a notional market difference.

### 3. Conclusion

In an increasingly volatile commodities landscape, the orthodox principles on non-delivery damages under Singapore law remain deceptively simple but fact-sensitive in application. While the market-difference measure provides a clear starting point, recent authorities suggest that commercial reality, particularly the availability of a practical substitute market and the steps taken in mitigation, will often shape the ultimate outcome. Parties should therefore be mindful not only of their contractual rights, but also of how their post-breach conduct may influence the measure of recovery, especially where substitute transactions are undertaken in a rapidly shifting market.

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<sup>20</sup> *Id.* at [42].

<sup>21</sup> *Shri Bajrang Power* at [19].

## Further information

Should you have any questions on this article or how this development may affect you or your business, please feel free to get in touch with the team at PDLegal.

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