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Offshore Wind



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Welcome to HFW's Offshore Wind Magazine

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

It reflects the issues we perceive as important to the industry, such as new developments, industry practice and emerging markets. We hope you find our magazine interesting – but please continue to let us know what you think, and what you would like to see covered in future editions.

HFW Offshore Wind Team



Go with the FLOW?

Tom Hutchison, **Roxanne Langford-Collins** and **Henry Proto** discuss some of the challenges of getting the risk allocation right in floating offshore wind projects

Across the globe, there are reportedly 221 GW of floating offshore wind capacity (**FLOW**) currently being considered and developed, particularly in Europe and Asia. Pilot projects have so far dominated the sector and, although several commercial scale projects are currently targeting FID, none has reached that critical milestone, with project delays and cancellations dominating the headlines.

So, what headwinds are FLOW projects facing?

First, FLOW remains significantly more expensive than fixed-bottom. Cost-reduction efforts such as shared mooring lines will help, but FLOW will continue to remain commercially dependent on government support for the foreseeable future. For instance, CfDs for FLOW projects in the UK's latest licencing round, AR7, were 2.4 times higher than for fixed bottom projects.

Secondly, untested technology, limited suppliers and port infrastructure constraints create critical execution risks for FLOW projects. This is compounded by some states' security concerns, which have led to restrictions on suppliers (in particular Chinese OEMs) and dampened investment in manufacturing facilities in the UK and EU.

Nonetheless, FLOW projects are progressing through the early stages of development and Owners are lining up their contractors and supply chain. The sector is therefore grappling with how to get the risk balance right.

Key contracting points for FLOW

Getting technological and commercial risk allocation right is the difference between a sector that generates electricity and one that merely generates headlines.

But the particular challenges of FLOW projects mean that many of the 'typical' risk allocations currently seen in the offshore wind industry cannot simply be adopted wholesale. How those issues are addressed will be a key point for developers and contractors on any FLOW project in the lead-up to FID, particularly because there is not yet a "market-standard" approach.

Two areas that, in our experience, warrant particular attention in FLOW projects are the complex interface risks and component warranties.

Interface Risk

FLOW projects require the complete assembly of each turbine at quayside before the finished structure is towed to the site. This 'port assembly' process creates interfacing risks that do not arise in the context of fixed-bottom projects:

Control and responsibility during assembly: Multiple contractors' scopes converge in a confined port environment – each of the foundation supply, WTG supply and installation, harbour marshalling and testing scopes may involve different contractors working under separate packages, or with defined scope in consortia. As such, there needs to be clarity in the contracts as to which party holds responsibility for which components at any given time, and at what point risk transfers between those parties. This requires careful consideration of interface matrices, change of control mechanisms, and liability provisions.

> **"Getting technological and commercial risk allocation right is the difference between a sector that generates electricity and one that merely generates headlines."**

Marshalling scope: The most precarious interfaces are likely to be those between the marshalling contractor and the assembly contractor(s). Marshalling contractors manoeuvre, stabilise, and eventually tow completed FLOW units to the site. Given their involvement in each stage of FLOW projects, and the relatively lower value of their scope, marshalling contractors may be disproportionately exposed to the risk of issues during assembly operations. This is especially so where marshalling contractors are typically expected to take full custody and control of components at various stages of the assembly process, despite having limited opportunity to directly manage such process. Careful interface management governing the allocation of such risk between the marshalling contractors on one hand, and assembly contractors on the other, is required for FLOW projects to be workable in practice.

Increased delay risk: Few ports globally meet the requirements for FLOW projects. Those that do often have capacity for only a single assembly line for floating units, creating an unavoidable bottleneck. Therefore, delay to any part of the assembly process can quickly cascade into significant project delay. Delay to one project can also have knock-on effects for subsequent projects committed to the same port, especially given the lack of viable alternative ports. Clear interface matrices are required to ensure that delay liability is allocated to the responsible parties, and that disproportionate losses beyond a contractor's reasonable sphere of control are limited, or shared between project stakeholders.

Warranties

Floating structures are in constant motion throughout their operational life. This creates loading on the tower and turbine, and requires that the inter-array cables are dynamic. The long-term effect of this movement on component performance remains somewhat uncertain, and is still being evaluated through demonstrator projects. FLOW warranty regimes will need to address that uncertainty.

Manufacturer Warranties: Manufacturers are naturally hesitant to provide comprehensive warranties for components which are unproven at a commercial scale. This is particularly acute for turbine suppliers, but is true for other 'high-risk' components such as anchors, moorings, and dynamic inter-array cables. Parties negotiating FLOW contracts should therefore expect warranty provisions that are more limited in scope (for example, shorter periods, reduced or excluded serial defect liability). Equally, parties should expect to see wider carve-outs to the warranty regime for FLOW projects, including novel carve-outs which aren't seen on fixed bottom projects (for example, with respect to towing costs associated with repair/maintenance). To address this 'lost' warranty coverage, parties will primarily look to insurance, but should also consider alternative contractual mechanisms to manage the risk, such as enhanced liquidated damages regimes, extended DNP periods, and direct agreements.

Warranty Periods: In case of delays, subsea components (particularly cables) could be faced with extended periods in the water before they are finally connected, tested, and commissioned. Similarly, delays to execution could result in cables remaining wound on their carousels for significantly longer periods of time than intended by the manufacturer. A question therefore arises as to whether the warranty period should run during such delay periods. Contractors will argue that any warranty period must run from the installation date, developers will push for the DNP period commencing on commissioning. Balancing these competing interests is essential.

Conclusion

While some scepticism remains about the viability and deliverability of FLOW projects, it will only be a matter of time before we see the first commercial-scale projects receive the green-light to proceed. Getting the risk allocation right from the outset will be critical, not only to the successful delivery of these pioneering projects, but also to the long-term viability of the FLOW sector globally.



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Jurisdiction in Focus: Japan

Ken Hickman and **Ruergan Braganza** give an overview of the offshore wind industry in Japan

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

Japan is an emerging hub of offshore wind activity and technical innovation. The Japanese government has made clear its desire to achieve a "*virtuous cycle*" of offshore wind developments, with an aim to achieve an installed capacity of 5.7 GW by 2030, and an auction capacity of 10 GW by 2030 and 30-45 GW by 2040. Underpinning these ambitions is a framework which now permits developments in Japan's exclusive economic zone (**EEZ**) – the sea areas between 12 and 200 nautical miles from the baseline limit – far exceeding the previous development limit of 12 nautical miles.

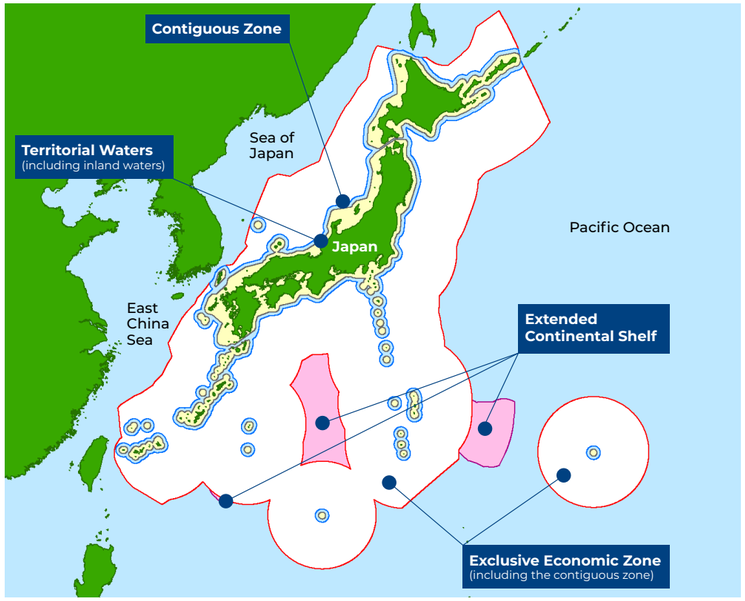
Despite some early false-starts, Japan's offshore wind sector has had some recent successes: nine offshore wind farms are currently in operation, six are under construction (or soon to be), three sites are being re-tendered, and further sites are expected to be auctioned in early 2027.

Nevertheless, the sector in Japan continues to track well below published targets: installed capacity only surpassed 500 MW in early 2026, with only 3.5 GW predicted to be installed by 2030 and 8.4 GW by 2035. While the policy framework does exist, the principal challenge is balancing auction price assumptions against market realities to ensure projects are commercially viable. It is this issue which was reported to have led to Mitsubishi Corporation's withdrawal from three projects in August 2025, amid rising costs and currency pressures.

The market has had a strong start to 2026, though. Japan's first commercial floating offshore wind farm, Goto (16.8 MW), and Japan's largest offshore wind farm to date, Kitakyushu Hibikinada (220 MW), both commenced commercial operation. These are positive and important developments.

Notably, the key component of Japan's future offshore wind capacity will be via floating offshore wind, with a designated contribution of more than 15 GW by 2040. To support this, the Japanese government has pledged 123.5 billion JPY from its Green Innovation Fund to assist in the development of component technologies and has commissioned offshore floating system demonstrations near Akita and Aichi. These are scheduled to continue until 2030 when a broader, systemic tender process for floating offshore wind is expected to begin.

Figure 1: Conceptual Diagram of Japan's Waters



Source: Japan Coast Guard, Hydrographic and Oceanographic Department, https://www1.kaiho.mlit.go.jp/ryokai/gainenzu.html

What are the challenges for the offshore wind projects in Japan?

Japanese offshore wind projects face many of the same challenges as other offshore wind projects in the region, as well as some which are more specific to Japan, including earthquake and typhoon risks.

Japan is situated on the 'Ring of Fire' – the line of high seismic activity that follows the tectonic plate boundaries around the Pacific Ocean. Foundations must withstand earthquakes, including the risk of seismic-induced liquefaction (i.e. the loss of structural integrity of saturated seabeds during earthquakes which can cause monopiles to tilt). Turbines must also withstand the wind loading from typhoons, which on average form 26 times a year in Japanese waters. These unavoidable perils introduce substantial engineering, certification and insurance complexity to offshore wind projects in Japan.

To counter this, the Japanese market continues to develop innovative solutions. For instance, in July 2026, the Oga-Katagami-Akita wind farm (315 MW) became the first 15 MW-class turbine installation certified for seismic environments and high-force earthquakes. Similarly, a bespoke "Class T" (Tropical) turbine classification was added to the IEC 61400-1 international design standard, with a reference wind speed of 57m/s, based on a Japanese proposal.

Cabotage restrictions

Under Japan's maritime cabotage rules – principally Article 3 of the Ships Act – offshore wind facilities in territorial waters are designated "closed ports" with access restricted to only Japanese-flagged vessels. Foreign-flagged vessels may seek special MLIT permission (a discretionary process that can take months) or re-flag as Japanese-owned and -crewed vessels (a process that can take over a year). The Japanese government is reportedly considering a proposal to relax cabotage laws, and in any event the current restrictions do not extend to projects in Japan's EEZ. Given Japan's limited fleet of specialist offshore wind vessels, the current cabotage restrictions present a significant constraint on the speed and efficiency with which international contractors can deploy vessels for Japanese projects.

Fisheries and community consensus-building

Unlike jurisdictions where the state itself secures stakeholder buy-in before tendering a site, the operator (not the Japanese government) is responsible for obtaining consensus from local stakeholders, including fishery operators, for Japanese offshore wind projects. If a project will interfere with a local fishery's operations, the fishery can seek injunctive relief or indemnities against the developer as fishing rights are proprietary rights under the Fisheries Act. Developers generally negotiate compensation arrangements with local fisheries, to garner the requisite local support to get projects past the development hurdle. Consulting with and accommodating local interests is therefore a material factor in the evaluation and award of tenders by the relevant ministries (METI and MLIT).

Local content and supply chain constraints

Japan currently lacks a domestic supplier of offshore wind turbines and continues to import major components such as foundations and towers from Europe. While the Japanese offshore wind industry has increased its local content target to 65% by 2040, the reality is this figure remains aspirational rather than a mandatory eligibility requirement. The promise of government subsidies for foreign turbine manufacturers may assist in establishing a local supply chain for core turbine components.

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

Market practice on contract forms is still developing in Japan. However, general trends include:

- Increasing adoption of FIDIC-based contracts.
- The chosen governing law is almost always Japanese. This is driven by the involvement of major Japanese trading houses and utilities as sponsors, and the mandatory application of Japanese law to matters such as fishing rights, cabotage and marine area occupation rights.
- Arbitration is typically the nominated dispute resolution forum.

This increasingly international framework reflects renewed international investment focus on Japan, and Japanese energy and construction conglomerates' increased work on projects outside Japan.

Japanese text translated into English by HFW. The original content has been translated and adapted; this English version is not an official translation of the Japan Coast Guard.



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FIDIC Yellow Book 1999 in Offshore Wind: Three Key Battlegrounds in Risk Allocation

A heavily-amended FIDIC Yellow Book 1999 remains the market standard contract for offshore wind work. **Alexander Jullienne** and **James Stewart** discuss recent trends in amendments to the standard form on three issues: employer-provided information, knock-for-knock risk allocation and liability caps.

The FIDIC Yellow Book 1999 (**Yellow Book**) remains a familiar starting point for contracting in the offshore wind sector. It was not drafted, however, with offshore wind in mind. In practice, employers typically use their own heavily-amended forms developed over successive projects.

Whilst every project has its own risk profile, three issues repeatedly sit at the centre of negotiations and have a significant effect on pricing, insurability and overall risk allocation: (i) the extent to which the contractor can rely upon employer-provided 'Rely Upon Information' (**RUI**); (ii) the adoption (or otherwise) of a 'knock-for-knock' style risk allocation; and (iii) the scope and structure of the contractual liability caps. In this article, we consider how and why the Yellow Book position on each of these issues is commonly modified in the offshore wind context, and recent changes in the positions being taken on these issues.

1. Rely Upon Information

The standard FIDIC position

The Yellow Book places significant responsibility on the contractor for design and delivery. Consistent with that approach, contractors are deemed to have inspected, examined and satisfied themselves as to the site and its surroundings, data provided by the employer and other available information before submitting their tender.

"Negotiations frequently move beyond the headline percentage and focus on a more fundamental question: which liabilities genuinely fall within the cap?"

That allocation may be acceptable on traditional onshore design-and-build projects where robust publicly available data is often available and contractors have sufficient opportunity to undertake their own investigations – but it is generally unsuitable for offshore wind projects.

Why offshore wind is different

Offshore wind projects are particularly sensitive to ground and seabed conditions. Any difference between assumed and actual conditions is likely to result in material changes to the design, installation methodology and programme, each with significant time and cost consequences.

Nevertheless, these projects are often tendered based on incomplete site data provided by the employer. Although contractors can review the available information, they rarely have the time or practical ability to independently verify it through their own investigations before submitting their bids. Pricing and programme assumptions are therefore often built around incomplete or inadequate employer-commissioned information.

This creates a fundamental tension: contractors are expected to assume significant delivery risk while relying on information they have not produced and cannot fully verify.

The market response

Offshore wind contracts therefore commonly include RUI provisions identifying specific documents or categories of information upon which the contractor is entitled to rely. If those documents or information are materially inaccurate, the contractor is typically entitled to time and/or cost relief. The key negotiation is rarely whether RUI should exist, but rather what information qualifies as RUI.

Contractors typically seek broad RUI protection, particularly where investigations remain ongoing. Employers, on the other hand, typically seek to limit its scope, expecting contractors to use their experience to identify missing data, or make inferences from the data available, and to take on the associated risks, whilst pricing accordingly.

Another interesting point of negotiation relates to whether the contractor can assume that the RUI is *complete* (for the purposes of the project), as well as *accurate*. Expressly addressing completeness can give the contractor a clearer route to time and/or cost relief where material information has not been provided, even though the information that has been provided is not itself inaccurate. This distinction can be significant – a dataset may contain no "error" but still present a misleading picture where important data or categories of data are missing.

2. Knock-for-Knock and the Expansion of Contractor Indemnities

The standard FIDIC position

The default position is, broadly, that a party is responsible for loss or damage it causes, and the Yellow Book largely reflects that stance.

However, offshore oil and gas and marine installation projects have generally adopted a 'knock-for-knock' regime, where each party insures and bears responsibility for its own personnel, equipment and property, regardless of cause or fault. That model was initially carried across into the offshore wind sector. But there is a recent and noticeable trend of employers chipping away at that model through an expanding list of carve-outs, as discussed below.

Why offshore contractors often prefer knock-for-knock

Under a conventional knock-for-knock regime, each party assumes responsibility for injury to its own personnel and damage to its own property, regardless of fault. The objective of this arrangement is to identify the allocation of risk in advance rather than determining blame after the event. On projects involving multiple vessels, subcontractors and offshore interfaces, this approach can provide greater certainty, reduce the scope for costly disputes and simplify insurance arrangements.

Recent divergences

Increasingly, however, many offshore wind contracts no longer contain a "pure" knock-for-knock regime.

Employers frequently seek carve-outs for matters such as damage to existing assets, employer-supplied materials, Construction All Risks (**CAR**) insurance deductibles and various categories of contractor indemnity. Viewed individually, many of these requests can be justified. Collectively, however, they can fundamentally alter the risk profile with significant 'reversion' to fault-based liability on the contractor.

"In practice, the often complex interaction between liability caps, insurance provisions and indemnity regimes is more important than the value of the nominal cap itself."

Contractors generally accept some deviation from the 'knock-for-knock' position, but seek to limit these deviations by:

- limiting carve-outs to narrowly defined categories of risk;
- aligning indemnities with available insurance cover;
- resisting indemnities for breaches of contract, so keeping 'in play' arguments about the extent of liability for damages;
- clearly defining concepts such as "gross negligence" and "wilful misconduct" which may disapply the knock-for-knock regime and give rise to fault-based liability; and
- clearly allocating responsibility for CAR deductibles and, if applicable, procurement of the CAR policy.

3. Liability Caps: When a Cap is Not Really a Cap

The standard FIDIC position

The Yellow Book combines a cap on the contractor's aggregate liability to the employer with a reciprocal exclusion of indirect and consequential loss. These provisions are intended to provide certainty as to each party's maximum financial exposure and enable risks to be priced and insured appropriately.

The rise of sub-caps and carve-outs

Offshore wind projects involve a number of activities that employers perceive as carrying heightened risk, including offshore lifting and cable installation to horizontal directional drilling and work around existing infrastructure.

Employers are often concerned that a single high-value event in one of these categories could consume, or even exceed, the overall cap on its own. Therefore, employers are increasingly seeking bespoke liability provisions for particular risks alongside the overall cap. For example, employers may seek separate caps for delay damages, defects or particular work scopes. They may also seek to exclude certain liabilities from any caps – e.g. indemnities for claims brought by third parties, liabilities the contractor is required (or expected) to insure against, and damage to key offshore assets.

Contractors typically accept that different risks justify different financial treatment. However, they need to be alert to the effect that the sub-caps and exclusions could have on their total risk exposure.

Take, for example, a foundations transport and installation contract with a contract price of £100 million and a headline cap set at that figure. If delay damages are carved out subject to their own £20 million sub-cap, defects liability is excluded from the cap entirely, and indemnities for damage to an adjacent export cable are left uncapped, the contractor's real exposure is far greater than £100 million.

Consequently, negotiations frequently move beyond the headline percentage and focus on a more fundamental question: which liabilities genuinely fall within the cap?

The market response

Contractors will often seek a coherent liability structure in which indemnities, defects obligations and other liabilities interact consistently with the agreed caps and available insurance cover. Where a liability is carved out because the contractor must insure against it, the indemnity and the insurance need to work together, since carving the liability out of the cap without responsive insurance will leave the contractor exposed to an uninsured risk. Particular attention is given to avoiding overlapping recovery mechanisms and ensuring that indemnities remain subject to agreed financial limits.

In practice, the often-complex interaction between liability caps, insurance provisions and indemnity regimes is more important than the value of the nominal cap itself.

Looking Ahead

The entry of new developers in the market, and the emergence of more tailored standard form including the IMCA Marine T&I Renewables Contract and the long-awaited FIDIC offshore wind contract, means the well-trodden path of a heavily amended Yellow Book might no longer be the most appropriate approach.

However using these new standard forms will inevitably come with difficulties – including that the market position on key risk allocation issues is continually evolving, as it is for RUI, risk allocation, and liability caps. As such, it may be some time until these new standards can be widely adopted, even if, in many ways, they are much more suited to the realities of offshore wind projects.



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Q&A – Secondment Insights

Recently, HFW lawyers **James Stewart** and **Alexander Jullienne** have undertaken secondments with international offshore wind contractors. Both supported in-house legal teams on reviewing and negotiating contracts, advising on tender submissions, assessing risk allocation and providing legal support across a variety of offshore and infrastructure projects. We asked them about the insights gained from their experiences.

What were you hoping to get out of the secondment?

AJ: I have spent my career working for a law firm, so I wanted the opportunity to see how legal and commercial decisions are made in practice, and to get greater insight into the issues that matter most to our clients.

JS: I also wanted to gain further experience of the earlier stages of a project lifecycle, like developing tenders, where external lawyers are typically not as closely involved. I was also attracted by the opportunity to work closely with technical and engineering teams delivering innovative marine infrastructure projects.

AJ: The opportunity to spend time overseas was an added bonus!

What are the most important things you learned from your time 'in house'?

JS: The tenders I worked on used innovative technologies, creating new opportunities but also new risks. Managing those risks was a real collaborative effort between the legal, commercial and technical teams, allowing us to offer ambitious, deliverable and commercially acceptable proposals. Experiencing that process in action was invaluable.

AJ: Absolutely. I would also add the understanding I got that the legal team's role is not just in limiting risks contractually, but supporting other teams to manage risks in other ways to support the success of projects.

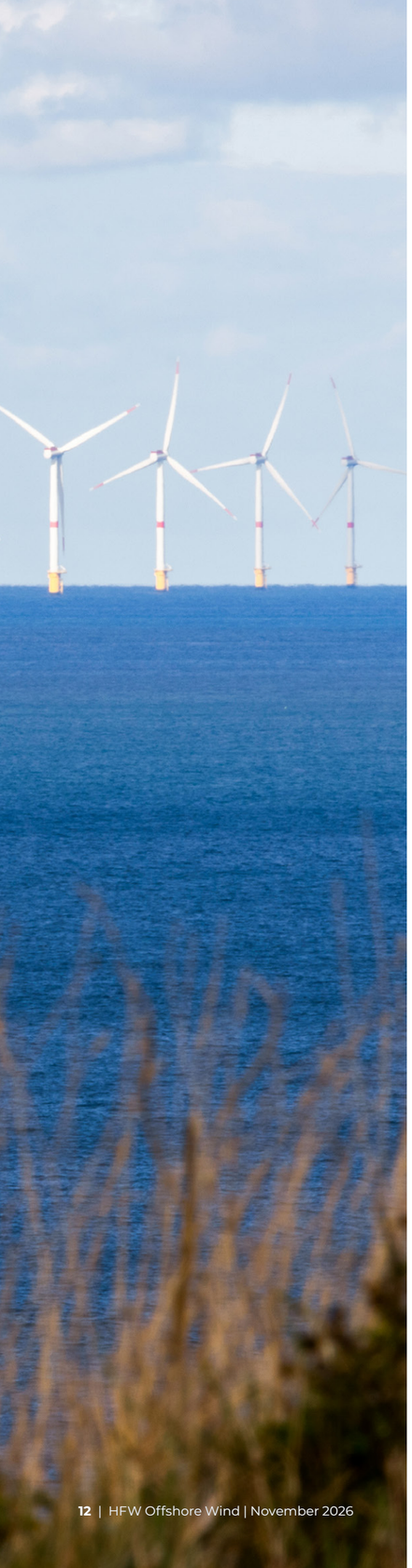
JS: In my experience, the best results came from the legal, commercial, technical and operational teams working closely together. Getting a real understanding of that process will help me hugely in my work as an external lawyer, to ensure that I am contributing fully to that collaboration.

AJ: There is no substitute for 'living it' to understand how the teams work in practice, and the pressures that they are under. That will really help me to ensure I am providing solutions that will work for the whole business.

What was your favourite discovery, outside of work?

AJ: Although I didn't mind dabbling in the odd Gevulde koek (Dutch almond pastry) or two, a highlight would have to be visiting and driving through the Delta Works, one of the seven Modern Civil Engineering World Wonders.

JS: I was lucky enough to be on secondment during the World Cup, so a day spent cruising around the Amsterdam canals before watching the Netherlands thrash Sweden was a real highlight!



France's AO10 Offshore Wind Tender: Putting the NZIA into Practice

France's AO10 offshore wind tender is the first French auction to implement the EU's Net Zero Industry Act supply-chain resilience requirements. The new regime introduces sourcing, reporting and compliance obligations that will influence how turbine manufacturers, component suppliers and developers structure projects in the French offshore wind market. **Erwan Robert** and **Stéphanie Schweitzer** examine the new requirements and their implications for industry participants.

In June 2026, France launched AO10, its largest offshore wind tender to date, covering approximately 10 GW of fixed and floating wind capacity. As one of the first auctions to implement the EU Net Zero Industry Act (NZIA) in practice, AO10 offers an early insight into how the legislation's new supply-chain resilience requirements may shape future renewable energy procurements.

The EU framework and its transposition into AO10

The NZIA came into force in 2024. It is designed to reduce the EU's reliance on non-European manufacturing for net-zero technologies, including onshore and offshore wind. Article 26 requires Member States to incorporate sustainability and resilience criteria into renewable energy auctions, weighted between 15% and 30% of award criteria. In essence, this mandates that tenders are assessed, in part, by how reliant they are on a 'Dominant Non-EU Third Country'.

The detail is set out in Implementing Regulation (EU) 2025/1176, which establishes three possible regimes depending on the EU's level of dependency on the non-EU supplier in question.

The drafting technique adopted is worth noting. AO10's 'cahier des charges' does not name any country directly. It defines an "État Tiers à l'Union Européenne Dominant" [Dominant Non-EU Third Country] solely by cross-reference to "paragraph 3 of Article 7" of the EU Implementing Regulation. It is only in this paragraph that it is finally confirmed that the dependency test applies (unless specifically disapplied by the Commission) to "final products and main specific components originating or assembled in the People's Republic of China."

Diversification requirements for sourcing of key parts

Separately, AO10 requires bidders to commit that, for at least 75% of turbine-foundation units, the final product and between five and eight of nine listed components – nacelles, rotor hubs, towers, blades, permanent magnets, drivetrains, gearboxes, bearings and foundations – do not originate from a Dominant Non-EU Third Country.

There are two sub-restrictions on this rule:

1. the drivetrain (including the generator) must not originate in a Dominant Non-EU Third Country. In effect, the tender singles out the drivetrain as the most strategically sensitive part of the turbine, and directly requires that this is one of the components that comes from a different source country; and
2. there is a separate, tighter, cap on the sourcing of permanent magnets: no more than 50% may be manufactured in a Dominant Non-EU Third Country. The tender anticipates that certain countries may, in future, impose export controls on permanent magnets, and requires bidders to demonstrate access to alternative, unrestricted sources.

A scored criterion, not an eligibility gate

The 75% non-origination requirement is not a simple pass/fail threshold but is scored. The more components not sourced from a Dominant Non-EU Third Country (above the minimum requirement of five), the more points are awarded in the 'resilience criterion' – with full marks awarded where eight components qualify. The resilience criterion is worth six points out of a total of 100, alongside price (70 points), contractual and financial robustness (18 points) and carbon footprint (6 points).

Compliance is monitored throughout the project. Successful bidders must provide regular sourcing updates and, following commissioning, obtain independent verification of component origin. Late reporting attracts penalties of EUR 5,000 per day, and failure to submit the final compliance dossier results in the bidder being treated as having achieved no compliant components.

Practical implications for industry participants

The mandatory requirement that the drivetrain must not come from a Dominant Non-EU Third Country – is likely to spur particular interest in European drivetrain and generator capacity for the French market.

Even for the other components where sourcing has some flexibility – including blades and gearboxes – there is likely to be an increased incentive to find suppliers outside the Dominant Non-EU Third Country.

Component suppliers based elsewhere (including in the EU itself) stand to gain commercial leverage: winning bidders must canvass "eligible suppliers" and report responses to the French energy ministry annually.

Developers and installers bear the principal administrative burden regardless of who manufactures the equipment, including a credible sourcing narrative, origin warranties and audit rights passed down into EPC contracts, and an independent expert's attestation. This adds cost to already demanding timelines, but the penalties for non-compliance are hefty.

Vessels: A separate regime

Vessels, including crew transfer vessels, fall outside the NZIA's resilience mechanism. The resilience test applies only to final products and main specific components of the turbine and its foundation – a useful reminder that the NZIA's reach, while extensive, is not unlimited.

AO10 imposes separate vessel-related obligations, including compliance with vessel safety requirements, the French Transport Code's host State regime, and fleet reporting obligations. Operators must provide information on vessel deployment and, for maritime transport activities, report IMO numbers and CO_2 emissions under the EU-MRV regime. While separate from the resilience criterion, these requirements add a further layer of compliance and administration for project participants.

Looking ahead

This regime should be considered in context. AO10 is the first French tender to give binding effect to the NZIA's default 75% mechanism – scored through the resilience criterion – and other Article 26 auctions may follow suit. Yet that criterion is a modest input into a contest still won largely on price: a zero score does not disqualify a bid, unlike a weak financial score, though it can decide a tie-break between bids otherwise level on tariff.

AO10's impact may ultimately extend beyond the resilience criterion itself. Together with the carbon-footprint criterion, it encourages bidders to adopt shorter, more transparent and more diversified supply chains. In the near term, this is likely to influence contract negotiations, requiring greater focus on component origin, supply-chain diversification and compliance obligations. Applied consistently across future tenders, they may also support the growth of European supply chains for key offshore wind components.



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Sequence changes: Routes to cost recovery

Time for vessel spreads is usually one of the most significant costs of a cable installation project. The sequence of the work is therefore carefully programmed for maximum efficiency. Delays to preceding work can require re-sequencing, significantly increasing the cost of the work. This article discusses how claims for these additional costs could be presented.

Cable-laying contractors will price a project carefully, based on the planned sequence of turbine installation. However, that sequence is often disrupted – for example when a particular foundation is delayed due to unexpected local ground conditions. When that happens, the cable-laying contractor will often be asked to re-sequence their work, re-deploying its vessel spread to another part of the windfarm where workfronts are available.

With the ever-increasing sizes of offshore windfarms, the costs of re-deploying the vessels become ever more significant. The contractor will, therefore, want to recover the additional costs from the employer. However, there may be different ways to frame such a claim, under the contract. For example, as (i) a breach of the right to access the site, (ii) a disruption claim, or (iii) a variation.

For each of these routes, there will be careful analysis done to see whether there is a valid contractual basis for the claim (and the strength of any such claim), before then deciding which option is best.

Lack of access

In the above scenario, it is unlikely that there is a claim for a general lack of access to the site. The contractor is permitted to enter the windfarm – it just can't access the particular structures it needs to, according to its workplan. For there to be a viable



"With the ever-increasing sizes of offshore windfarms, the costs of re-deploying the vessels become ever more significant."

claim for breach, therefore, the contract will need to have (i) set out a detailed schedule for access to particular turbines, and (ii) stipulated that the schedule is binding on the employer.

If that is satisfied, then the contractor will likely, in principle, be entitled to its additional costs (and an extension of time).

General disruption

In principle, the scenario provides a basis to claim that there has been disruption – the contractor's planned work has been prolonged, or made more inefficient. The cause is not in the contractor's control, so the factual conditions for a disruption claim – for the additional costs incurred by the contractor – are present.

However, this is not necessarily enough. The contractor will still need to find a contractual basis for the claim. Some contract forms do not allow for general disruption claims – in which case the contractor will need to find a specific contractual 'hook' for the claim (i.e. an applicable 'compensation event', or equivalent), which is not always straightforward.

Variation

If the planned sequence for the contractor's work was an agreed term of the contract, then a deviation from that sequence will likely constitute a variation. However, that will not always be the case, and a careful analysis may be required to determine whether any proposals for the sequence have been 'bound in' to the contract, such that they are binding on the parties.

The variation will need to go through the relevant approval process, and will be valued in accordance with the relevant rules.

Which route is best?

Once the legal/factual analysis has been carried out to determine the options available to the contractor, there will then be a decision to be made as to which route is preferred by the contractor (although these claims are not necessarily mutually exclusive).

Some of the relevant considerations may include:

- Quantifying and evidencing claims for disruption costs (whether direct or indirect) can be difficult and subject to considerable debate – proving a direct causal link to the costs claimed is often contentious. The position is further complicated where recoverable costs are subject to a standard of reasonableness, or where disruption is not a distinct head of loss under the contract but must instead be recovered as increased 'Cost', under a more general definition. For these reasons, disruption claims can be among the most hotly-debated – with considerable uncertainty over what a contractor can expect to recover.
- Some costs of the disruption may not become clear until later in the project. If so, payment for them may not be made until a long time after they are incurred – creating a cashflow risk for the contractor.
- Isolating the costs arising from the out of sequence work can be very difficult. A simple comparison of the planned and actual progress and costs is unlikely to be sufficient. The plan may not have been realised for a range of reasons or may never have been realistic. Ideally, contractors should be able to identify specific costs that would not have arisen without the disruption and explain why they arose. There are different methods to achieve this but, generally, granular data and a coherent narrative are needed.
- Claiming a variation, and agreeing the price for it, may give the contractor more certainty over the extra payment it will receive, and allow it to be paid immediately after the costs are incurred (or even in advance). But agreeing a price for the variation in advance carries a risk that the valuation does not end up capturing the full cost of the varied works. Arguably this is no different from the usual position (at least for 'fixed price' contracts) – but it is potentially a different risk from claiming disruption.

In practice

If a work sequence is disrupted, a quick decision may be needed as to which claim to pursue, given contractual time limits for notifying claims.

There is also, though, a significant practical dimension to the decision – especially if vessels have already been deployed. The contractor may have significant practical leverage over the employer, who will be keen to avoid any delays to energisation.

Therefore, the strict legal position may not be the only factor relevant to negotiations. Nevertheless, supportive contract terms – most crucially having the work sequence be an agreed, binding term of the contract – will make any such discussions significantly easier for the contractor.



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Unincorporated Joint Ventures: Managing Claims and Liability Risk

Offshore wind projects rarely get built by a single contractor. Cable installation, foundation works, turbine supply and balance-of-plant packages typically demand specialist expertise which a single organisation may not possess on its own. Contractors will often therefore combine to deliver packages as unincorporated joint ventures (JVs). In this article, **Daniel Johnson** and **Arpan Gupta** examine the management of claims and liability risks between unincorporated JV members when delivering offshore wind projects.

The offshore wind sector uses JV structures at multiple levels of the supply chain. Main contractors frequently form unincorporated JVs (or "consortiums") to deliver large Engineering, Procurement, Construction and Installation (EPCI) packages. This delivers multiple benefits but also creates new risks for the JV members. One of these relates to how claims are managed by the JV.

Why JVs are common in offshore wind

Offshore wind projects are capital intensive, technically complex and involve significant execution risk. Sharing that risk, while combining complementary capabilities, lets contractors compete for opportunities beyond their individual reach. For instance, a cable manufacturer and an installation contractor can jointly offer a developer design, supply, transportation and installation capability that neither could have offered alone.

That combined offering matters commercially as well as technically and can deliver multiple benefits such as:

- Presenting the JV to the employer as a single entity, jointly and severally liable for the whole of the works, creates an EPCI-style liability wrap that developers/employers value and that can make a joint bid materially more competitive.
- Employers may obtain parent company guarantees from both members' corporate groups, giving them a stronger security than a single-contractor bid would offer.

Further, an unincorporated JV can be more attractive than incorporating a new corporate vehicle, given the cost, tax friction and governance overhead involved.

"Unincorporated JVs are an attractive and often essential delivery model for offshore wind projects..."

These benefits mean that unincorporated JVs are commonly the structure of choice for two or more contractors seeking to partner to deliver works.

Management of claims and liability between JV members

The unincorporated JV also brings new risks. An unincorporated JV itself has no separate legal personality and exists only as a contractual arrangement between its members. The JV agreement must therefore anticipate how to manage liability between its members and deal with issues such as managing and pursuing claims.

Management of claims against the employer

While JV members may be jointly and severally liable to the employer, it does not automatically follow that an individual JV member can independently pursue claims against the employer.

This issue was highlighted by the recent English court decision in *Darchem Engineering Ltd v Bouygues Travaux Publics and another* [2026] EWHC 220 (TCC),[1] where the court held that an individual JV member could not unilaterally pursue adjudication where the relevant contractual rights belonged to the subcontractor JV as a whole. In doing so, the court rejected the argument that the JV members' joint and several liability (i.e. the fact that they could individually be liable for the full amount of any claims against the JV) meant that each member had an independent right to bring a claim.

Darchem highlights the importance of agreeing terms about the management of claims being brought by the JV. Before entering into the main contract, JV members should agree a clear mechanism for pursuing such claims, covering who is authorised to act, what approvals are needed before dispute resolution starts, and what happens if members disagree. Without this, a JV member may be unable to enforce rights otherwise available under the contract.

Scope Allocation and Interface Risk

Where two separate entities are delivering a combined scope as part of an unincorporated JV, it is important to set out precisely which member is responsible for which part of the works under the main contract. Each member's exposure should correspond to the scope it actually controls and the members should agree when care and custody of the works transfers from one member to another. For instance, in case of defects where one member manufactures a product, such as cables, and another installs it, the manufacturer should be responsible for manufacturing faults, and the installer for damage during installation. This could be supported by a joint inspection at the point of handover from the manufacturer to the installer.

Further, many offshore wind disputes ultimately arise from interface failures rather than outright non-performance. JV members should therefore consider additional interface management mechanisms, such as a scope allocation matrix, an interface matrix, or an interface management plan.

Clawback Mechanism and Performance Guarantees

Clear scope allocation needs to be paired with a clawback mechanism giving each member a defined route of recourse against the other. Because members typically remain jointly and severally liable to the employer regardless of which of them actually caused the loss, one member could initially 'overpay' for defects for which it is not responsible. That member will want clear rights to recover the overpayment from the member actually at fault. This is commonly achieved through cross-indemnities between the JV members, under which each indemnifies the other for losses caused by its own scope, breach or default.

However, the value of the cross-indemnities ultimately depends on the indemnifying party's financial strength and the ease with which they can be enforced. JV members frequently operate from different jurisdictions and even if an indemnity claim is successful, enforcing a judgment or an arbitral award across borders can be complex and expensive. For that reason, indemnities are often supplemented with parent company guarantees or bonds.[2]

Conclusion

Unincorporated JVs are an attractive and often essential delivery model for offshore wind projects, enabling contractors to combine expertise, share risk and offer developers a single point of responsibility – but without the downsides of formally incorporating a JV entity. However, to realise these benefits fully, the JV agreement needs to provide a clear framework for pursuing claims, managing disputes, allocating responsibility and securing recovery between the parties.

As offshore wind projects continue to increase in scale and complexity, careful drafting of JV agreements will be critical to ensuring that the commercial benefits of collaboration are not undermined by unclear responsibilities or disputes between the parties.



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1 Read our article on the *Darchem* case. The risks of going it alone | HFW

2 See our article on "Security for Joint Venture Participants", Construction Bulletin, March 2022 | HFW



Examples of our work

- We are regularly instructed to provide tender support in relation to the review and negotiation of EPCI or T&I contracts (and ancillary documents) for different packages of works for UK, European and Asian offshore wind projects and interconnector cable projects. This reflects our deep understanding of the offshore market and the relevant risk allocation.
- Our team is providing ongoing tender support during the negotiation of a contract for an EPCI scope for a commercial scale floating offshore wind farm project in UK waters, which will be the world's first commercial application of floating offshore wind technology. This instruction reflects our team's significant experience in the rapidly developing floating offshore wind sector.
- 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.
- As part of a project counsel role, we have been instructed to advise on the adverse physical conditions position under an export cable contract for a UK offshore wind project. Our understanding of how cables and foundations are installed means we are able to quickly grasp the relevant issues and concepts for a successful claim.
- We have advised our clients on the implications of recent changes to the UK's immigration laws, including the eligibility requirements for skilled worker visas. Our Paris office regularly advises on offshore worker visas for French projects.
- We have advised on the negotiation of contracts for projects in Taiwan, Korea and Japan, as well as delay and additional cost disputes arising out of contracts for projects in Taiwan and Korea.
- We have advised on insurance claims arising out of the construction of offshore wind farms.
- 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 22 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 has over 700 lawyers working in offices across the Americas, Europe, the Middle East and Asia Pacific. For further information about our offshore wind capabilities, please visit hfw.com/offshore-wind or scan the QR code.

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