

A large offshore oil rig is shown at sunset. The rig's complex metal structure, including two tall derrick legs and a central drilling tower, is silhouetted against a sky filled with vibrant orange and red clouds. The rig is illuminated with warm yellow lights, and these lights reflect on the dark water in the foreground. The overall scene conveys a sense of industrial activity in a dramatic natural setting.

C/M/S/

Law . Tax

Oil and Gas Disputes Survey:

Managing disputes risk – the in-house perspective

Key Findings

The three geographic locations identified as highest risk in terms of the prospects of a dispute arising were: Africa (28% of respondents, and 60% of those who operate in that region); the United Kingdom Continental Shelf (UKCS) (37% of all respondents, and 50% of those who operate in the UKCS); and Latin America (17% of total respondents and 40% of those who operate in the region).

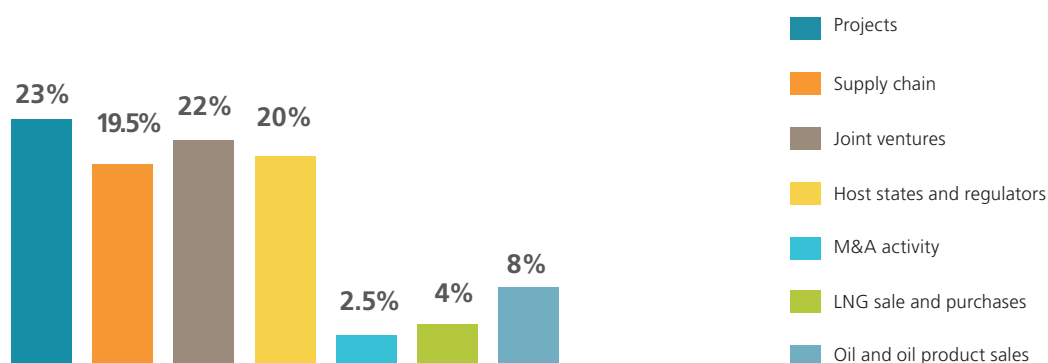
Figure 1: Of those geographical areas where you operate, where do you consider there to be the greatest risk of disputes arising?



respondents could select more than one response for this question

Nearly half of all participants see the greatest risk of disputes arising from Projects and Joint Ventures. However, Projects, Supply Chain, Joint Ventures and relationships with Host States and Regulators are all identified as activities where a high risk of disputes arises.

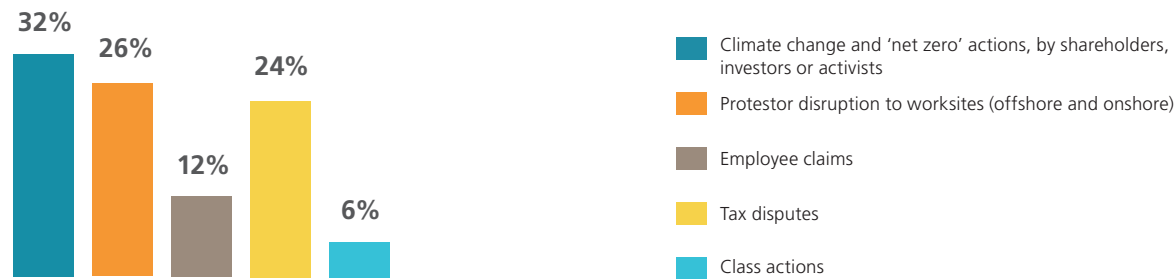
Figure 2: Which are the activities where you or your counterparties see the highest risk of disputes arising?



respondents could select more than one response for this question

Protestor, shareholder or investor activism was identified by nearly 50% of respondents as a real risk to their company or company group – that would include activities by those focussed on climate change issues but also broader corporate governance issues and special interest groups seeking to influence a company’s ‘direction of travel’.

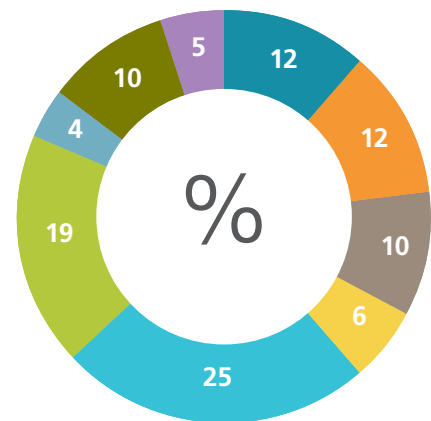
Figure 3: Do you consider that any of the following are a real risk for your company or company group?



respondents could select more than one response for this question

With regard to disputes arising with co-venturers, more than a quarter of respondents believe that better managing relationships with co-venturers is key to minimising the risk of disputes in that context.

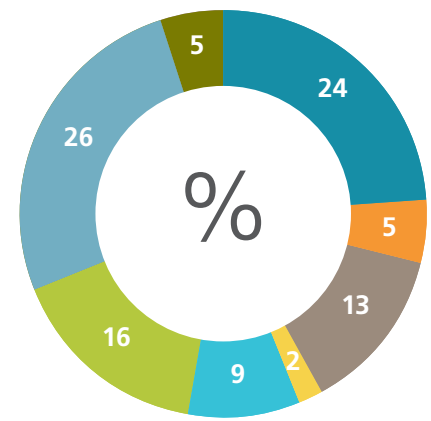
Figure 4: In what areas do you consider that dispute related risk can be better managed in respect of disputes arising within joint ventures?



respondents could select more than one response for this question



Figure 5: In what areas do you consider that dispute related risk can be better managed in relation to disputes involving host states or regulators?







Introduction

The CMS Oil and Gas Disputes Survey examined the key drivers of disputes and dispute management in the oil and gas industry, and how sector participants are moving towards new approaches to minimise conflicts and disputes. Based on more than 50 responses from senior legal managers and senior in-house counsel in the oil and gas industry across Europe, the Middle East, Asia Pacific, Africa and Latin America, it provides interesting insights into how disputes arise and are managed around the globe.

Even before the onset of the COVID-19 pandemic, the oil and gas industry was facing considerable challenges, not least a prolonged period of relatively low oil prices and a global focus on lowering carbon emissions and “green” energy.

Compared with the heights of 2008, prior to the global financial crisis, when international oil prices peaked at over US\$140 a barrel, the US\$55 barrel price for Brent Crude in late January 2021 still looked relatively low, despite the recent partial recovery. Those weak prices continue to place considerable pressures on industry players that are now often operating on historically low margins of profitability.

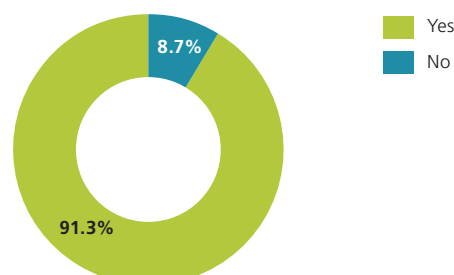
It was not always this way. As vertically integrated giants, oil and gas majors were traditionally considered well able to absorb downsides within a broad portfolio of revenues and partnerships, but today many industry players no longer have that luxury. A number of geographic markets that were previously dominated by a few large upstream oil companies have transitioned through divestments to ownership by a larger group of smaller independent players with more focussed portfolios and a range of financial models. With more operators and participants in many oil and gas geographic markets, it seems likely that the opportunities for disputes are increasing. CMS Oil and Gas Disputes Survey indicates that more could be done to prevent and mitigate against expensive time-consuming disputes.



Ensuring that robust terms and conditions for respective major contracts are put in place

General Counsel at a Middle Eastern independent oil company

Figure 6: In relation to those dispute related risks that you have identified, do you consider there is room to improvement in how those risks are managed within or by your organisation.





Geography: Complex environments deliver financial rewards but higher risks

Risk profile, technical and regulatory complexity and financial constraint naturally all heighten the potential for disputes. The CMS Oil and Gas Disputes Survey suggests that two types of geographic locations bring with them an increased risk of disputes.

First, mature basins where: (i) exploration and production (E&P) is more technically challenging; (ii) projects are financially marginal compared to less mature 'mega fields' with a long remaining life; and (iii) there is a proliferation of medium sized oil companies with fewer relationships to maintain elsewhere. These mature basins are reported as having a greater capacity to raise contentious clashes. There are likely many contributing factors. The **United Kingdom Continental Shelf (UKCS)** is one of the three geographic locations that represents the highest chance of a dispute arising, according to The CMS Oil and Gas Disputes Survey participants. A high proportion of respondents have operations in the UKCS region and our data indicates that a significant number of these see it as high risk.

As the market has matured and with hydrocarbon reserves diminishing in more mature fields, operators have been forced into deeper waters where E&P is more technically complex and expensive. If worksopes require to be adapted because projects do not unfold as anticipated on the ground, cost overruns can quickly become a real concern and the chance of a dispute heightens, both with contractors trying to work to tight budgets and co-venturers required to fund what may be cutting edge or marginal projects.

The profile of asset ownership in the UKCS has also changed over time. The UKCS region is now inhabited, in part, by smaller and medium sized independent players looking to develop and maximise recovery from smaller or mature interests. These oil companies are often are financed and structured in a way that is very different from the super-majors that traditionally dominated the UKCS.

Latin America contains another mature basin that respondents to The CMS Oil and Gas Disputes Survey identified as having an elevated danger of arising disputes. For example, offshore Brazil is a demanding region for oil and gas players given the maturity of elements of the basin and with E&P gradually moving into deeper waters. With a need for large offshore platforms, and other offshore assets such as floating production storage and offloading (FPSO) vessels, and floating storage regasification unit (FSRU) vessels, the industry faces considerably greater expense in undertaking projects than onshore basins such as the Middle East, where E&P can be significantly simpler and cheaper.

Africa is a geographic location also identified as generally having a raised risk profile and it seems likely that is for very different reasons. Our data indicates that, amongst those who operate in the region, it is considered an even higher risk than UKCS and Latin America. Factors that are likely to drive that concern are numerous: in parts of sub-Saharan Africa, there is an evolving regulatory landscape as oil and gas E&P activity is relatively new compared with other regions of the globe (or other parts of Africa). That means that the technical understanding of the conditions in which E&P activity is undertaken is not as complete as it is in more mature basins, so that there are not always 'tried and tested' answers to fall back on. Economic nationalism, populism and local content laws are also a feature in parts of the continent, though of course these do not apply to every jurisdiction and it would be wrong to suggest that the risk is constant across all areas.

Figure 7: Of those geographical areas where you operate, where do you consider there to be the greatest risk of disputes arising?

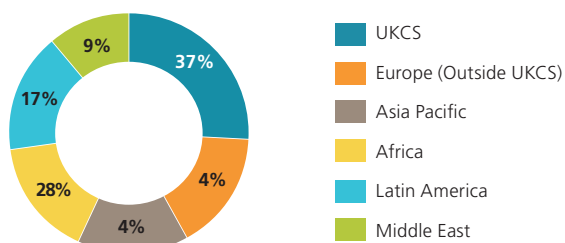
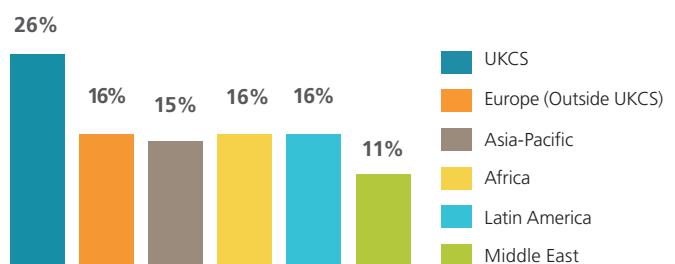


Figure 8: Please indicate which geographical areas you operate in:



respondents could select more than one response for this question



Where do the disputes come from?

A collection of inter-related activities and business relationships pose a considerable challenge to oil and gas industry players. Projects and supply chains are complex, while joint ventures can be tested by financial constraints and tighter profit margins.

At the same time, oil and gas businesses are at the forefront of attention from many host states and regulators as a result of (i) the current increasing focus on ESG issues and environmental targets and (ii) the need for the relevant government to use oil operations as a source of state revenue. In some regions, those

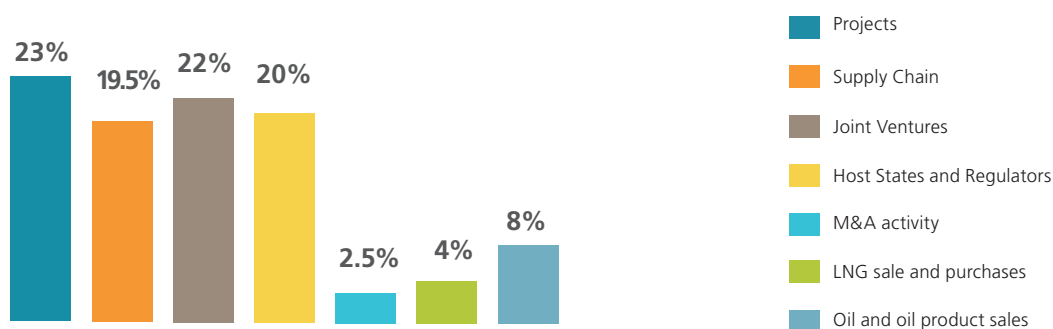
challenges are accompanied by local content laws and nationalistic policies which add to the complexity. In a generally harsh global business environment made worse by the COVID-19 pandemic, it is logical, that industry players would be wary of disputes and their possible consequences.



Key in my experience is stopping to consider what issues the other side (whether contractor, joint venture partner etc.) might be facing before we are made aware of them. So for example if there is a cash call coming up or a change in project scope or an issue in project execution - considering how that might impact the other side, considering how best to approach and, if appropriate, engaging in dialogue with them at an early stage.

General Counsel at an independent oil company

Figure 9: Which are the activities where you or your counterparties see the highest risk of disputes arising?



respondents could select more than one response for this question



Interview - Johanna Coelho Legal Manager, PetroRio

What are the key risks that the industry is facing and where are you seeing the most potential for disputes?

Today, I believe that the main challenge consists of aligning the necessary reduction of risks, costs and impacts of existing operations with the desirable increase of productivity and generation of cash for new investments. For the longer term, I think the main challenge that all operators will face is how do you transform your hydrocarbon business into something greener. You can do this by just having another portfolio with other energies or just by implementing certain changes in your own oil and gas assets.

How do you see the force majeure term being applied in the current climate?

What you don't know is how a pandemic is viewed by the courts and by the arbitral tribunals. There's a lot of jurisprudence regarding force majeure clauses, but I think the new component here is the pandemic. I think that arbitrators and courts will have sympathy for the ones who are suffering with a pandemic. Let's see how they react.

How litigious or cooperative is the industry right now?

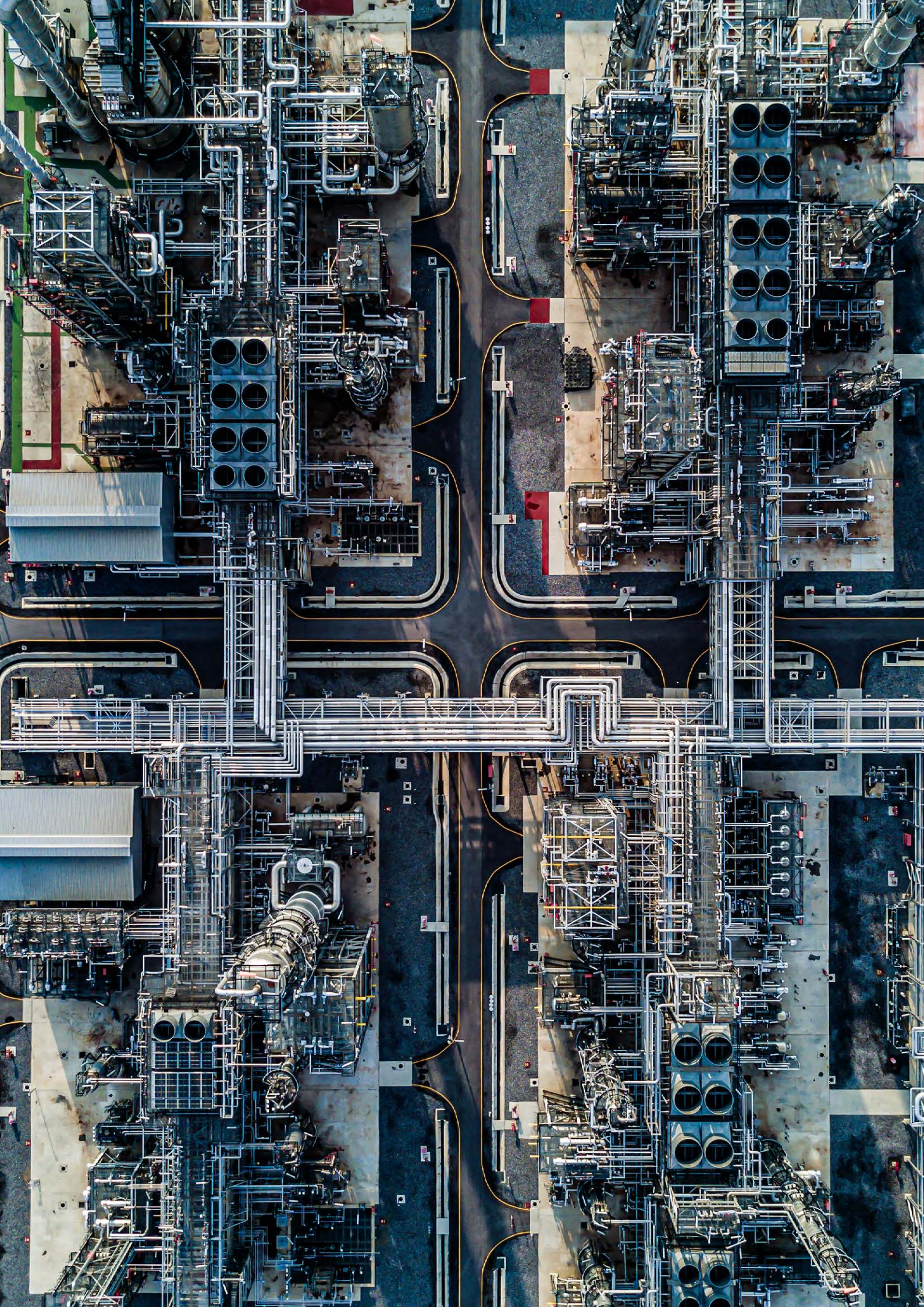
I think the industry itself is quite litigious, but I think that litigation is expensive. I think that parties are less willing, because of the financial crisis, to enter into proceedings to solve problems. I think they will pause and look at the benefit of having an arbitration versus the cost of it, and what they'll gain from it. You have to look at the long-term prospects.

Do you feel that in-house legal teams can be better equipped to manage risks and disputes?

We'll look more at the commercial aspects of the case and weigh up whether we should enter into an arbitration or whether it can affect the commercial relationship with a party. I think that more legal departments are involved in this kind of activity, having this kind of commercial sensitivity and how it may impact the company as a whole.

How can you best guard against disputes that might arise from acquisitions?

We need to count on the experience of our external lawyers who have the expertise in what has happened in other fields. That's the key, to have a well drafted agreement that covers anything that might come up, that has good indemnification, that has good material adverse change and force majeure clauses, and gets as much protection as possible.





Operational problems: activities and relationships that can lead to disputes

It is notable that in The CMS Oil and Gas Disputes Survey, respondents singled out projects and joint ventures as the aspects of their activities that bring the highest risk of disputes arising.

As far as **joint venture** disputes are concerned, in more benign times, when oil prices were considerably higher, when the global economy was growing, and before the oil and gas market became more fragmented, industry players would have been perhaps more likely to avoid disputes with a joint venturer or resolve issues quickly. Disputes with a joint venture partner over a relatively small matter in a single jurisdiction might jeopardise a more lucrative global relationship. The wider commercial imperatives would often vastly outweigh the gains from a legal battle.

Duncan Holland, Head of Legal at Cairn Energy says: "In years gone by when the oil price was closer to \$100, the banks were freer with their lending, people were less constrained, and disputes were more easily resolved. People would just meet in the middle."

Now that the market is more segmented and with both larger companies and independent players having tighter financial resources, the incentive to launch disputes seems to be greater. Relatively speaking oil companies simply have more to lose. "Fifteen years ago, there were

very few joint venture disputes,” comments Phillip Ashley, a CMS Energy Disputes Partner. He says that in certain regions, the frequency of these kinds of disputes seems to have grown as assets are divested to smaller entities and private equity-backed companies - that have tighter profit margins. They also have less extensive funding arrangements meaning that it may be less straightforward for them to simply ‘meet in the middle’. Also, many of these smaller companies do not have the kind of extensive portfolio that traditional oil and gas companies would have had. As a result, there may be less need to balance relationships across multiple joint venture interests.

Moreover, some joint venture agreements were put into place decades ago, when exploration in a particular area commenced. That means that they incorporate approaches to accounting and governance which are no longer reflective of today’s market. In some cases the existing contractual arrangements have not fully anticipated the challenges associated with continuing to produce from a mature asset, or those that arise as production winds down and the oil field infrastructure moves closer to decommissioning. These historic contractual arrangements often also do not account for asset ownership by companies that are structured in a very different way to the companies that carried out the original exploration work. Valerie Allan, a CMS Energy Disputes Partner, says that court records show a marked increase in joint venture cases.

It is perhaps not surprising that respondents identified **projects** as the other key area of risk as regards the potential for disputes to arise. E&P projects require significant financial investment, sometimes (for example, in drilling exploration wells) with no guarantee of any return. The work is often being undertaken in a difficult physical environment and, despite extensive planning, in many cases (such as exploration wells) there will be no certainty as to the result. Technical complexity means there is always the potential for things to go wrong, and that complexity is increasing, for example, in mature basins where new technology is required to deliver barrels from deeper, higher pressure wells. Particularly where projects are to bring new or additional production online, there will be real commercial pressures to achieve first hydrocarbons as quickly as

possible in order to facilitate a return on investment. Added to that, the continuing low oil price puts significant pressure on margins, driving down contractor rates in an increasingly competitive market and leaving little contingency for unexpected events.

Along with projects and joint ventures, The CMS Oil and Gas Disputes Survey disclosed that market participants also face the significant possibility of disputes with (i) host states or regulators and (ii) their supply chains. In fact, The CMS Oil and Gas Disputes Survey demonstrates that joint venture disputes, project disputes, host state and regulator disputes, and supply chain disputes were all seen as a significant risk.

In reality a single project may result in disputes across the relationships within and between the joint venture, project contractors, host states, and supply chain. If a project overruns in time or budget it can have a direct financial impact of each of these levels of the industry. In turn, in seeking to protect their position each of these relationships may lead to a dispute arising from one underlying cause.

Our research shows that fewer disputes tend to emerge from M&A activity, LNG sales and purchases, and oil product sales. In relation to M&A activity, this is perhaps explained by a greater presence of legal advisers in the initial transactions, minimising the chance of a dispute emerging. The outcomes from M&A deals are more predictable and more straightforward, as they do not directly address the technical and environmental complexities of the exploration, drilling and production of hydrocarbons, enabling parties to more comprehensively anticipate and address risk and limit the possibility of a disagreement.

The relegation of LNG sale and purchase transactions to a low risk activity likely reflects the evolution of natural gas and LNG markets over the past 20 years. As little as 10 years ago these contracts, with associated price reviews, would have been perceived as a key disputes risk to many oil companies. However, The CMS Oil and Gas Disputes Survey results reflect that as markets have liberalised, and moved to a more market based pricing solution for natural gas and LNG, the perceived risk of disputes has become low.



Strategising: Identifying what represents a good outcome in a particular potential dispute at an early stage and managing actions and communications to achieve / beat that target, with all relevant stakeholders aware of surrounding facts, status of records and the overall message for forward activity/records.

Lawyer at a FTSE listed oil company



Elevated risks: newer dangers for oil and gas players

The range of disputes that the industry is experiencing is evolving with the onset of environmental and climate change concerns. Currently the industry is defending an ever-growing list of climate change cases as activists begin to be more assertive, often through judicial review challenges. In 2020, several judicial reviews were brought by environmental campaigners seeking to limit or prevent oil and gas exploration activity.

Allied to this, The CMS Oil and Gas Disputes Survey respondents identify protestor disruption as a major area of risk for oil and gas players. A range of protest actions have occurred seeking to disrupt both onshore and offshore oil and gas operations, including in the fracking industry.

The CMS Oil and Gas Disputes Survey participants also acknowledge the risks associated with tax disputes, which arise in large part because international tax regimes relating to the oil and gas sector are hugely complex and increasingly so.



Relationship building is critical.

Senior Lawyer at a global oil services company



Interview - Duncan Holland Head of Legal, Cairn Energy

What are the key risks that the industry is facing? Where are you seeing the most potential for disputes?

It is largely about the financial situation. Across the industry, we are seeing more disagreements even with parties in joint ventures, where there may not be a huge amount of money at stake, but companies are seeking to preserve cash and not be tied into work commitments.

What operations are most likely to lead to disputes and how are you approaching topical issues such as force majeure?

We are in a different world where some long-term contracts and work commitments of operators don't make sense anymore and it's not going to change in the next 12 to 18 months, which is increasingly leading to disputes.

Force majeure has taken up a bit of time in the last few months. If you physically can't operate, then force majeure is pretty clear, but as restrictions are then relaxed in some parts of the world while remaining in others, it can become quite complex. Particularly in the oil and gas industry where people and equipment can be moving around the world.

How do you see the impact of climate change policies and priorities?

Governments, shareholders and regulatory bodies in many countries are looking at increased regulation in the immediate and near-term future and that will be a key issue when looking at new projects.

How is the typical in-house legal team addressing these risks in today's climate? And how might this compare to five or 10 years ago?

I think there is a general trend to more quickly use external counsel, because there used to be more disputes resolved amicably. The temperature has increased. We don't necessarily end up in court, but we have the potential to do so.

People can be emotive about disputes and it can become more tense. What you want is for external counsel to see through that and see what the underlying issue is. And so it's about being able to cut through all that noise in these disputes and seeing where the strong points and the weak points are and asking: 'is this worth pursuing'? We need lawyers to be commercial while understanding all the key moving parts.

Where do you feel that the industry can improve its management of risk and disputes?

People can keep better records. A lot of problems arise out of meetings where people disagreed about certain things and the two parties have records that are wildly different.

Also, clearer drafting at the outset. Often you have complicated agreements and people are keen to get them concluded and signed, even though there is often vague language trying to deal with highly complex situations. You need to have these discussions early to try and deal with some of the problems before they arise. It's easier to reach agreement on a lot of these issues when things are amicable.





Risk mitigation: limiting the fallout

Even if the oil and gas industry faces more risk and is prone to more tensions, clashes and disagreements, it does have the means of tackling these concerns.

Over 91% of The CMS Oil and Gas Disputes Survey respondents indicated that there is room for improvement in managing dispute-related risks. Just as the industry is evolving and shifting according to

economic, geopolitical and social changes, so too are the means of addressing risks and minimising the chances of disagreements.



External law firms being a part of the dispute resolution strategy discussion.

In-house counsel at a supermajor



The role of external lawyers

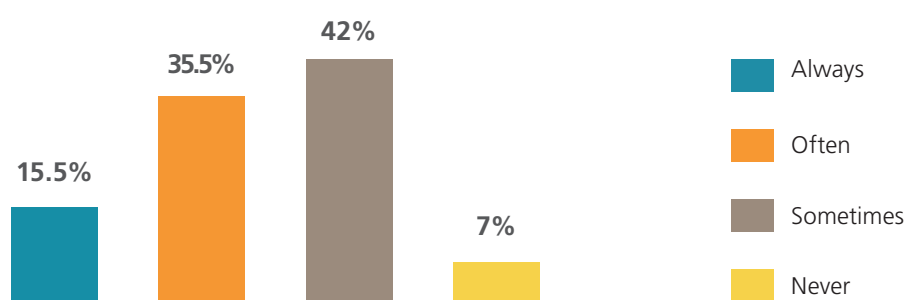
A very small proportion of The CMS Oil and Gas Disputes Survey participants admit to never consulting with internal or external legal teams or contract management groups although only 51% say they will always or often turn to these specialists for help with risk/dispute management strategies.

Naturally addressing a potential area of conflict at an early stage is beneficial as full-blown disputes are expensive and time consuming. Of course, larger organisations and oil majors are often process-led and well equipped and experienced in managing risk and disputes. They have process management embedded within their operations: reducing the risk of disputes

and imbedding a process for dealing with potential disputes at early stages. Smaller players often find it more difficult or impractical to operate the type of process management solutions suited to the management of large corporations, which can be effective at risk mitigation but expensive to operate.

51% say they will always or often turn to these specialists for help with risk/dispute management strategies.

Figure 10: Considering those activities where you have been involved, how often is there a conscious effort to consult or involve internal legal/contract management team or external counsel to identify key risks and put risk/dispute management strategies in place



respondents could select more than one response for this question



Senior level engagement at the right time - too early or late and it is ineffective but at the right time can cut through the dispute. Requires good internal briefing and focus on overall objectives/goals. Keep team focused on ultimate goal. Honesty internally about strength of own case - avoids creating barriers to resolution that are harder to break down.

General Counsel at an independent oil company



Communication is key

Across the board, respondents to The CMS Oil and Gas Disputes Survey identified that relationships remain critical to risk management and that early engagement and communication with counterparties of all types is key – provided it is at the right level, and follows robust internal preparation and a clear understanding of the issues and risks, and also a clear focus on the ultimate goal.



Interview - Sandra Redding General Counsel, Seadrill

Where are you seeing the most potential for disputes?

Whenever we see macroeconomic financial challenges in the industry, we see changing priorities for all players, and that leads to a desire to find flexibility in existing commitments, to move in different directions. Naturally that can see an increase in disputes coming through the supply chain, and for long term supply relationships. We see challenges coming through an increasing focus on local content, environmental and issues arising from international labour mobility due to changes in labour laws globally

Where do you see the biggest potential for disputes geographically?

We are seeing operational interruption evenly distributed across the globe as we move through the pandemic. That has been a great leveller this past year in terms of commercial disputes. Certain social and political pressures have over the past several years put pressure on local content policies in almost every continent. And we're seeing tensions coming through the maturing of employment law in certain labour markets.

As General Counsel, where have you felt the most pressure during the COVID crisis?

Initially it was the relentless pace of it all, needing to solve very new challenges simultaneously, in terms of working locations, moving people around internationally, contract implications. As the pandemic draws out, we are seeing more fundamental impacts; permanently changed working methods, locations and structures. Which brings opportunities to respond more creatively in the longer term to the lower demand that we are seeing across the industry through 2021, and potentially beyond.

Which activities are most likely to lead to disputes right now?

Operational delay due to COVID and force majeure is a really hot issue. Movement of goods and people across borders and to offshore locations continues to be very challenging.

How are in-house teams typically starting to use technology?

The use of AI and automation in our supply chain and commercial agreements has huge potential to help us manage risk through standardisation and greater alignment between suites of project agreements across our enterprise. It is the key to cost and time efficiency in contracting. It's much easier for us to run stats on our agreements to increase consistency of content, and be able to monitor key metrics. As an offshore drilling company, we are hugely adept at developing and using innovative technology. That shouldn't stop when it comes to our onshore business.

What involvement do you typically seek from external counsel and in what circumstances would you look to bring them in?

No matter the calibre of a strong in-house team like Seadrill's, international businesses like ours will always look for quality specialist jurisdictional knowledge. Having the international umbrella of external firms, helping us access and manage local content in emerging jurisdictions and challenging jurisdictions, is hugely valuable. In areas like complex dispute management, law firms are becoming real specialists in their ability to handle and process the volumes of data involved and offer a more joined-up service to get all the way through to resolution.

We build trusted relationships with external counsel, who advise us not only on the relevant legal content, but who are also willing to help strengthen our team and capabilities in areas like knowledge management, and legal operations. Law firms do these things exceptionally well within their own businesses, and there is huge potential for them to work with General Counsels to help transform in-house team performance in these areas.

Where do you feel that the industry can improve its management of risk and disputes?

It's a very collaborative industry. We have had to use pragmatism to successfully deliver the kind of work that we do. And I think, if nothing else, COVID has taught us that in 2020, we have to find solutions, draw on that pragmatism, to respond collectively as an industry to changing conditions. There is a great opportunity for the participants in this industry to use the inherent aspects of our DNA – assessing risk quickly, effectively, mitigating it to ALARP and pushing on. That mentality is very strong offshore, but we could do with more of it onshore.

How can in-house lawyers be more effective in stepping outside of the legal box?

Really understand and see what your business does. In a drilling company like Seadrill, you must go and get on a rig, you must go and do some offshore training, you must call in on the HSE team, and see the operations people. You need to know what a drill string is, what a blowout preventer is, and be curious about how these things work. Don't be seen as 'other' or apart from commercial and even operational decisions. Learn and lean-in to that, and show how 'legal' can be so much more than an isolated input to decision-making.

What are the most effective methods of managing disputes with contractors?

Just keep communicating as much as possible at a commercial level. Commercial and legal people working together behind the scenes, yes, but communication is key. Respect the relationship and be pragmatic about whether all battles are ones that need to be taken, so much is lost through miscommunication. In times when things may be building up to a dispute, every word and every nuanced move is analysed by all sides and can so easily be misread.

How do you address potential disputes with states and regulators?

The power balance and context can obviously be different when you're dealing with a state. But the fundamental principles of avoiding disputes remain exactly the same, particularly when we're dealing with cross-cultural issues in relationships with a state. Communication and engagement is absolutely key. Build strong and consistent relationships relentlessly from the very beginning, and utilise those to work strategically in more difficult times.

With fragmentation in the market, are there fewer chances for pragmatism to diffuse a dispute?

At the operator level the market is becoming more concentrated, certainly in the UK. With less diversity in the ownership of assets in the UK than in other parts of the oil and gas industry and other sectors of the supply chain, there is potential for deeper relationships to develop - which leads to long-term strategic opportunities – both for upstream, Joint venture participants and down through their supply chains.



How can risks with contractors be better managed?

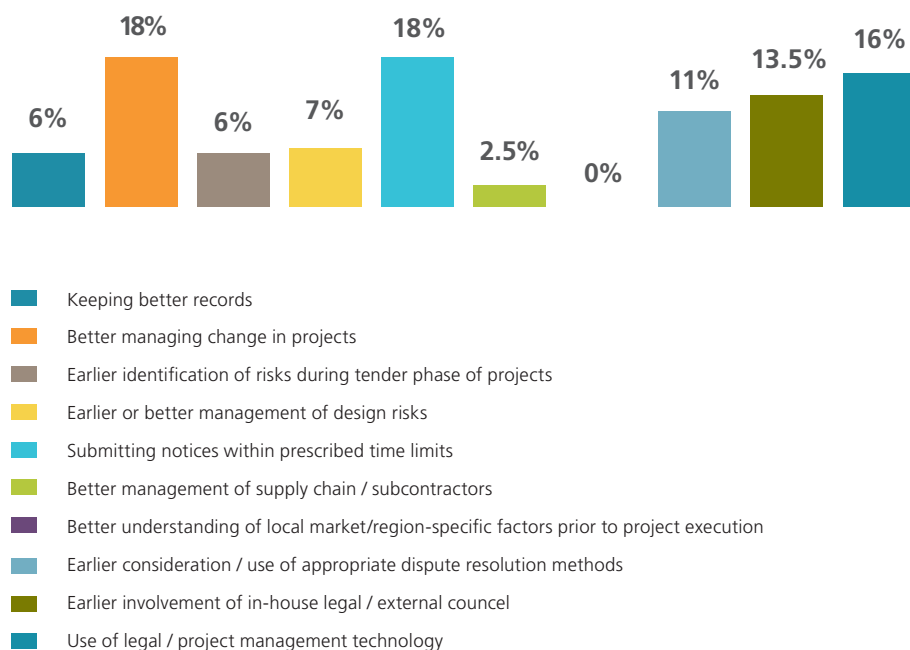
In disputes with contractors, The CMS Oil and Gas Disputes Survey participants identify better management of change in projects and submitting notices within prescribed time limits as the primary strategies to risk mitigation and avoidance.



Complying with the contractual procedures regarding work scope and cost changes is often perceived as unnecessary paperwork, but ensuring that those are followed and records are properly maintained will put you in a much better position to identify issues quickly, before they impact the project or the relationship and turn into a full blown dispute.

Valerie Allan, Partner, CMS

Figure 11: In what areas do you consider that dispute related risks can be better managed in respect of disputes with contractors?



respondents could select more than one response for this question



How can Joint venture risk be better managed?

In disputes arising within joint ventures, respondents point to better management of the relationship with joint venture partners as the key approach. They also single-out the importance of an improved understanding of the local market and region-specific factors. These difficulties can stem from non-operating partners lacking the knowledge of local factors and pushing back on operator proposals. Regular communication and management of the relationship can be especially pivotal to preventing disputes.



How can risks with host states and regulators be better managed?

Interestingly, when it comes to addressing disputes with host states and regulators, earlier involvement of in-house legal and external counsel is viewed as essential. Local knowledge of laws and regulations, including the application of local content laws, are imperative in avoiding conflict with host states and regulators.

Keeping better records is also seen as vital, in part because under many production sharing contracts or technical service agreements the financial model means

that it is vital for oil companies to be able to recover costs.



Cost recovery disputes often revolve around whether costs can be proven in accordance with the relevant documents.

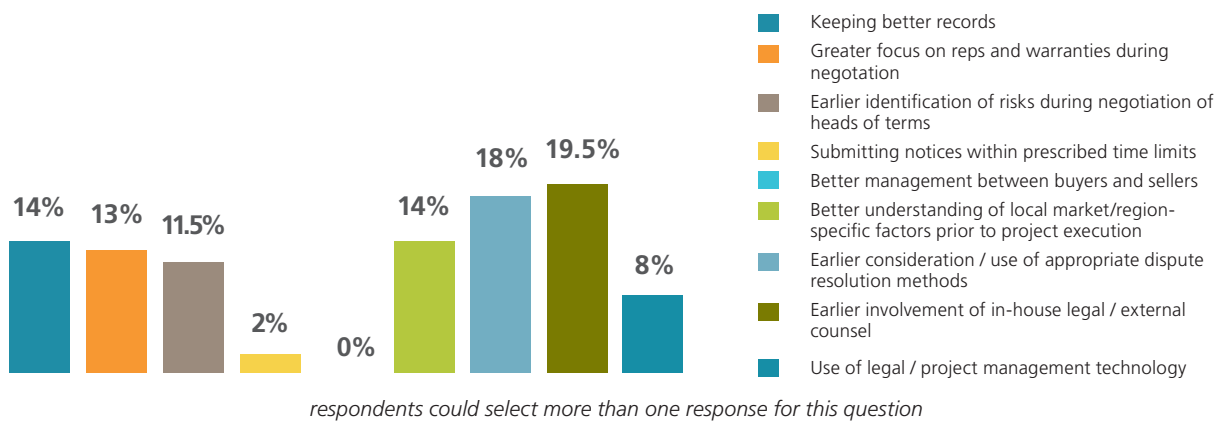
Phillip Ashley, Partner, CMS



Managing M&A risks

Like in contentious situations with host states and regulators, when it comes to disputes relating to M&A activity, the early involvement of in-house legal and external counsel is also raised as the key priority, along with prompt consideration of dispute resolution methods. Keeping better records and an improved knowledge of the local market and region-specific factors are also considered to be prudent.

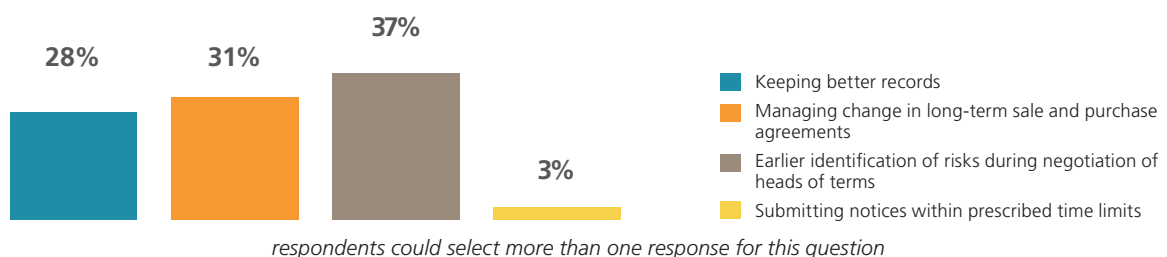
Figure 12: In what areas do you consider that dispute related risk can be better managed in respect of disputes concerning M&A activity?



Managing risks in Commodity Sales

In disputes relating to commodity sales, respondents feel that closer attention should be paid to identifying risks during negotiation of the heads of terms. At the same time, managing change in long-term sale and purchase agreements and keeping better records are seen as key.

Figure 13: In what areas do you consider that dispute related risk can be better managed concerning disputes in relation to commodity sales? (natural gas, LNG, crude, oil products etc)





Early engagement and communication with counterparties.

General Counsel at an Asia Pacific oil company



Riding out the storm

Although another super-cycle can never be discounted in the oil industry, market analysts currently consider it unlikely that the oil and gas industry will ever experience the conditions that immediately preceded the 2008 financial crisis.

In that period, businesses were able to generate significant profits thanks to skyrocketing oil prices and significant global demand. As the green economy gains further traction, buoyed by political and societal support, inevitably oil and gas players will face challenges. It will not always be easy to preserve cordial relationships with joint venture partners, contractors, supply chains and host states.

Where tensions build, it will be essential to have the right methods in place to mollify friction and unease.



Organisations that are process-led tend to be extremely effective at managing disputes.

Phillip Ashley, Partner, CMS

With in-house legal departments becoming more integrated into the wider business, and with more targeted use of technologies and external counsel to predict and prevent disputes, businesses can be better prepared for the post-COVID climate.



About us

CMS is a top six global law firm, with 70+ offices in 40+ countries. With a global team of over 4,800 lawyers who are dedicated sector specialists. The top tier CMS Oil and Gas and Energy Disputes team is the largest UK-based team dedicated to this industry, providing advice to clients all around the world, guiding them through all the problems and pitfalls they face. We advise on all aspects of the industry; upstream, downstream, LNG, platforms, pipelines, FPSOs, shipping and transportation, gas storage, supply chain management, decommissioning, M&A and financing. Visit here for more information: cms.law/en/gbr/

When disputes occur, energy companies expect their lawyers to be true specialists that understand the industry. The CMS Energy Disputes Team focuses entirely on advising and representing clients in the energy sector. Their experience covers all forms of dispute resolution, including international arbitration (both commercial and investor-state), litigation (either of the underlying dispute or in support of arbitral proceedings), expert determination, adjudication and mediation.

If you have any questions on the report or would like further information regarding Oil and Gas and Energy Disputes team please contact Phillip Ashley or Valerie Allan.

Key contacts



Phillip Ashley

Partner

T +44 20 7367 3728

E phillip.ashley@cms-cmno.com

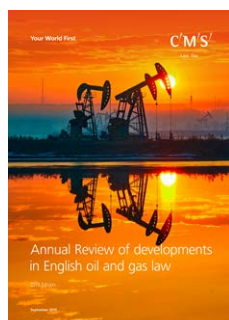


Valerie Allan

Partner

T +44 1224 267149

E valerie.allan@cms-cmno.com





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CMS Cameron McKenna Nabarro Olswang LLP
Cannon Place
78 Cannon Street
London EC4N 6AF

T +44 (0)20 7367 3000
F +44 (0)20 7367 2000

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