



# PERSPECTIVES

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## **The Winds of Change: Navigating Offshore Wind Disputes**



Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

## INTRODUCTION

Offshore wind energy is a new and developing frontier in the global transition to renewable power, with ambitious worldwide projects competing for expertise in a fledgling industry. As this industry grows, so too do the challenges, particularly in offshore wind disputes. At London International Disputes Week (LIDW), industry leaders, legal professionals, and stakeholders convened to discuss challenges, recent developments, and the future of offshore wind disputes.

Here, we highlight some of the key takeaways from the discussion.

## CHALLENGES IN OFFSHORE WIND DISPUTES

Firstly, the offshore wind sector is still relatively new. This youth brings with it a host of disputes that are often centred around the allocation of risk along with commercial issues. The industry is uniquely susceptible to the key challenges of vessel availability, logistical difficulties, and the environment in which it is based.

As demand for specialised ships increases, the capacity within the industry is struggling to maintain pace, resulting in tension within commercial arrangements and price-sensitive projects. Likewise, delays offshore often have at best a domino effect, or at worst a compounding effect, as they are exacerbated by obligations of follow-on projects. Vessels either progress to subsequent projects prior to the completion of a delayed project or that delay travels along the project chain.

Design liability is also a recurrent point of contention. As projects move into deeper waters with increasingly challenging environmental conditions, the parties' design liabilities and subsequent defects may emerge. These can develop into costly disputes, including arbitrations or litigation. The risk of disputes is often due to the youth of the industry where the distribution of risk between the parties often varies and has not yet become fully normalised.

The example of ground conditions was discussed in detail, as these are a persistent uncertainty. Offshore construction must account for varying seabed conditions, which can present challenges in terms of both establishing the conditions and the allocation of responsibility for unexpected complications.

Along with the allocation of risk comes the allocation of costs and claims. Again, the offshore wind industry brings with it challenges of valuation—including assessing equipment depreciation, standing time costs and demurrage. There is also the common need to assess prolongation and perform detailed analysis of disruption, in situations where disruption is commonly caused by multiple events (only some of which may entitle compensation).

## NEW DEVELOPMENTS: RISK ALLOCATION AND STANDARD CONTRACTS

After identifying some of the challenges faced, the panel discussed how to deal with them. The International Marine Contractors Association (IMCA) launched new risk allocation principles in January 2023 aimed at providing a clearer framework for mitigating disputes. These principles emphasise a balanced distribution of risk across stakeholders, ensuring that the party best positioned to manage each risk takes responsibility.

Moreover, it was recognised that ongoing efforts by FIDIC Task Group 14 and IMCA to develop new standard form contracts are a crucial step forward for the industry. These contracts, tailored to the offshore wind sector, are designed to address the specific risks and challenges inherent to offshore projects, standardising the approach to disputes, and helping to streamline the resolution process.

It will be interesting to see the adoption of these new forms of contract in the future and their impact on the industry.

## THE INDUSTRY CONTINUES TO EVOLVE

Finally, the question of what the future holds was posed. It was acknowledged that the offshore wind industry remains an exciting place with continued evolutions in technology, size, capacity, and methodology, most recently materialising in the use of floating wind projects.

As the technology develops, so do new sets of risks and challenges, such as the need for advanced mooring systems, the further unpredictability of oceanic conditions, and the challenges of maintenance in deeper waters.

Managing these risks effectively is essential to the continued success of the industries and companies that work in the industry.

## CONCLUSION

So, what does this all mean in terms of practical application and takeaways? The consensus was that as offshore wind energy continues to develop, so to must contractual relationships surrounding them, and the sophistication with which projects and their outcomes are assessed and quantified. When conditions fluctuate, the parties need to be aware of the competing sources of risk and risk allocation. Contractual parties can have different priorities, and resolution needs to reflect the sophistication of the projects, interactions, technology, and records currently available. Only by ensuring that the quality of claims and assessments match the quality of the projects and the industry, can we navigate these winds of change.

## ACKNOWLEDGEMENTS

We would like to thank our colleague, [Daniel Miles](#), for providing insights and expertise that greatly assisted this research.

[Dan Miles](#), Senior Managing Director in [J.S. Held's Construction Advisory practice](#) as a Senior Managing Director in April of 2023 as part of J.S. Held's acquisition of Aquila Forensics. He is an experienced chartered quantity surveyor and testifying expert witness with more than 15 years of experience working on high-value, complex disputes. Daniel has given evidence on multiple occasions in various international arbitrations. He specializes in the provision of quantum advice and opinion in mediation, adjudication, arbitration, and litigation.

Daniel lectures at both Stuttgart University and Derby University on contract administration and assessment of quantum and delays in disputes in a number of courses. He also provides training for firms on the commercial management of contracts under all significant contract forms.

Daniel can be reached at [daniel.miles@jsheld.com](mailto:daniel.miles@jsheld.com) or +44 78 4241 6592.

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