Material Adverse Change Clauses in M&A Transactions: The Impact of Macroeconomic Events

Fatima Aliyeva[*]

Abstract

Mergers and acquisitions (hereinafter M&A) transactions often involve a period between signing and closing, during which the condition of the company being acquired may change before the transaction is completed. Material Adverse Change (hereinafter MAC) clauses are intended to allocate between the parties the risks arising from significant adverse developments during this period. Their application becomes more complex where deterioration results from broader macroeconomic changes, since the same event affecting the market as a whole may have different consequences for individual companies. The key question is therefore whether such deterioration falls within the risk already assumed by the buyer under the transaction or amounts to a change significant enough to affect the obligation to complete the acquisition. This article examines how macroeconomic changes are assessed in the context of MAC clauses and how courts distinguish a material adverse change from ordinary commercial risk. After reviewing the case law developed around MAC clauses, the same issue is considered under Article 422 of the Civil Code of the Republic of Azerbaijan, which governs significant changes in circumstances. The article also puts forward proposals for applying approaches developed in international judicial practice concerning MAC clauses in the Azerbaijani legal context.

Annotasiya

Birləşmə və satınalma (mergers and acquisitions) (bundan sonra – M&A) əməliyyatlarında müqavilənin imzalanması ilə əqdin tamamlanması arasında keçən müddətdə satın alınan şirkətin vəziyyəti dəyişə bilər. Əhəmiyyətli əlverişsiz dəyişiklik (Material Adverse Change) (bundan sonra – MAC) müddəaları bu dövrdə baş verən əhəmiyyətli mənfi dəyişikliklərdən irəli gələn risklərin tərəflər arasında bölüşdürülməsinə xidmət edir. Lakin pisləşmə daha geniş makroiqtisadi dəyişikliklərin nəticəsi olduqda bu müddəaların tətbiqi mürəkkəbləşir. Belə ki, bütövlükdə bazara təsir edən eyni hadisə ayrı-ayrı şirkətlər üçün fərqli nəticələr yarada bilər. Buna görə də əsas məsələ belə pisləşmənin alıcının əqd üzrə artıq üzərinə götürdüyü riskə aid olub-olmaması və ya əqdin tamamlanması öhdəliyinə təsir göstərəcək dərəcədə əhəmiyyətli dəyişiklik təşkil edib-etməməsidir. Bu məqalədə makroiqtisadi dəyişikliklərin MAC müddəaları çərçivəsində necə qiymətləndirildiyi və məhkəmələrin bu kontekstdə əhəmiyyətli mənfi dəyişikliklə adi kommersiya riskini necə fərqləndirdiyi araşdırılır. MAC üzrə formalaşmış məhkəmə təcrübəsi nəzərdən keçirildikdən sonra eyni məsələ şəraitin əhəmiyyətli dərəcədə dəyişməsini tənzimləyən Azərbaycan Respublikası Mülki Məcəlləsinin 422-ci maddəsi baxımından təhlil edilir. Məqalədə həmçinin MAC üzrə

[*] Baku State University, LL. B'26.

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Introduction

Commercial agreements are necessarily made against the circumstances existing when the parties negotiate their bargain and decide which risks they are prepared to bear. Difficulties arise when those circumstances change after the agreement has become binding but before the transaction has been completed. This concern is especially acute in M&A, where an acquisition agreement may become binding while regulatory approvals, merger-control clearance or other conditions required for completion remain outstanding. During that period, the buyer is committed to a transaction negotiated on the basis of existing circumstances, while the target continues to operate and remains exposed to changes in its business and economic environment.[1] The commercial assumptions on which the deal was struck may thus change before the transaction itself is completed. This makes the allocation of interim-period risk a central concern in determining the parties' respective obligations between signing and closing. To preserve this delicate balance, specific contractual mechanisms come into play.

[1] Robert T. Miller, *The Economics of Deal Risk: Allocating Risk Through MAC Clauses in Business Combination Agreements*, 50 William & Mary Law Review 2007, 2012 (2009).

MAC clauses are used in acquisition agreements to address significant negative changes in a company that may occur between signing the agreement and completing the acquisition.[2]

Depending on the agreement's terms, the absence of a MAC event often operates as a condition to the buyer's obligation to complete the transaction.[3] The difficulty lies in determining when a deterioration is sufficiently significant to fall within the clause. Courts have generally imposed a high burden on buyers seeking to invoke a MAC clause to avoid completing an acquisition.[4] The inquiry becomes particularly difficult where the deterioration follows a macroeconomic event. Inflation, currency depreciation, changes in interest rates or economic recession may affect the market generally, while producing substantially different consequences for individual businesses. MAC clauses commonly exclude general changes in economic conditions, financial markets and the relevant industry, thereby allocating such systematic risks contractually. However, the application of these exclusions may depend on the terms of the agreement and how the relevant event affects the target.[5] The fact that an event is market-wide therefore does not, by itself, resolve the question of how its consequences should be treated in a particular transaction. Even where an agreement excludes general economic changes, it may not specify how the target-specific consequences of those changes affect the buyer's closing obligations.

On the other hand, parties cannot always include detailed MAC mechanisms in their agreements or certain circumstances remain unregulated. In such cases, Azerbaijani law provides a general legal framework for a significant change in circumstances, namely Article 422 of the Civil Code. However, the absence of a clear framework when applying this provision in the specific context of an acquisition creates serious difficulties. This, in turn, generates uncertainty as to how such deterioration should be distinguished from the commercial risks already assumed under the transaction and how the requirements of Article 422 should be applied to such transactions. The uncertainty surrounding the application of Article 422 is not merely theoretical. The Constitutional Court's Decision of 7 September 2018 arose from a reference by the Baku Court of Appeal which expressly noted

[2] *Ibid*.

[3] Tuna Çolgar & Helin Akbulut, *Material Adverse Change Clauses*, Chambers (July 12, 2023), https://chambers.com/articles/material-adverse-change-clauses (last visited Sept. 29, 2026).

[4] *Hexion Specialty Chemicals v. Huntsman Corp, Inc.*, CA 3841-VCL, 715, 738 (Sep. 29, 2008). Available at: https://law.justia.com/cases/delaware/court-of-chancery/2008/112500-1.html (last visited Sep. 21, 2026).

[5] Miller, *supra* note 1, 2048-2049.

differing judicial approaches and decisions concerning the application of Article 422 that impeded the formation of consistent judicial practice.[6]

This article examines the legal significance of macroeconomic developments affecting a target between signing and closing. To this end, Section I first explores the structure of M&A transactions, interim-period risk and the economic function of MAC clauses in allocating macroeconomic developments. Section II then examines leading case law to extract the judicial criteria, such as timing, materiality and durational significance, disproportionate effect and causation, used to evaluate post-signing deterioration. Building on these comparative insights, Section III proposes a transaction-specific framework for applying Article 422 of the Azerbaijani Civil Code, demonstrating how MAC jurisprudence can clarify the statutory requirements without introducing an independent legal doctrine. Finally, the Conclusion summarizes the main findings and offers recommendations for judicial interpretation.

I. Macroeconomic Risk During the Interim Period of M&A Transactions

A. The Distinctive Structure of M&A Transactions and the Interim Period

M&A agreements are complex commercial contracts that establish the principal terms on which a buyer undertakes to acquire a target company, its shares or business assets. Typically, contractual commitment and completion in such transactions do not occur simultaneously: the agreement may become binding while closing remains pending subject to regulatory approvals, merger-control clearances or other agreed conditions. It is precisely this structural feature that gives rise to the interim period between signing and closing. During this period, the parties remain bound by the agreed terms while ownership of the target has not yet transferred. The duration of the interim period varies from transaction to transaction, but its legal significance lies in the parties' exposure to changes affecting the target after contractual commitment and before completion.[7]

This separation between contractual commitment and completion produces a distinctive allocation of control and economic exposure.[8] The

[6] Azərbaycan Respublikası Mülki Məcəlləsinin 422-ci maddəsinin şərh edilməsinə dair Azərbaycan Respublikası Konstitusiya Məhkəməsi Plenumunun Qərarı [Decision of the Plenum of the Constitutional Court of the Republic of Azerbaijan on the Interpretation of Article 422 of the Civil Code of the Republic of Azerbaijan] (2018). Available at: https://e-qanun.az/framework/40088 (last visited Sep. 24, 2026).

[7] Guhan Subramanian & Caley Petrucci, *Deals in the Time of Pandemic*, 121 Columbia Law Review 1405, 1405 (2021).

[8] Matthew Hyung Kyun Kwon, *Rise and Fall of Ordinary Course Covenants and MAE Clauses: Case and Trend Analysis*, 41 Journal of Law and Commerce 199, 203-205 (2023).

buyer has agreed to acquire the target on terms negotiated by reference to the information and commercial circumstances existing when the agreement was concluded, but does not yet own or control the business. Legal ownership and day-to-day operational authority ordinarily remain with the seller until closing. During this interim period, the seller continues to operate the business while the buyer has a conditional obligation to purchase it.[9] The target therefore remains economically active during a period in which the parties' respective interests in its future value have already begun to diverge.[10] A deterioration in the target's business before closing may reduce the value of what the buyer has agreed to acquire, whereas decisions necessary to preserve that value continue to be taken by a party that will cease to own the business once the transaction is completed. The interim period consequently creates risks that are not present in the same form once ownership has transferred.[11] The target may experience changes in revenues, financing needs, contractual relationships, regulatory conditions or other aspects of its business while the acquisition remains pending.[12] Some of those changes may result from the operation of the business itself; others may arise from circumstances over which neither party has meaningful control.[13] When a negative change occurs in the value or condition of the target company, the buyer's natural reaction may be to walk away from the deal or refuse to close. But the buyer cannot ordinarily treat every deterioration as a basis for refusing to close, since entering into an acquisition necessarily involves exposure to some degree of change before completion. At the same time, requiring the buyer to complete the transaction regardless of the nature or magnitude of an intervening change could force it to acquire a business materially different from the one it agreed to acquire. The legal problem is therefore not simply that the target may change before closing, but how the agreement distributes the consequences of that change between the parties.[14]

Acquisition agreements address this problem through several interrelated provisions rather than through a single contractual mechanism. Representations and warranties establish an agreed factual baseline concerning the target; interim covenants regulate the seller's conduct while

[9] Robert S. Reder & William Pugh, *Delaware Supreme Court Bars Buyer from Using Narrowly "Cabined" Working Capital Adjustment to Attack Seller's Alleged Noncompliance with GAAP*, 72 Vanderbilt Law Review En Banc 19, 20 (2018).

[10] Bryan Monson, *The Modern MAC: Allocating Deal Risk in the Post-IBP v. Tyson World*, 88 Southern California Law Review 769, 769-774 (2015).

[11] Afra Afsharipour, *Transforming the Allocation of Deal Risk Through Reverse Termination Fees*, 63 Vanderbilt Law Review 1161, 1166-1172 (2010).

[12] *Ibid.*

[13] Nils Patschureck et al., *Contract Design as a Risk Management Tool in Corporate Acquisitions: Theoretical Foundations and Empirical Evidence*, 26 Journal of Management Control 279, 308-316 (2015).

[14] *Supra* note 1, 2081-2082.

the transaction remains pending; and closing conditions determine what must remain true or occur before the parties are required to complete the transaction.[15] These provisions perform different functions, meaning that an event affecting the target may have different consequences under different contractual provisions.

This distinction is particularly relevant to ordinary-course covenants. Such provisions commonly restrict significant departures from the target's established business practices before closing, thereby limiting the extent to which the business may be altered while the acquisition remains pending. At the same time, external circumstances may require the target to depart from its ordinary operations. *AB Stable VIII LLC v. MAPS Hotels and Resorts One LLC* illustrates this distinction. In that case, the buyer agreed to acquire a portfolio of 15 luxury hotel properties for $5.8 billion, but subsequently sought to terminate the transaction. In response to the COVID-19 pandemic, the seller made substantial operational changes to the hotel businesses, including closing properties and reducing staffing and other expenditures without obtaining the buyer's prior consent. The Delaware Court of Chancery considered the pandemic under the agreement's Material Adverse Effect ("MAE") provision but separately examined whether the seller's response complied with the ordinary-course covenant.[16] The Court of Chancery held that the pandemic fell within the agreement's MAE carve-out but that the seller breached the ordinary-course covenant, which excused the buyer from closing; the Delaware Supreme Court affirmed. The significance of the case for present purposes lies in this distinction: the same external event may engage different provisions of an acquisition agreement and its contractual consequences therefore depend not merely on the nature of the event but also on the particular obligation through which the relevant risk is regulated. The same distinction may be relevant when a broader macroeconomic event prompts changes in a target's operations; its contractual effect depends on the wording of the relevant covenant and the agreement's allocation of risk. Just as operational responses to a pandemic can trigger covenant breaches even where general market risks are carved out of a MAC clause, systematic macroeconomic shifts, such as sudden inflation, interest rate hikes or currency devaluations, similarly force targets into operational adjustments that may violate interim covenants or ordinary-course obligations. Consequently, evaluating macroeconomic risk requires analyzing not only whether a general economic shock qualifies as a MAC, but also how the target's operational measures in response to that shock interact with its specific post-signing covenants.

[15] Monson, *supra* note 10.

[16] *AB Stable VIII LLC v. MAPS Hotels & Resorts One LLC*, C.A. No. 2020-0310-JTL, 125-130, 149-153, 165-169 (Dec. 8, 2021). Available at: https://law.justia.com/cases/delaware/court-of-chancery/2020/c-a-no-2020-0310-jtl.html (last visited Sept. 28, 2026).

The contractual allocation of interim-period risk becomes particularly important where the intervening development arises outside the target's operations. Macroeconomic events present this difficulty because their origin may be market-wide, while their consequences depend on the financial and operational characteristics of the particular business.[17]

B. Macroeconomic Events as Interim-Period Transaction Risk

The risks arising during the interim period differ considerably in their source and scope. Some originate within the target itself, such as the loss of a significant customer, deterioration in operational performance or the emergence of previously unidentified liabilities. Others arise outside the target and affect the economic environment in which the transaction is expected to close.[18] Macroeconomic developments belong principally to the latter category: they may affect an M&A transaction even though they originate outside both the target and the parties' control.[19] Economic recession, inflation, currency depreciation, changes in interest rates and disruption in financial markets are particularly relevant because they may alter the assumptions concerning the target's value, expected performance or financing on which the transaction was negotiated.[20] Their relevance becomes more pronounced during the interim period: the parties have already committed to the principal terms of the acquisition, while the target remains exposed to economic changes before closing.[21] Empirical research confirms that changes in gross domestic product, inflation, interest rates and real exchange rates are associated with the outcome of announced M&A transactions, although their effects vary across transactions and economic environments. Crucially, these macroeconomic fluctuations heighten the likelihood of transaction failures or deal renegotiations during the interim period, thereby highlighting the importance of contractual risk-allocation mechanisms such as MAC clauses.[22]

Recession and inflation affect a pending acquisition primarily through changes in the target's expected operating performance. A recession may weaken demand for the target's products or services and thereby reduce revenues, cash flows and expected profitability. Inflation creates a different form of pressure by increasing input, labor and other operating costs; where

[17] Antonio J. Macias & Thomas Moeller, *Target Signaling with Material Adverse Change Clauses in Merger Agreements*, 39 Journal of Empirical Finance 69, 71 (2016).
[18] *Ibid.*
[19] *Ibid.*
[20] Peggy Morgan, Note, *The Big MAC: How Should Courts Approach MAC Clauses in Merger and Acquisition Agreements?*, 57 Indiana Law Review 725, 727-730 (2024).
[21] Afsharipour, *supra* note 11, 1166-1172.
[22] Deepak Kumar et al., *Macroeconomic Influences on M&A Deal Outcomes: An Analysis of Domestic and Cross-Border M&As in Developed and Emerging Economies*, 161 Journal of Business Research, 3-5 (2023).

those increases cannot be passed on to customers, the target's margins may decline. For an M&A transaction, these developments matter because the financial expectations underlying the agreed valuation may change between signing and closing. The extent of that change is nevertheless target-specific: the effect of a recession depends, for example, on the sensitivity of the target's business to the economic cycle, while the effect of inflation depends on its cost structure and ability to adjust prices.[23]

Currency movements introduce a distinct exposure, particularly in cross-border transactions. Depreciation may increase the cost of imported inputs or the burden of foreign-currency liabilities, whereas foreign-currency revenues may offset part of that effect. Accordingly, the same currency movement may weaken one target's financial position while having a limited or even offsetting effect on another.

Interest-rate changes and financial-market disruption operate principally through financing conditions. Higher rates may increase the target's debt-servicing and refinancing costs, particularly where it is highly leveraged or exposed to variable-rate debt. At the transaction level, tighter monetary conditions may also increase financing difficulties for the acquirer. Empirical evidence associates increases in the federal funds rate with a greater likelihood of deal withdrawal and financing challenges for acquirers, while monetary contraction is associated with lower aggregate M&A activity.[24] More broadly, evidence from acquisitions across 36 countries indicates that macroeconomic conditions affect acquisition decisions partly through the cost and availability of external finance.[25] These effects illustrate why a market-wide economic development cannot be assessed solely by reference to its general character: its significance for a pending acquisition ultimately depends on how and to what extent, it affects the particular target or the financing of the transaction.[26]

Although macroeconomic events are market-wide in origin, their consequences are not uniform. The same economic development may affect businesses differently depending on their financial structure, sources of revenue, cost base and exposure to particular markets. A significant increase in interest rates, for example, may impose substantially greater pressure on a highly leveraged target than on competitors with limited external financing. Currency depreciation may likewise affect a business dependent on imported inputs more severely than one whose costs and revenues arise predominantly

[23] Morgan, *supra* note 20.

[24] Samer Adra et al., *The Impact of Monetary Policy on M&A Outcomes*, 62 Journal of Corporate Finance, 4-8 (2020).

[25] Isil Erel et al., *Corporate Liquidity, Acquisitions and Macroeconomic Conditions*, 56 Journal of Financial and Quantitative Analysis 443, 470-474 (2021).

[26] Albert H. Choi & George G. Triantis, *Strategic Vagueness in Contract Design: The Case of Corporate Acquisitions*, 119 Yale Law Journal 848, 867 (2010).

in the same currency. A macroeconomic event may therefore be general in its origin but company-specific in its consequences.[27]

Unlike risks arising primarily from the target's own operations, macroeconomic risks are generally beyond the parties' ability to prevent. Prevention is generally unavailable in relation to systematic risks and the parties will often have similar information concerning the probability of their occurrence.[28] This characteristic makes contractual allocation particularly important: the parties may be unable to prevent the event, but they can determine how its consequences will affect their obligations under the acquisition agreement.

C. MAC Clauses as a Mechanism for Allocating Interim-Period Risk

A MAC clause is a contractual provision that allocates the risk of serious adverse changes affecting the target before closing. It identifies the level and type of deterioration that may have consequences for the buyer's obligation to complete the acquisition, thereby distinguishing such changes from interim-period risks that remain with the buyer under the agreed transaction.[29] In practice, a MAC commonly operates as a closing condition, meaning that the completion of the transaction requires that no MAC occurs during this period.[30] Where this condition is not satisfied (i.e., where a MAC has occurred), the buyer may be entitled to decline to complete the transaction. The clause does not, however, protect the buyer against every deterioration in the target's condition or every development that makes the transaction less attractive.[31] Its role is to allocate the consequences of sufficiently serious adverse changes in accordance with the particular terms of the acquisition agreement.

As discussed in Section 1.2, macroeconomic events may affect the target's financial position before closing. However, the occurrence of such an event does not automatically mean that it constitutes a MAC. Whether the resulting deterioration falls within MAC protection depends on the terms agreed by the parties.

Acquisition agreements may exclude general economic conditions, financial-market developments or industry-wide changes from the MAC definition through carve-outs.[32] The economic source of a loss and the contractual allocation of that loss are not the same question. A market-wide

[27] *Supra* note 20.

[28] *Supra* note 1, 2081-2082.

[29] *Ibid.*

[30] *Ibid.*

[31] *Akorn, Inc. v. Fresenius Kabi AG*, No. 2018-0300-JTL, 134-139 (Oct. 1, 2018). Available at: https://law.justia.com/cases/delaware/court-of-chancery/2018/ca-2018-0300-jtl.html (last visited Sep. 28, 2026).

[32] *Supra* note 20, 728-729.

event may therefore fall outside MAC protection in one agreement but remain relevant under another, depending on the wording and scope of the applicable provisions.[33] This distinction has a direct consequence for the parties' obligations. If the deterioration constitutes a MAC under the agreement and the absence of a MAC is a condition to closing, the buyer may be entitled to decline completion in accordance with the contractual terms. If the deterioration does not constitute a MAC, the buyer cannot rely on that provision alone to refuse closing.[34] A recession that reduces the target's expected profitability, for example, does not automatically release the buyer from its commitment.[35] Equally, the fact that a recession affected the wider market does not necessarily exclude MAC protection where the agreement preserves it for a disproportionate effect on the target. The same macroeconomic event may thus lead to different contractual outcomes, not merely because its effects differ, but because the parties may have allocated the relevant risk differently.[36]

Disputes concerning macroeconomic deterioration therefore require more than proof that an external event occurred and adversely affected the target. The contractual definition, exclusions and applicable closing conditions determine whether the resulting deterioration affects the buyer's obligation to complete the transaction. Whether such deterioration constitutes a MAC ultimately depends on how courts interpret and apply the contractual standard agreed by the parties.[37]

II. Judicial Determination of a MAC

A macroeconomic event may cause substantial financial losses without necessarily constituting a MAC. As established in the preceding section, the consequences of such an event depend on the deterioration suffered by the target and the risks allocated under the acquisition agreement. The difficulty lies in determining whether that deterioration satisfies the contractual MAC standard.[38] This question cannot be answered by identifying the economic event or measuring the resulting loss alone: the significance of the change may depend on (i) when it occurred (timing), (ii) how serious its effects are and

[33] Andrew A. Schwartz, *A Standard Clause Analysis of the Frustration Doctrine and the Material Adverse Change Clause*, 57 UCLA Law Review 789, 820-823 (2010).

[34] Adam B. Chertok, *Rethinking the U.S. Approach to Material Adverse Change Clauses in Merger Agreements*, 19 University of Miami International and Comparative Law Review 99, 102-106 (2011).

[35] Andrew C. Elken, *Rethinking the Material Adverse Change Clause in Merger and Acquisition Agreements: Should the United States Consider the British Model?*, 82 Southern California Law Review 291, 293-297 (2009).

[36] Chertok, *supra* note 34, 106-109.

[37] *Ibid.*

[38] David J. Denis & Antonio J. Macias, *Material Adverse Change Clauses and Acquisition Dynamics*, 48 Journal of Financial and Quantitative Analysis 819, 819-847 (2013).

whether they are temporary or lasting (materiality and duration), (iii) whether the target was affected differently from comparable businesses (disproportionate effect), (iv) whether the event relied upon actually caused the deterioration (causation) and (v) how these factors are evaluated within the overall context of the agreement.[39]

Because Delaware law governs a large share of public-company acquisition agreements and its Court of Chancery has produced the leading MAC decisions, Delaware judicial practice offers a means of assessing these questions. The decisions in *IBP, Hexion and Akorn* demonstrate how courts examine an alleged adverse change in the context of the business being acquired and the agreement governing the transaction.[40] Their relevance to macroeconomic events lies in distinguishing a deterioration that remains within the risks assumed by the buyer from one that may satisfy the contractual MAC provision.

A. Timing of the Alleged Change

Timing is relevant to a MAC analysis because the alleged adverse change must represent a deterioration occurring within the period for which the agreement allocates MAC risk. The fact that a problem is discovered after signing does not necessarily mean that the target's condition changed after signing: the underlying condition may already have existed when the parties entered into the agreement. Conversely, an adverse development that began before signing may continue to produce new consequences during the interim period. The analysis must therefore distinguish the timing of the underlying event, the timing of its effects on the target and the timing at which those effects became known to the buyer.[41] Specifically, if an underlying condition pre-existed signing, it generally falls outside MAC protection unless the agreement provides otherwise; if an event occurs before signing but its material adverse effects only manifest during the interim period, it may trigger a MAC; whereas the mere post-signing discovery of a pre-existing fact does not itself constitute an interim deterioration.

The practical application of this temporal distinction is demonstrated in *IBP, Inc. v. Tyson Foods, Inc*. In that case, Tyson Foods sought to terminate its merger agreement with IBP, a major meat processor, relying, among other matters, on accounting irregularities concerning IBP's subsidiary DFG that came to greater attention after the merger agreement had been signed. The court did not treat the subsequent discovery of those problems as sufficient in

[39] Robert T. Miller, *Canceling the Deal: Two Models of Material Adverse Change Clauses in Business Combination Agreements*, 31 Cardozo Law Review 99, 105-108 (2009).

[40] *In re IBP, Inc. Shareholders Litigation*, 789 A.2d 14, 67-68 (Jun. 15, 2001). Available at: https://opencasebook.org/documents/1005/ (last visited Sep. 17, 2026); *supra* note 4; *supra* note 31, 70-83.

[41] Steven M. Davidoff, *The Failure of Private Equity*, 82 Southern California Law Review 481, 503-506 (2009).

itself to establish a new material adverse effect. Instead, it examined the relevant contractual representations and the circumstances existing when the agreement was executed in determining whether the matters relied upon by Tyson could support its MAE position. The case therefore demonstrates the relevance of timing to the identification of the alleged change: information becoming known during the interim period must be distinguished from an actual deterioration in the target occurring during that period.

The same distinction is important where the alleged deterioration results from a macroeconomic development. Inflation or currency depreciation, for example, may begin before signing while their consequences for the target's costs, revenues or liabilities continue to develop after signing. In such circumstances, the relevant question is not merely when the macroeconomic event began or when the buyer became aware of it, but whether and to what extent the target's condition deteriorated during the period governed by the applicable MAC provision.[42]

B. Materiality and Durational Significance

A macroeconomic event may cause a substantial decline in the target's financial performance without necessarily constituting a MAC. The materiality of that decline depends on its significance for the business being acquired, which cannot be assessed solely by reference to the loss recorded in a particular financial period.[43] A sharp reduction in earnings may reflect a temporary disruption, while a less abrupt decline may indicate an impairment of the target's ability to generate earnings over a longer period. Materiality and durational significance are therefore closely connected: the expected persistence of an adverse effect informs the assessment of how seriously it affects the target's business.[44] This relationship is reflected in *IBP, Inc. v. Tyson Foods, Inc.*, where the Court of Chancery considered IBP's disappointing quarterly results in light of the cyclical nature of its business and the longer-term perspective of a reasonable acquirer.[45] Rather than treating the immediate decline as determinative, the court asked whether the deterioration was consequential to the target's earnings-generating capacity over a commercially reasonable period.[46] *Hexion Specialty Chemicals, Inc. v. Huntsman Corp.* followed the same approach in examining whether Huntsman's declining performance substantially threatened its overall earnings potential over a significant period.[47] The reasoning in these decisions

[42] Miller, *supra* note 39, 112-116.

[43] Kenneth A. Adams, *A Legal-Usage Analysis of "Material Adverse Change" Provisions*, 10 Fordham Journal of Corporate & Financial Law 9, 25 (2004).

[44] Yair Y. Galil, *MAC Clauses in a Materially Adversely Changed Economy*, 2002 Columbia Business Law Review 846, 846-847 (2002).

[45] *Ibid*.

[46] *Supra* note 40.

[47] *Supra* note 4, 738, 742.

explains the relationship between the two considerations: the duration of a decline matters because it helps establish whether the observed deterioration represents a substantial impairment of the business or a fluctuation whose consequences are expected to be short-lived. Durational significance should not be understood as a fixed temporal requirement applicable to every MAC provision. Its role is to inform the assessment of the seriousness of the alleged deterioration in light of the contractual wording and the nature of the business being acquired.

Snow Phipps Group, LLC v. KCAKE Acquisition, Inc. confirms this point by recognizing that durational significance depends on the specific circumstances of the acquisition.[48] The assessment must remain grounded in the target's business, the nature of the alleged deterioration and the applicable contractual standard. In the context of a recession, for instance, the question is not how long the wider economic downturn continues, but how long its adverse consequences are expected to affect the particular target. A business may recover while the recession persists; another may continue to experience reduced earnings after general market conditions improve.

The decisions in *Akorn, Inc. v. Fresenius Kabi AG and Snow Phipps* illustrate the importance of evidence concerning the likely course of deterioration. In *Akorn*, the court examined the target's sustained decline in financial performance alongside forward-looking evidence indicating that the adverse effects were expected to continue.[49] In *Snow Phipps*, the COVID-19 pandemic caused a severe reduction in DecoPac's sales, but the court considered evidence that the business had begun recovering and that its performance was expected to improve.[50] These decisions do not establish that recovery alone excludes a MAC or that a continuing decline necessarily establishes one. They demonstrate that the significance of an immediate loss must be assessed in light of the evidence concerning its expected effect on the target beyond the initial period of deterioration. That assessment requires a reliable comparison of the target's financial condition and a reasoned evaluation of its likely performance. Results from comparable historical periods help establish the extent of the deterioration; subsequent results, management forecasts and other forward-looking evidence may indicate whether its effects are expected to persist. The choice of comparison period is important: in Hexion, the court addressed the distortion that could arise from comparing financial results across unsuitable periods.[51] For a business affected by changing macroeconomic conditions, a forecast prepared before the relevant event

[48] *Snow Phipps Group, LLC v. KCAKE Acquisition, Inc.*, No. 2020-0282-KSJM (Apr. 30, 2021). Available at: https://cases.justia.com/delaware/court-of-chancery/2021-c-a-no-2020-0282-ksjm.pdf?ts=1619805709 (last visited Sep. 22, 2026).

[49] *Supra* note 31, 70-83, 136-138.

[50] *Supra* note 48, 34-39.

[51] *Supra* note 4, 742.

should therefore be considered alongside subsequent performance and the assumptions on which the forecast rests. An expected recovery should be supported by evidence, just as a claim of lasting impairment should be.

The interaction between materiality and duration does not eliminate the need to establish the seriousness of the adverse effect. A minor reduction in earnings does not become material merely because it continues for an extended period. Equally, the fact that a target experiences a severe immediate decline does not establish the required impairment if the evidence indicates that its consequences will be short-lived.[52] The inquiry is whether the deterioration, assessed in its magnitude and expected persistence, is sufficiently consequential to the target's business over the period relevant to the acquisition.[53]

C. Disproportionate Effect

A macroeconomic event may affect an entire industry while causing more severe consequences for a particular target. Whether that difference is relevant to a MAC claim depends on the agreement.[54] Where general economic or industry conditions are excluded from the MAC definition, the parties may nevertheless preserve protection against the disproportionately adverse effect of those conditions on the target.

The agreement in Akorn contained such a qualification. When Akorn attributed its deteriorating performance to broader headwinds in the generic pharmaceutical industry, the court examined the causes of its decline and compared its performance against evidence concerning direct industry peers. The Court of Chancery attributed Akorn's sharp decline in financial performance principally to increased generic competition and the unexpected loss of a key progesterone contract. It treated the serious data-integrity and regulatory problems as a separate basis for Fresenius's termination rights under the agreement's representations and warranties.[55] That inquiry mattered because the contractual treatment of a general industry risk differed from the treatment of deterioration attributable to the target's own circumstances.

Accordingly, where a recession affects the target more severely than other businesses, the difference in performance does not automatically establish a MAC. The comparison must address the effect specified in the agreement, using businesses that provide a meaningful basis for comparison. Disproportionate effect is relevant where the contractual wording makes it

[52] Samuel Shapiro, *Rethinking MAC Clauses in the Time of Akorn, Boston Scientific and COVID-19*, 10 Michigan Business & Entrepreneurial Law Review 241, 251 (2021).
[53] *Supra* note 20, 738-739.
[54] *Id*., 728-729.
[55] *Supra* note 31, 70-83, 136-147.

relevant; it is not an independent exception to every exclusion of macroeconomic risk.

D. Causal Connection

The occurrence of a macroeconomic event and a subsequent decline in the target's performance do not, without more, establish that the event caused the decline. This distinction becomes important where the target was already experiencing operational or financial difficulties or where several developments contributed to its losses.

In *Akorn*, the court examined Akorn's explanation that industry-wide pressures caused its poor performance against evidence of company-specific problems. Identifying the causes of deterioration was necessary to determine which contractual provisions governed the adverse effects relied upon by the buyer. A similar question arises where a target loses revenue during a recession but had also been losing customers before the downturn. The assessment must distinguish, to the extent supported by the evidence, the effects of the wider economic event from those of the target's existing difficulties. Causation matters not as a separate, universally applicable MAC threshold, but because the source of the deterioration may determine how the agreement allocates its consequences.

E. Assessment in the Context of the Agreement

The preceding decisions show why a macroeconomic event cannot be classified as a MAC solely by reference to its severity. The timing of the change identifies the relevant deterioration; materiality and duration establish its significance for the target; and where the agreement so provides, comparative impact and causation assist in determining whether the deterioration falls within an excluded risk or an applicable qualification. The contractual allocation of risk remains central to that assessment.[56] A serious and lasting decline may not support a MAC claim if the agreement excludes the risk responsible for it. Conversely, the fact that an event affected the wider market does not necessarily dispose of the claim where the agreement preserves protection against its disproportionate consequences for the target. The determination therefore turns on whether the proven deterioration satisfies the particular MAC provision, rather than on whether the underlying macroeconomic event is sufficiently serious in the abstract.

III. Macroeconomic Changes in M&A Transactions under Azerbaijani Law

The application of comparative MAC reasoning to M&A transactions under Azerbaijani law must be considered within the existing statutory framework governing significant changes in contractual circumstances.

[56] Davidoff, *supra* note 41.

Article 422 of the Civil Code provides the legal basis for modifying or terminating a contract where the circumstances underlying it have changed significantly, subject to the conditions prescribed by law. While Article 422 offers a general statutory doctrine of changed circumstances, applying its general standards to complex corporate acquisitions requires a refined analytical methodology to distinguish assumed commercial risk from legally actionable disruptions. A change is considered significant where, had the parties reasonably anticipated it, they would not have concluded the contract or would have done so on substantially different terms.[57] Where the parties cannot reach agreement, judicial relief is subject to four cumulative conditions: the parties must have proceeded on the assumption that the relevant change would not occur; the causes of the change could not have been overcome by the interested party with the required degree of care and caution; continued performance would substantially deprive that party of what it was entitled to expect under the contract; and the risk of the change must not be one that the interested party is required to bear by virtue of business usage or the nature of the contract.[58]

However, the practical application of this statutory framework presents considerable implementation challenges, particularly in the context of M&A transactions. The principal difficulty is determining when deterioration in the target's condition constitutes a significant change in the circumstances underlying the acquisition, rather than a commercial risk already assumed by the party seeking relief. A decline in earnings or enterprise value may demonstrate that the target has become less valuable, but it does not establish that the contractual basis of the acquisition has changed or that continued performance would substantially deprive the interested party of its expected contractual benefit. This distinction becomes more difficult when a macroeconomic event compounds risks that were already present at signing.

In such circumstances, the court must distinguish the deterioration attributable to the subsequent evvent from the risks inherent in the target's original condition and determine whether the resulting consequences fall within the contractual allocation of risk. Article 422 establishes the legal conditions for relief but does not prescribe an acquisition-specific method for making these distinctions. The analytical reasoning developed in MAC jurisprudence may assist in applying those conditions without replacing them with a separate contractual standard.

In this regard, the risk-allocation function of a MAC clause particularly significant for the application of Article 422. A MAC clause is not merely a mechanism that may permit the buyer to avoid closing; more fundamentally,

[57] Azərbaycan Respublikasının Mülki Məcəlləsi [The Civil Code of the Republic of Azerbaijan], art. 422.1 (1999).
[58] *Id.*, art. 422.2.

it allocates between the parties the risk of adverse developments affecting the target during the period between signing and closing.[59] This function is especially relevant to Article 422.2.4, which expressly requires consideration of whether the risk of the changed circumstances is to be borne by the party seeking relief.[60] Accordingly, deterioration in the target's financial position should not, by itself, determine the application of Article 422. The assessment must also identify the circumstances underlying the transaction and determine whether the agreement had already allocated the risk of their subsequent change.

Before MAC reasoning can be applied to Article 422, the different legal consequences of the two mechanisms must be distinguished. A MAC clause derives its content and consequences from the acquisition agreement. The parties may define the relevant adverse change by reference to the target's business, financial condition or operations, exclude specified categories of developments and determine the consequences of satisfying the contractual definition. Where the absence of a MAC is a condition to closing, the clause may affect whether the buyer remains obliged to complete the acquisition. Article 422 serves a different function. It does not create a closing condition or confer an automatic right to withdraw from the transaction upon the occurrence of an adverse event. Where the parties cannot agree on modification or termination, the interested party must satisfy the applicable legal requirements and pursue the prescribed procedure. Judicial modification is permitted only in the exceptional circumstances specified by law, while judicial termination is subject to the cumulative conditions governing changed circumstances.[61] The distinction is particularly important during the interim period, because the existence of a statutory claim does not itself suspend the buyer's obligation to close. The preceding analysis of MAC clauses can assist courts in applying Article 422 to M&A transactions, but it does not create an independent legal regime or alter the statutory requirements.

Applying these statutory requirements to an acquisition begins with identifying the circumstances existing when the agreement was concluded. The analysis should begin by identifying the circumstances existing when the acquisition agreement was concluded. Article 422 requires a change in the circumstances underlying the contract; accordingly, conditions already reflected in the target's position at signing must be distinguished from subsequent deterioration.[62] The acquisition agreement, due-diligence disclosures and contemporaneous financial information may assist in establishing that baseline. If, for example, the target's existing debt was

[59] *Supra* note 10, 769-770.

[60] *Supra* note 57, art. 422.2.4.

[61] *Id.*, art. 422.2-422.4, 423.2.

[62] *Id.*, art. 422.1.

disclosed before signing, the debt itself does not constitute a subsequent change. A later interest-rate increase may nevertheless create a new or substantially greater financing burden. The assessment should therefore focus on whether the post-signing event materially altered the circumstances underlying the transaction, rather than merely revealing a vulnerability that already existed.

This distinction also informs the requirement in Article 422.2.1 that the parties must have proceeded on the assumption that the relevant change would not occur.[63] General awareness of economic uncertainty should not automatically establish that the parties contemplated the particular development later relied upon for relief.[64] At the same time, a change cannot be treated as unexpected merely because its precise scale was not predicted. The parties' assumptions must instead be identified from the transaction itself, including the information available at signing and the risks addressed in the agreement. This keeps the inquiry focused on the circumstances underlying the particular acquisition rather than on the abstract foreseeability of inflation, interest-rate movements or other macroeconomic developments.[65]

The next issue is the significance of the deterioration. The materiality and durational-significance reasoning developed in MAC cases is useful here because it directs attention away from an isolated financial loss and towards its effect on the target over a commercially meaningful period.[66] Under Article 422, however, duration is not an independent condition. Its relevance lies in determining whether the change is sufficiently significant and whether continued performance would substantially deprive the interested party of what it was entitled to expect under the contract. A temporary reduction in earnings and a sustained impairment of the target's operations may therefore have different legal significance even if both initially produce a substantial financial loss. The assessment should focus on the effect of the deterioration on the business forming the subject of the acquisition, rather than on a decline in valuation alone. Where the deterioration follows a macroeconomic event, its cause must also be identified. A decline occurring during a recession, for example, may result from the wider economic environment, pre-existing weaknesses of the target or a combination of both. Comparative evidence may assist in distinguishing these possibilities where businesses with sufficiently similar exposures are available for comparison.[67] A substantially worse performance by the target may indicate company-specific vulnerability, while similar deterioration among comparable businesses may support a

[63] *Id.*, art. 422.2.1.

[64] *Ibid.*

[65] UNIDROIT Governing Council, Principles of International Commercial Contracts, art. 6.2.2(b), cmt. 3 (2016).

[66] *Supra* note 40, 67-68; *supra* note 4, 738-742.

[67] *Supra* note 31, 70-83, 123-127, 141-147.

connection with the wider economic event. Such evidence is not an independent test under Article 422. Its function is to clarify the source and extent of the change that forms the basis of the statutory claim.

Causation must also be considered together with Article 422.2.2. The fact that a macroeconomic event itself was beyond the parties' control does not establish that its consequences could not have been overcome with the degree of care and caution required by the contract.[68] The inquiry should concern the measures reasonably available to the party seeking relief. In an acquisition, this assessment must take account of the interim allocation of control. A buyer that has not yet acquired control of the target may have limited ability to alter its operations or financing arrangements. The statutory requirement should therefore be applied to the actual legal and practical position of that party, rather than to measures that could theoretically have been taken by someone else.

Risk allocation completes the analysis. Article 422.2.4 requires consideration of whether the relevant risk is one that the interested party was required to bear.[69] This is the point at which the acquisition agreement, including any MAC provision, becomes particularly relevant. MAC exclusions, pricing mechanisms, interim covenants and other contractual provisions may show how the parties allocated a particular economic exposure. A MAC clause is not conclusive of the Article 422 inquiry, but neither should an express contractual allocation of risk be disregarded when statutory relief is sought. Empirical research on acquisition agreements likewise demonstrates that MAC exclusions materially affect the allocation of deal risk and the parties' ability to terminate or renegotiate a transaction.[70] Foreseeability should not be conflated with this allocation of risk. Awareness that interest rates, exchange rates or other economic conditions may change does not necessarily mean that one party agreed to bear every consequence of such a change. Conversely, contractual allocation does not require the parties to have predicted the precise timing or magnitude of the event that later occurred.[71] The relevant question under Article 422.2.4 is whether, having regard to the agreement and the nature of the transaction, the risk of the changed circumstances belonged to the party seeking relief.[72]

A court applying Article 422 to an acquisition can therefore assess the target's condition at signing, the scale and duration of later deterioration, comparative evidence and the agreement's risk allocation. MAC

[68] *Supra* note 57, art. 422.2.2.

[69] *Id*., art. 422.2.4.

[70] Denis & Macias, supra note 38.

[71] *Ibid*.

[72] *See* Antonio J. Macias, *Risk Allocation and Flexibility in Acquisitions: The Economic Impact of Material-Adverse-Change (MACs) Clauses*, AFA 2009 San Francisco Meetings Paper (Apr. 17, 2009).

jurisprudence supplies a structured way of conducting this assessment, but it does not displace the statutory conditions. Any modification or termination remains governed by Article 422 and its procedural requirements.

Conclusion

Macroeconomic developments occurring between signing and closing present a fundamental challenge in M&A transactions as neither economic severity nor the resulting financial loss determines legal significance. The relevant question is whether the resulting deterioration remains within the risk allocated to the affected party or fundamentally alters the basis of the transaction.

The analysis of MAC jurisprudence demonstrates that this distinction cannot be reduced to a rigid percentage threshold. The condition of the target at signing provides the necessary baseline; magnitude must be considered together with the expected persistence of deterioration; contractual allocation determines who bears the relevant risk; comparative evidence may reveal whether a systematic event has produced an exceptional target-specific effect; and causation separates the consequences of the alleged change from pre-existing or independent weaknesses. These considerations explain why neither a market-wide event nor a substantial decline in target value is sufficient, by itself, to establish a MAC.

Under Azerbaijani law, Article 422 already contains the normative basis for a comparable inquiry. It directs attention to the circumstances forming the basis of the agreement, the significance of their change, substantial disturbance of the contractual balance and the allocation of risk. The difficulty is not the absence of statutory criteria, but the lack of a concrete method for applying them to the signing-closing period of an acquisition.

This article does not propose transplanting foreign MAC doctrine into Azerbaijani law as an independent body of substantive rules. It argues instead that the reasoning developed in MAC cases can be used to concretize the existing requirements of Article 422 in the M&A context. Applying this framework provides courts with a principled standard to distinguish assumed commercial risk from legally significant change, while encouraging parties to negotiate and allocate specific macroeconomic exposures more precisely under Azerbaijani-law agreements.

The central conclusion is accordingly narrower than the transplantation of foreign MAC doctrine. Azerbaijani law already supplies the applicable rule; comparative MAC jurisprudence simply provides a more developed method for applying it in the particular environment of M&A. A systematic event may be general in origin but company-specific in consequence. Whether a macroeconomic disruption has legal significance ultimately depends on its departure from the contractual baseline, its persistence and above all, whether it falls outside the risk that the party invoking Article 422 agreed to bear.