

# Offshore construction: Managing key risks and disputes

2025 is another busy year for the offshore construction sector. Despite challenges faced by the hydrocarbon industry, offshore oil and gas-related engineering, procurement and construction (EPC) awards are estimated to be valued at \$54 billion, up 1% year-on-year<sup>1</sup>. Expenditure in the global offshore wind sector is expected to hit \$80bn (an additional 19GW of installed capacity) following a recent slowdown where project delays drastically impacted financial investment decisions (FID) in 2024<sup>2</sup>.

The construction phase of an offshore project carries the most risk and is undoubtedly the source of significant disputes. **Freeths' construction and engineering team** has advised clients on a range of offshore construction projects, including offshore oil and gas installations, offshore wind projects, and interconnectors/subsea cabling.

## Offshore construction risks and mitigation

**Risk: contracts and multi-contracting models.** An ongoing issue in the offshore wind industry is a lack of bespoke contracts designed specifically for use in the sector. At the time of writing, FIDIC is developing a dedicated standard form contract for offshore wind projects, and it will be interesting to see whether the industry takes it up once published.

In addition to heavily amended FIDIC forms, other forms of contract such as LOGIC and BIMCO, which were not designed for offshore projects specifically are still commonly used. LOGIC contracts at least do contain important provisions for offshore operations such as i) involvement of the marine warranty surveyor; ii) use of marine vessel spread; and iii) contractual responsibility for weather conditions.

The offshore wind industry has shifted towards a multi-contracting approach rather than the traditional single source Engineering, Procurement, Construction and Installation (EPCI). Original Equipment Manufacturers (OEMs) (particularly turbine supply and install) are often unwilling to take on a fully wrapped EPC/turnkey project, especially given the scale of projects involved. Typically, a number of contracts govern one scheme.

**Mitigation:** Contractual provisions need to be adapted for offshore requirements. For example, failure to properly provide for vessel availability could result in delays if equipment is not available at the site and the opportunities to carry out works are limited due to variable weather. These delays can have serious consequences given the multi-tiered nature of offshore projects, as knock-on delays can cause sub-contractor packages to be disrupted, potentially causing liability gaps and disagreements between parties. Stakeholders should consider local law requirements (particularly around vessel availability) and whether EOT provisions are sufficient to include for such delays and include commercially acceptable rates for delay liquidated damages.

**Errors and omissions in the contract is a leading cause of construction disputes<sup>3</sup> and we have a wealth of experience of advising our clients on these issues in the event of disputes, particularly on how provisions are to be interpreted under English law.**

Risk: **environmental conditions.** For obvious reasons, offshore operations are highly dependent on weather and sea conditions.

Vessels operate within strict windows and delays can cascade if a window is missed. Subsea cable installations face unique challenges such as route planning around sensitive marine habitats, UXO (unexploded ordnance) clearance, and protecting the completed cable against damage by other vessels, e.g. anchor drags and fishing activities. Further, undertaking detailed seabed surveys in advance is impractical and too costly and by the time the works are carried out the conditions will have changed.

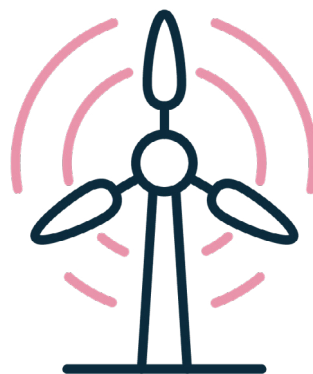
Mitigation: Contracts should address costs and extensions of time associated with environmental and site conditions. In the FIDIC 2017 Suite, the standard form can provide extension of time relief for the contractor in the event of "exceptionally adverse climatic conditions". This is not sufficient for an offshore contract, however. Contractors will require not only extension of time but financial compensation for time spent waiting on weather, for example.

In relation to the site conditions, careful consideration is required as to responsibility for reliance on Rely Upon Information (RUI) when compared to actual conditions. The extent to which a contractor may rely upon information is highly contentious and can become a hotbed for disputes.

Risk: **tariffs and pricing.** Global tariffs cause market volatility, impacting supply and demand. This can jeopardise the success / viability of a project. In the offshore oil and gas industry, there is heavy reliance on aluminium and steel which comprises the main materials for sub-sea cables and platforms. Tariffs can drive up procurement costs for heavy materials which are often passed on to exploration and production companies, with smaller scale producers likely to be impacted more significantly.

Mitigation: Thorough analysis of the contract should be undertaken together with consideration of the supply chain and the origins of particular components. Where appropriate, parties should also consider whether amendments should be made to change in law provisions to account for tariffs. Project managers should also consider and price for contract value escalations due to material labour costs as well as opportunities to procure materials from different suppliers, creating more agile supply chains.

Force majeure clauses are unlikely to be effective against increased tariffs mostly because they are intended to be used against unforeseen events and do not typically provide for financial compensation. In the current economic climate, the risk of high inflation and volatile prices should be considered at procurement stage and should be provided for.



## Dispute avoidance and management

Disputes can happen at any stage of an offshore project—during construction, testing and commissioning, operations and maintenance, or at decommissioning stage. To best avoid or manage any potential dispute, and maximise chances of achieving a successful resolution, parties should, as a minimum:

- **Act quickly and be informed:** understand what has happened and take advice on your contractual position. Has the risk been addressed under the relevant contractual document(s)? Is your exposure capped? What are your dispute provisions? Consider whether the contract provides for a formal meeting—and even if it does not, there may be benefits in having one. Keep under consideration any alternative dispute resolution process such as mediation or commercial negotiations and beware of time bars to making claims and disputing decisions
- **Protect your position:** check if any actions are required under your contractual documents, such as notices, and discuss the matter with your insurance broker (and any funders if applicable / required). Consider whether other steps may be needed such as termination, depending on the issue which has arisen
- **Keep communication clear:** as between your team and with your opposite numbers. This can also assist in seeking to preserve relationships / avoid escalation. Be clear internally on who is leading on the issue to ensure consistency and coordination. Be mindful of privilege in relation to communications / documentation being produced
- **Maintain thorough records:** make sure all documentation / data is saved (which can include emails and even WhatsApp messages). Issue data preservation notices to those involved in the project and consider using an electronic review platform to hold, organise and review the documentation

## Key team members

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<sup>1</sup>\$54 billion: The forecast global offshore EPC contract award value in 2025 | Upstream

<sup>2</sup>Global offshore wind poised for landmark 19GW of additions in 2025

<sup>3</sup>Arcadis 15th Annual Construction Disputes Report cites the leading overall dispute cause as “Errors and/or omissions in the contract documents”

## Testimonials

*“Freeths made an effort to understand our business and our team, which allowed them to cut through complex situations and tailor advice to reach a solution which suited us.”*

Chambers & Partners

*“Team players. Exceptional at controlling and managing the resolution of a construction dispute by working as a team with the construction professionals and experts also involved.”*

The Legal 500

## Awards and accreditations



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