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IMCA's T&I Contract

The correct Vessel and Defect risk allocation?

UK Strategy Plan Upcoming developments in the UK Offshore Market

Jurisdiction in Focus: South Korea

Key questions in relation to the Offshore Wind Industry

Offshore Works on the UK Seabed

Does statutory adjudication apply?

Rising Tide

HFW

Insurance Costs in Offshore Wind Projects

Welcome to HFW's Offshore Wind Magazine

Our publication is designed to give people working in the offshore wind industry a concise and userfriendly update on recent legal and contractual developments.

It reflects the issues we perceive as important to the industry, such as new contract forms, case law updates, emerging markets and government regulation. We hope you find our magazine interesting - but please let us know what you think, and what you would like to see covered in future editions.

HFW Offshore Wind Team

IMCA's T&I Contract: The correct Vessel and **Defect risk allocation?**

Vessel and Defect risk are always difficult points when agreeing offshore renewables contracts. IMCA's approach indicates how contractors may want to adjust risk allocation from current market practices.

As the offshore wind industry has grown in recent years, there have been greater calls for a standard form contract which is tailored to the industry. To date, the market has generally adopted the first edition (1999) of FIDIC's Yellow Book as the basis for offshore wind contracts. However, this is not very satisfactory, given the FIDIC contract's onshore focus.

In this context, in December 2022, the International Marine Contractors Association (IMCA) released Revision 3 of its renewables contracting principles (Contracting Principles). 12 months ago, in November 2023, IMCA released its new marine transport and installation renewables contract (T&I Contract).

It is a commendably concise contract, with the contract conditions extending to no more than 40 pages, and is the first offshore wind focussed standard form contract to be released to the market. This article considers how the

T&I Contract addresses two particularly significant issues – vessel availability and defect correction.

Vessel Availability

The T&I Contract includes an express right for the Contractor to demobilise its marine spread upon receipt of the Offshore Completion Certificate. The Company (i.e. the Employer, in FIDIC terms) is obliged to issue such a Certificate to the Contractor within four hours of receipt of notification

that the whole (or part) of the Works has been substantially completed and has satisfactorily passed any final tests. This mechanism provides for prompt demobilisation and allows for the Contractor to move on to its next project in a timely manner.

But what happens if the Company withholds the Certificate? There is no concept of an 'Engineer' (or other quasiindependent contract administrator) under the T&I Contract, meaning the Contractor is reliant on the Company

"It is a commendably concise contract, with the contract conditions extending to no more than 40 pages, and is the first offshore wind focussed standard form contract to be released to the market."

"Surprisingly, the T&I Contract does not include an express 'latest vessel availability date' allowing the contractor to remove its marine spread if that date is reached, irrespective of the cause of delay."

administering the Contract properly. It is possible to envisage scenarios in which a Company would withhold such a Certificate as leverage – leaving the Contractor in a difficult position where removing its vessel spread would (technically) be a breach of the contract.

There is a separate right to remove 'equipment' in the event of a prolonged suspension (clause 16.9). but this requires there to have been a 'suspension' (as opposed to a 'delay' to the Works).

Surprisingly, the T&I Contract does not include an express 'latest vessel availability date' (LVAD) allowing the contractor to remove its marine spread if that date is reached, irrespective of the cause of delay. The market generally accepts the need for a LVAD in a contract. The absence of such a LVAD also contradicts the underlying IMCA Contracting Principles.

Defect Risk Allocation

Risk allocation for defects is often heavily debated for contracts for T&I scopes. The T&I Contract's approach to the following points is interesting:

Defect correction period (DCP) - a DCP is included, commencing on the date specified in the Offshore Completion Certificate and lasting for the period specified in the contract particulars. It is often argued that given a T&I contractor has no design liability, its responsibilities should end when the Works successfully pass post-installation tests. However, the T&I Contract's approach reflects current usual market practice. It also reflects the guidance in the Contracting Principles, which recommends a DCP is included (though for only a short period).

Scope of defect correction -

reflecting the Contracting Principles' guidance, the Contractor is to only remedy defects that the Company can 'demonstrate' are due to the Contractor's default.

It is difficult to see this being acceptable for a Company (and its

financiers). If a defect is identified, a Company will want it to be remedied promptly. It will not want to have to prove that the defect is due to a Contractor default. The position could also be susceptible to mischief given it is often not possible to identify the cause of a defect until the defect has been remedied and the defective component inspected.

It might also be problematic for a Contractor. If a Contractor refuses to remedy a notified defect on the basis the Company has not (at that point) demonstrated the cause of the defect, the Company is entitled to engage another contractor for the remedial works. This will be more expensive for the Contractor if ultimately the cause of the defect is established as being an issue for which the Contractor is responsible.

No definition of 'defect' – the T&I Contract does not define 'defect'. Defining this term is usually preferable, especially if the governing law might impose an unexpectedly broad definition (and obligation).

Liability exclusions - the Contractor benefits from various express exclusions of liability. These include the cost of remedying defects which result from the Contractor relying on Technical Information, or the operating conditions offshore being different to those specified. This risk allocation will undoubtedly be heavily negotiated.

The exclusions also extend to the Contractor's liability for latent defects. In English law, irrespective of the DCP duration, a Contractor is usually liable for defects for 12 years following Completion. However, the wording

of the T&I Contract ought to be sufficiently clear to exclude liability for defects identified after the expiry of the DCP. Contractors might also want to include a provision requiring the Company to notify defects (condition precedent notification) on or before the expiry of the DCP.

No cap on liability – notably, there is no financial cap on the Contractor's liability for defects, even though the Contracting Principles suggest there should be.

No serial defects mechanism – there is no 'serial defects' mechanism. This is in line with the Contracting Principles which suggest that such a mechanism is only appropriate for EPCI contracts.

Adoption in the market

It remains to be seen whether the T&I Contract will be adopted in the market, and especially the extent of amendments introduced by those who do use it. It is notable that the (unamended) T&I Contract does not fully adhere to the Contracting Principles, demonstrating that IMCA recognises that some of those principles do not reflect current market norms.

It will also be interesting to see to what extent the approach of the T&I Contract is reflected in the new standard form offshore wind contract that FIDIC has announced it is preparing – though it may be another 18-24 months before a draft of this is released.



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"Notably, there is no financial cap on the Contractor's liability for defects, even though the Contracting Principles suggest there should be.""

UK Strategy Plan: Upcoming developments in the UK Offshore Market

The new Labour government in the UK has made a number of eye-catching announcements in relation to renewable energy, with promises to accelerate the expansion of offshore wind capacity. Chief among them is the establishment of 'Great British Energy' (GB Energy).

Establishing GB Energy was a flagship policy for the Labour Party during the election campaign. In the first few months in government, they have already taken initial steps to implement the policy.

GB Energy – what we know so far

Legislation has now been introduced to enact this policy. The Bill itself (which remains subject to being amended through the legislative process) contains limited detail of precisely how GB Energy will work. It does, though:

- 1. establish that GB Energy will be an independent company, albeit one overseen by the Minister of State, and for which the Minister of State will prepare a "statement of strategic priorities"; and
- 2. stipulate that GB Energy's articles of association must state that its objects are:

"restricted to facilitating, encouraging and participating in -

- (a) the production, distribution, storage and supply of clean energy,
- (b) the reduction of greenhouse gas emissions from energy produced from fossil fuels,
- (c) improvements in energy efficiency, and
- (d) measures for ensuring the security of the supply of energy."

The Department for Energy Security and Net Zero has also issued a 'founding statement' for GB Energy. This document emphasises that GB Energy's intended role is to facilitate achieving the government's ambitions for increasing supply of low-carbon energy to the UK, from local sources. To achieve this, five priorities for GB Energy are set out. The three most relevant to the offshore wind industry are:

- 1. project investment and ownership with an emphasis on less developed/mature technologies, including floating offshore wind;
- 2. project development including by way of a new partnership with The Crown Estate (which owns much of the seabed around the coast of the UK); and
- 3. support (in combination with the National Wealth Fund, among others) for local supply chains for clean energy projects, including offshore wind.

It has also been announced that:

- 1. the Chair of GB Energy will be Juergen Maier, former CEO of Siemens;
- 2. GB Energy will initially have financing of £8.3 billion; and
- 3. the headquarters will be in Aberdeen, Scotland – traditional hub of the UK's North Sea oil and

gas operations, but also the local port for the Kincardine floating offshore wind farm, which recently pioneered an 'in situ' generator replacement.

The UK's stated ambitions

The UK has long had ambitious official goals for decarbonisation of its economy - including as a result of signing up to the goals of the Paris Agreement set at COP21. However, the Labour Party sought to make its stated ambitions a point of difference during the election campaign – setting higher targets than the Conservative Party.

For offshore wind, this included aiming for:

- 1. 55GW of offshore wind capacity by 2030 – quadrupling the current installed capacity (around 14GW); and
- 2. 'fast-tracking' 5GW of floating offshore wind capacity.

The role of GB Energy

The UK is a leader in offshore wind, and has the second-highest amount of installed capacity in the world (behind China). However, the scale of the challenge to meet the stated targets is highlighted by the results of the recent Auction Round 6 (heralded as a success, particularly by contrast with Auction Round 5). In AR6, contracts for difference for only 3.36GW of new fixedbottom offshore wind projects were granted, and for only 0.4GW of floating offshore wind. Very significant changes would be required to make the UK's ambitions achievable.

GB Energy appears to be part of a more interventionist approach than previous governments have taken. However, it appears that any direct investment in projects is likely to be focused on developing technologies such as floating offshore wind (as well as other emerging low-carbon technologies such as hydrogen, tidal energy, and carbon capture use and storage) and onshore projects with local authorities.

As such, it seems unlikely that GB Energy will be an owner or (significant) investor in a fixed-bottom offshore wind project any time soon. Such a role is more plausible in relation to

floating offshore wind – the Crown Estate is currently in the second stage of leasing round 5, with up to 4.5GW of projects in the Celtic Sea potentially available, and a further 12GW of projects identified for future rounds.

For fixed-bottom projects, there may be greater significance in GB Energy's partnership with the Crown Estate (supported by legislation to increase the Crown Estate's powers to borrow money and invest in technology) under which the Crown Estate / GB Energy will do more 'pre-development' work for projects. This might include carrying out land assessments and environmental surveys, as well as obtaining planning permissions and grid connections. The goal of this is to speed up project approvals and increase the attractiveness of potential projects to investors by reducing up-front costs.

Other initiatives have also been announced which are intended to address other challenges with achieving the stated targets - for example upgrading the national grid, improving port facilities and reducing grid connection delays. All of these should result in greater attractiveness of the UK for offshore wind projects, and opportunities for those in the industry. Perhaps the greatest challenge, though, will be obtaining sufficient resources to supply the planned projects, if they come to fruition. This is something which the 'founding statement' for GB Energy appears to implicitly acknowledge, with its stated aim of improving the supply chain for clean energy projects.

However, this is the goal which has, perhaps, been supported by the least amount of detailed proposals. As such, the plan for achieving this aim is currently unclear. It also remains to be seen how much financial support will be provided to this goal – at the time of going to press, the Labour government's first Budget had not yet taken place. Interested parties will need to watch for announcements.



RICHARD ROWLATT Senior Associate. London **T** +44 (0)20 7264 8508 E richard.rowlatt@hfw.com UK Electricity from offshore wind (2023)

400MW

capacity of GreenVolt floating offshore wind project awarded in AR6 – largest in the world

34 GW

total awarded capacity of UK offshore wind projects

Jurisdiction South Korea

Helen Lee and Chris Cho discuss the Offshore Wind Industry in South Korea

Can you give an overview of the current state of the offshore wind market in South Korea?

South Korea's offshore wind industry is advancing rapidly, underpinned by the government's bold renewable energy targets. The country aims to achieve 14.3GW of offshore wind capacity by 2030, a target that reflects the inevitability of offshore wind as a critical component to South Korea's unique energy challenges. As of January 2024, there are 83 offshore wind projects with an Electrical Business License, totalling to 28GW in potential capacity. This is a strong indicator of the industry's growth trajectory.

The largest project is a 1.6GW project currently being developed by Ørsted, located 70km off the Northwest coast of Incheon. Another noteworthy development is the Ulsan floating offshore wind cluster, which involves multiple floating offshore projects being developed by five different consortiums. Together, these projects will have a combined capacity of 6GW. All the projects within the cluster have recently passed environmental impact assessments, marking a key milestone in their development process.¹

Although the installed capacity currently stands at a modest 124MW, the capacity is expected to increase to 323MW by the end of 2024,² which reflects an industry gradually gaining pace. This steady increase, supported by both the private sector and international partnerships, illustrates that offshore wind is no longer just an option but a necessity for South Korea's renewable future.

What are the challenges for the offshore wind projects in South Korea?

Permitting process

Offshore wind projects in South Korea face several challenges. One

This is with the addition of 2 offshore wind farms, Hallym Offshore Wind 100MW and Jeonnar Offshore Wind Power 99MW https://www.epi.co.kr/ news/articleView.html?idxno=34577

"South Korea's offshore wind industry is advancing rapidly, underpinned by the government's bold renewable energy targets. The country aims to achieve 14.3GW of offshore wind capacity by 2030."

of the most significant hurdles is the permitting process. Currently, private developers are responsible for selecting sites and obtaining permits from numerous government authorities, which can involve as many as 30 permits from 10 different agencies. This complex process has led to delays, although both the government and the private sector are actively working to address these issues through a proposed legislation aimed at streamlining the permitting process.

Power of the fishing industry

Another challenge lies in balancing offshore wind development with the interests of South Korea's strong fishing industry. The government has implemented stakeholder consultation processes during the early stages of project planning to ensure that fishermen's concerns are heard and addressed. However, the lack of clear standards for financial compensation owed to fishermen can result in prolonged and difficult discussions.

Deep waters

Deep sea waters surrounding much of Korea's coastline present another technical challenge, making traditional fixed-bottom turbines unsuitable in many areas. This is one of the main reasons for the greater focus on floating projects in Korea. Floating wind technology is still in its early stages globally, but South Korea is positioning itself as a leader in this area. The Ulsan cluster mentioned earlier will be the largest floating wind cluster in the world, if completed as planned.

3 https://english.motie.go.kr/eng/article/EATCLdfa3I9ada/1853/view#:~:text=Furthermore.%20MOTIE%20will%20improve%20the%20electric

8 | HFW Offshore Wind | November 2024

How is the South Korean government supporting the **Offshore Wind Industry in** South Korea?

The South Korean government has implemented several important initiatives to support the offshore wind industry. In 2022, a governmentled fixed price auction system was first introduced to the wind industry. Amongst others, this helped to increase price certainty and bankability. In 2023, five projects, totalling approximately 1.4GW, were selected through the auction system, a significant increase in capacity compared to 2022, where eight projects, totalling 374MW were selected for both onshore and offshore wind projects combined.

On 16 May 2024, the Ministry of Trade, Industry and Energy published a comprehensive strategy for expanding renewable energy.³ In relation to offshore wind, this includes, amongst others:

• support for legislating the 'Special Offshore Wind Law' to streamline site selection and assist with environmental and community support;

• building installation infrastructures such as ports and installation vessels; and

• financial support such as the establishment of a KRW 9 trillion (approximately USD 6.8 billion) 'future energy fund' by 2030.4

In August 2024, the government announced a roadmap outlining the next steps in the expansion of the

industry. This includes plans for three to four auctions, targeting an additional 7 to 8GW by early 2026. The auctions will be split between fixed-bottom and floating wind projects. By refining the auction system to emphasise not only price but also factors like maintenance, national security and public benefits, the government is demonstrating a commitment to sustainable and balanced growth.

Is there an established practice for the contract forms, governing law and dispute resolution processes for offshore wind projects in South Korea?

As the offshore wind industry in South Korea is still in its early stages, no established norms for contract forms, governing law, or dispute resolution have yet emerged. However, with the involvement of international stakeholders and financiers, global standards are likely to influence how contracts are structured. Similarly, a neutral dispute resolution mechanism is likely to be preferred, particularly where international stakeholders are involved.



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4 https://eng.me.go.kr/eng/web/board/read.do?menuId=461&boardMasterId=522&boardId=1664110#:~:text=Korea%20Development%20Bank%20and%20the%20five

https://www.epj.co.kr/news/articleView. ntml?idxno=34888

Offshore Works on the UK Seabed Does statutory adjudication apply?

Adjudication is a dispute resolution procedure which is implied into most construction contracts for projects in the UK. A recent case clarifies the geographical limitations of the relevant Act.

The Housing, Grants, Construction and Regeneration Act 1996 (**Construction Act**) created adjudication as a swift and relatively cheap method of dispute resolution for most construction contracts for projects in the UK. It cannot be excluded from relevant contracts, even by agreement. Adjudications decisions are binding until overturned in arbitration or litigation. It was thought that the Construction Act did not apply to offshore works, as it only covers:

- works forming or intended to form part of the land; and
- construction operations in England, Wales or Scotland.

The recent decision of the TCC (the UK's specialist construction court) in the case, Van Elle Ltd v Keynvor Morlift Ltd¹ is of great interest as it clarifies the territorial scope of the Construction Act and provides guidance as to whether works being carried out in the tidal area or in the sea would fall within the remit of the Construction Act.

Facts of the Case

Van Elle was engaged by the contractor, Keynvor, to replace the existing pontoon berthing and mooring piles, including installation of the new piles at Fowey Harbour in Cornwall. The berthing piles were to fix a pontoon used by the Royal National Lifeboat Institution (RLNI), and the mooring piles were designed to moor the lifeboat. These works were beyond the low water line of the shore and approximately one mile upstream from the point where the river Fowey met the sea.

A dispute arose between the parties and Van Elle brought an adjudication against Keynvor under the Construction Act. The adjudicator awarded £335,000 to Van Elle as the true valuation of its contract with Keynvor. Van Elle brought summary enforcement proceedings in relation to the adjudication decision.

Keynvor opposed the enforcement on the ground that the adjudicator lacked jurisdiction as the Contract was not a contract for the carrying out of construction operations in England as per Section 104 of the Construction Act. Keynvor argued that Van Elle had no statutory right to refer the dispute to adjudication.

Keynvor noted that there was no definition of "England" in the Construction Act and that one should rely on the definition provided in the Interpretation Act of 1978 and refer to the Ordnance Survey (OS) maps. The boundary line as per the OS map was the line where the level of the river meets the level of the sea at low water. Keynvor submitted that based on the OS map, the works under the Contract occurred outside the black line of the OS Map (seaward side) and therefore outside of England (see map). Keynvor argued that, as a consequence, the Construction Act was not applicable.

Keynvor also relied on the case of Staveley Industries plc v Oldebrecht Oil & Gas Services Ltd² which had held that in relation to offshore installations, structures founded in the seabed below the low water mark do not form part of the land. Keynvor argued that the piles on its project were founded in the seabed below the low water mark and hence were not structures forming part of the land.

Van Elle, on the other hand, argued that the works to the piles should be considered as works to the pontoon as a whole such that the works form part of the land. It also noted that illustrative examples of "works forming part of the land" in the Construction Act included docks and harbours, inland waterways, which mostly relate to structures below the low water mark.

Decision

The TCC granted the summary judgment in favour of Van Elle. While answering the question on what England means, the Court undertook a comprehensive review of the relevant authorities governing this topic, including the Interpretation Act 1978, the Territorial Sea (Baselines) Order 2014 (2014 Order), and the United Nations Convention on the Law of the Sea (UNCLOS).

2 (2001) 98(10) LSG 46



The 2014 Order noted that the baselines of the territorial sea should be established by the UNCLOS. Under UNCLOS, the normal baseline for measuring the breadth of the territorial sea adjacent to the United Kingdom begins from the low water line along the coast. In case of mouth of the rivers, Article 9 of UNCLOS provides that "[i]f a river flows directly into the sea, the baseline shall be a straight line across the mouth of the river between points on the low water line of its banks".

The definition of internal waters as per UNCLOS included a larger area than just the area as per the OS boundary line. The Court preferred the UNCLOS approach as it concluded that the intention of the Parliament was that the dividing boundary line was to be drawn at the mouth of the river when it meets the sea. The Court further held that the term "land" in the Construction Act includes land covered with water, including lakes, rivers and inland waters like the river Fowey.

The Court concluded that works to the pontoon were well inland and upstream of the boundary line that ought to have been drawn. Therefore, it held that the works were within England and the Construction Act applied. The Court also considered that the decision of *Staveley v Odebrecht* was not inconsistent with its decision. he th nc pe th pa **C** Th

This case establishes that offshore works in internal waters up to the baseline of the sea even if beyond the OS map boundary would fall within the remit of the Construction Act. If parties are concerned about whether the Construction Act would apply and want to include adjudication as a dispute resolution mechanism, they can safeguard their position by incorporating a contractual right to adjudicate. The judgment also suggests that the Construction Act would not be applicable to 'hybrid' contracts, which have some works within the UK boundary and some outside. However, it remains to be seen whether this will be confirmed in a relevant case.

1 [2023] EWHC 3137 (TCC)

• Approx pile location

In terms of the argument as to whether these works formed part of "land" as per the Construction Act, the Court held that they did not. According to the Court, the self-standing piles were not connected in any meaningful or permanent way to the pontoons and the pontoons themselves did not form part of the land.

Conclusion



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Key Points

- Van Elle had entered into a contract with Keynvor for the installation of mooring and berthing piles at Fowey Harbour in Cornwall. A dispute arose and Van Elle brought successful adjudication proceedings against Keynvor. Keynvor said that adjudication did not apply, claiming that the works were outside the boundary of England. Keyvnor relied on the fact that the works were undertaken outside the low-water mark marked by a black line on the Ordnance Survey (OS) map. It said that this line marked the geographical limit of the Construction Act.
- The Court disagreed, concluding that England extends up to the 'baseline' of the sea and in this instance would be a straight line across the mouth of the river Fowey.
- The Court also reaffirmed that the term "land" in the Construction Act includes land covered with water, including lakes, rivers and inland waters.

Rising Tide:

Insurance Costs in **Offshore Wind Projects**

Met with rapidly increasing claims, renewables insurers are beginning to reconsider their approach to risk allocation for offshore wind projects. The result: obtaining effective insurance cover for these projects is likely to become more burdensome, particularly for contractors.

State of the Industry

Recent reports reveal that there have been claims totalling \$725 million in Construction All Risks (CAR) and Delay in Start-Up (DSU) for offshore wind projects over the past decade.¹ The biggest losses are due to contractor errors and manufacturing defects, representing over 63% of claims by frequency in 2022, up from 55% in 2020.²

The rapid development of new renewable energy projects around the world and the pressure on manufacturers to scale turbine technologies has increased the frequency and value of insurance claims. The average offshore wind losses have increased from GBP1m in 2012 to over GBP7m in 2024,³ whilst the average settlement of claims related to subsea cables grew to GPB9m in 2023.4 This, combined with an increase in the frequency of extreme weather events, particularly in emerging markets, is leading to a more cautious approach from underwriters.

As a result, contractors are likely to start seeing an uplift in insurance costs. years by over-capacity as a result of new entrants from the oil and gas sector. Insurers, now looking to mitigate their rising losses, are calling for a greater degree of risk-sharing across the entire industry, meaning that developers and contractors alike will have to bear more risk. This may result in increased premiums, increased deductibles or reduced coverage being offered.

The cost of this market shift is particularly burdensome for contractors who operate in a fiercely competitive environment with limited profit margins, and limited scope to bear such an increase. The price to obtain comprehensive (LEG3) CAR policies of a percent of a project's value in 2020, can now amount to 3-4% in 2024. Contractors are potentially left in the difficult position of choosing between pricing their tenders to win projects, or pricing to allow for comprehensive insurance coverage.

Claims Journal, Report: Renewable Projects at Risk from Contractor Errors and Defects, Natural Cats and Extreme Weather, September 19th 2024, (https://www.claimsjournal.com/news/national/2024/09/19/326185.htm 2 Power Engineering International, New renewables construction to surge complex insurance claims, September

- 11 2024. (https://www.powerengineeringint.com/renewables/new-renewables-construction-to-surge-complex insurance-claims/)
- 3 The Climate Transition Podcast, 12th September 2024 (https://www.dlapiper.com/en/insights/podcasts/the
- 4 Power Engineering International, Cable failures pose a threat to global offshore wind ambition, November 14th 2023 (https://www.powerengineeringint.com/renewables/wind/cable-failures-pose-a-threat-to-global-offshore-wind ambition/)

"The price to obtain comprehensive (LEG3) CAR policies, which may have represented a fraction of a percent of a project's value in 2020, can now amount to 3-4%"

Legal solutions

From a legal perspective, contractors can seek to mitigate these market conditions by allocating risk more equitably with employers, particularly for transport and installation (T&I) scopes. Traditionally, risks are apportioned using knock-for-knock (K4K) indemnity regimes, meaning that parties are responsible for, and bear the risk of damage to, their own equipment, vessels, personnel, etc.

Such regimes often contain carve-outs for damage to high-value employer property, such as installation items or permanent works (like pre-installed foundations). As a result of these carve-outs, contractors will often bear responsibility for the care and custody of employer property during T&I works. Such allocation naturally protects employers from the risk of contractor damage to their property, but leaves contractors disproportionately exposed to the risk of damage for which they may not be responsible leading to significantly higher deductibles.

Rather than accept such risk, contractors (particularly those with T&I scopes) should push for completely reciprocal K4K regimes covering all employer property, with limited carveouts for damage caused by contractor negligence.

This risk allocation shifts the cost burden onto the employer, with the contractor's CAR policy operating as only a secondary layer of protection, leading to more affordable deductibles.

Similarly, contractors can reduce their insurance costs by limiting the scope of any defects notification period and abbreviating any statutory limitation

periods for their works as much as possible. Contractors can also seek to limit their exposure by incorporating a separate liability sub-cap in relation to defect liability.

Increased standardisation for components in offshore wind may bring reductions in insurance costs. At the moment, many components are designed and manufactured on a bespoke basis, whilst the constant development of new technologies in the offshore industry means that such components are quickly rendered obsolete before they have the chance to become standardised in any case. There is also relatively little guidance from industry standards as to the minimum requirements for some elements of those components. This leads to increased uncertainty among insurers as to the likelihood of problems, or of the costs of any remedial works, resulting in higher deductibles. This uncertainty is likely to increase as new technologies (such as those associated with floating offshore wind projects) continue to be developed and

installed around the world. Increased standardisation of components, testing and guidance may help to reduce this uncertainty, as well as allowing for more options for remedial solutions. A more difficult problem, though, is alleviating the costs arising from the limited availability of vessels suitable for implementing remedial solutions.

Increased governmental support using subsidies, competitive electricity guarantee prices, and reduced localisation requirements, naturally provides developers with greater financial stability. The benefits of this

Standardisation

Government support

stability can allow for a more equitable apportionment of risk with contractors, and provides sufficient profit margins to focus on contingencies rather than savings, driving down insurance costs. The increased strike price for projects awarded in the UK's recent auction round for renewables projects shows that, at least in some jurisdictions, greater governmental support is being provided in response to recent cost pressures.

What to do

Greater collaboration between contractors and developers will allow parties to collectively reduce their insurance burdens. For projects which involve contractor design, greater transparency and coordination of any manufacturing processes will allow for more effective risk management, potentially leading to reduced deductibles for all parties.

Further, the development of collaborative real-time project monitoring systems which can be used to provide accurate information to insurers will go some way to reducing the likelihood of drawn-out claims disputes, allowing insurers to provide more economic coverage. Finally, early engagement with insurance brokers will help ensure that expectations are managed, and that insurance is in place that meets the project requirements.



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HENRY PROTO





Examples of our work

- Our team provided tender support during the negotiation of a contract for a balance of plant scope for an offshore wind farm project, which was a world leading project in terms of the size of turbines, foundation design and cable capacity. We led the negotiations of the contract with the Employer to ensure the correct risk allocation was achieved.
- We were retained to prepare detailed claims for an extension of time and additional costs arising from complex geotechnical ground conditions at a European offshore wind project. The claim was subsequently referred to arbitration and we assisted our client throughout the dispute process and ultimately with a commercial settlement of the dispute.
- We have advised on various issues arising from the construction of one of the world's largest floating offshore wind farms. This instruction reflects our team's position as one of the world's leading teams advising on offshore wind projects.
- We have advised on the tender contract documents, including vessel reservation agreements, for Taiwanese offshore wind farms.
 Similarly, our team has been retained to advise on the contract terms for offshore wind farms in US waters.
- We have been retained to provide project support during the T&I works for a very large offshore wind farm in European waters. That project support has led to a series of strategic adjudications to unlock various issues of importance to our client's entitlement.
- Our team has been instructed in respect of a number of adjudications and arbitrations concerning defects in offshore wind projects – including disputes that are subject to English, Danish, German and Dutch law. These disputes have also involved issues of insurance.

HFW's Offshore Wind Team

Our team has been working in this sector since 2010, when we acted for one of the contractors building the London Array project, at the time the biggest windfarm in the world. Our expertise has developed as the market has grown, and we now estimate that we have advised on 70% of the UK's offshore windfarm projects.

HFW is an international law firm with 21 offices spanning the globe, giving us the capability to advise our clients not only on UK and European projects, but also windfarms across Asia and other emerging markets.

Our specialist expertise covers a range of skillsets key to offshore wind projects. Not only are we a top-ranked construction law team, HFW is also the largest shipping law firm in the world. We also have a highly regarded insurance law practice and support clients with related commercial advice, such as sanctions and employment law.

Our advice on the construction of windfarms falls into three main phases: initial advice on tender contract wording and risk; advice during the course of the project when challenges may arise; and assisting with formal claims and disputes, typically towards the end of the project.

We also assist our clients by providing practical support for their in-house teams in various ways. Firstly, by providing training and updates on relevant legal developments. And also, by seconding our lawyers to our clients to cover peak resource periods or provide maternity cover.

If you would like further information on how we can help, please do not hesitate to contact us.



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HFW Offshore Wind | November 2024 | 15



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