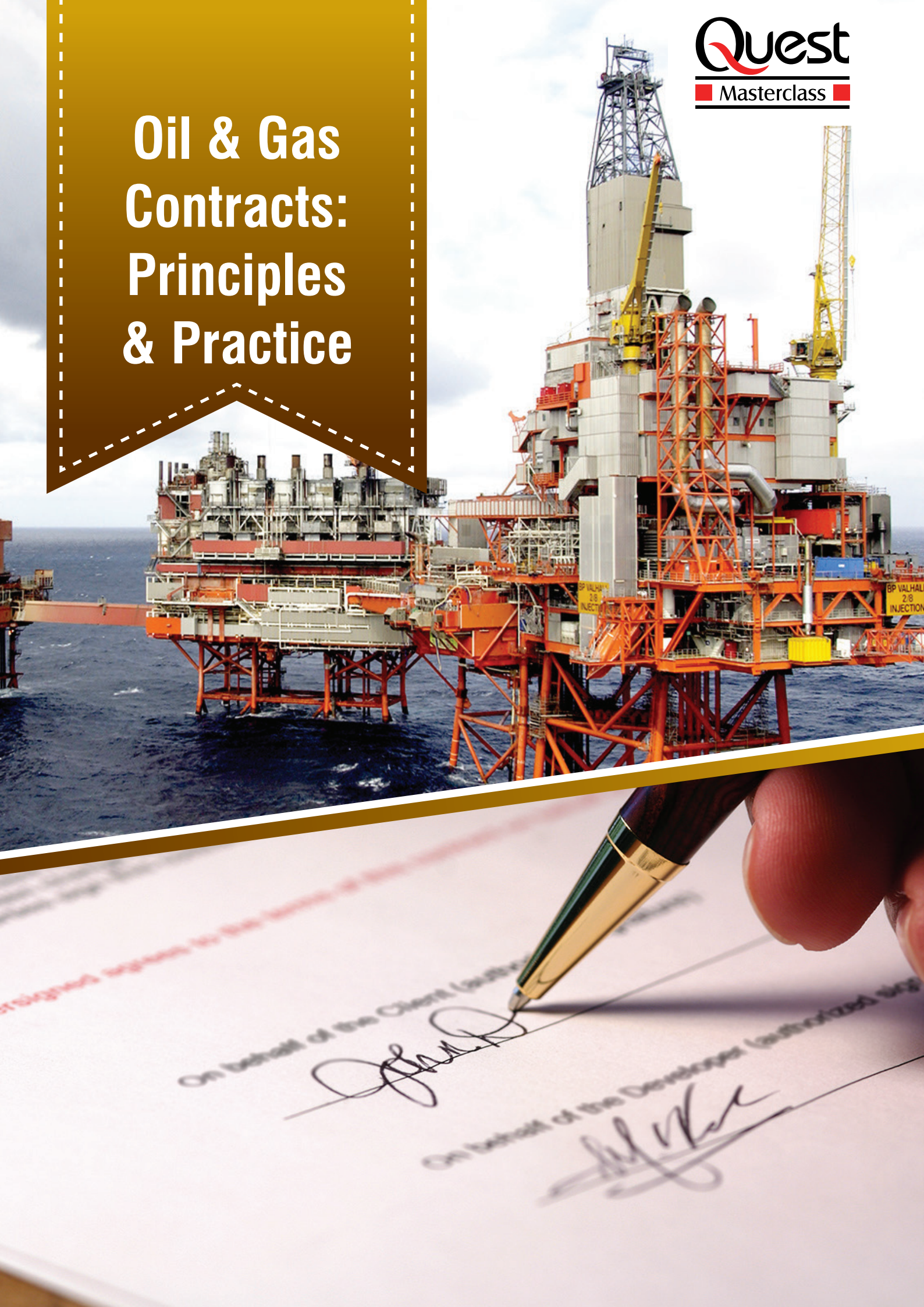


Oil & Gas Contracts: Principles & Practice



A Framework for Negotiating & Managing Oil & Gas Industry Contracts

Understanding how to negotiate, draft, and interpret the nitty-gritties of international business agreements, at times when there are increasing number of Oil & Gas cross-border transactions, is of vital importance. Contracts ensure that there are no long and ruinous disputes, and curbs subsequent expensive and complex litigation and arbitration proceedings. This eBook throws light on the principles of International contract law, with specific reference to the Oil & Gas industry, using as a basis some standard of EPC Engineering Procurement and Construction Agreement, PSA Production-Sharing Agreement, License-Concession Agreement, Joint-Venture Agreement, and more in general exploring today's internationally accepted commercial contracts principles. Also, a significant portion will talk about early neutral evaluation, expert determination, Internal Mediation, and guide you on how to develop your personal path forward.



3 Key Pain Points to Look for Oil & Gas Contracts

For drafting a lucid and an error-free contract, one needs to understand the main elements, including materials from international practice, agreements, judgements, and other documents. Gaining insights into the way oil companies and contractors view, and negotiate oil & gas agreements is a must. Also, complete knowledge about progressive fiscal regimes designed to provide stabilisation, as well as legal stabilisation mechanisms is mandatory. Understanding the basic elements of international and domestic arbitration, including doctrine and materials from international practice, cases and awards, along with clear understanding of the ADR Alternative Dispute Resolution processes, how they work and how they can be implemented successfully is quite essential. Moreover, a sound understanding of international institutions and organizations (like for Instance, the CPR International Institute for Conflict Prevention and Resolution, the ICC International Chamber of Commerce, the LCIA London Court of International Arbitration, the UNIDROIT International Institute for the Unification of Private Law and the UNCITRAL United Nation Commission on International Trade Law) that influence and determine the structural context in which the management of international disputes operates.

Let's discuss in detail about the 3 key pain points in International Oil & Gas Contracts:



**Specific
Contracts &
Governing Law**



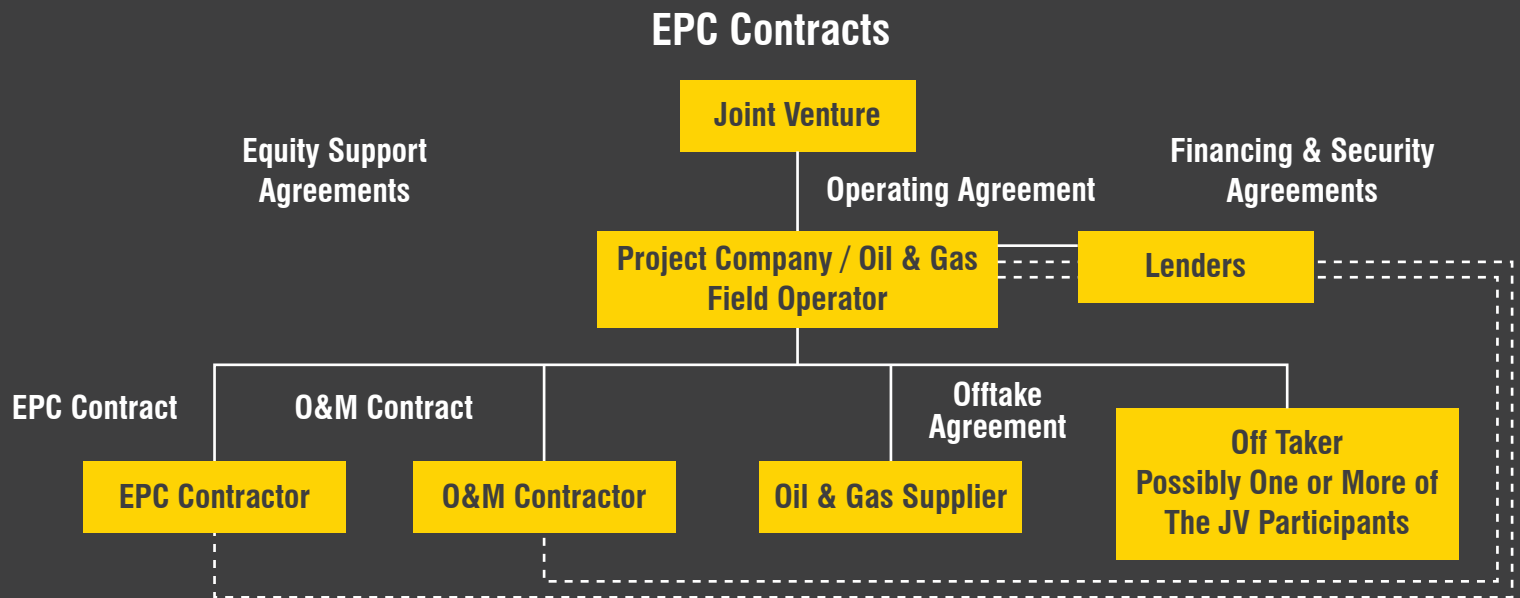
**Compliance
&
Sustainability**



**Dispute
Resolution**

1. Specific Contracts & Governing Law

In the present scenario, there are diverse governing laws all across the globe. This demands creation of specific contracts that apply in a specific region. Thus contracts need to be drafted accordingly after deliberating, negotiating and learning through dispute resolution experiences of others who have either experienced the difficulties or are facing the problems. Specific contracts such as EPC Engineering Procurement and Construction Agreement, PSA Production-Sharing Agreement, License-Concession Agreement, and Joint-Venture Agreement will be under major focus. Also, a complete knowledge of Civil vs Common Law, local laws, UNIDROIT principles as the codification of the international principles of commercial contracts are the talk of the town. Companies also need to focus on how to deal with liability issues, which consists of Liquidated damages, payment for non-performance, loss of profits, opportunities and direct, indirect, and consequential damages. Moreover, Workmen compensation, transportation, equipment, and CAR (Construction All Risks) insurances, Co-insured parties, and waiver of subrogation are some other essential things that need to be taken care of.



The above contractual structure gives a clear understanding of an EPC contract. Let's discuss the basic features of it.



Single Point of Responsibility

- a. For all activities ranging from procurement, designing, construction, commissioning, and testing activities, the only person responsible is the contractor.
- b. The fix a problem, the company needs to contact only one party, i.e. the contractor.



Constant Contract Price

- a. The contractor is liable for both, the benefits of cost savings and cost overruns, and their account is either credited or debited respectively.
- b. The contractor can only claim for extra funds in cases when the company has either delayed the work or done some last minute changes in the order.



Fixed Completion Deadlines

- a. EPC contracts come with a deadline for the completion of the project. If the contractor fails to achieve it, then they are held accountable for Delay Liquidated Damages (DLD).
- b. DLD's are expressed as a rate per day and are defined before the commencement of the project.
- c. The EPC contract consists of clauses to provide relaxation to the contractor in cases when the delay is made by the concerned company.



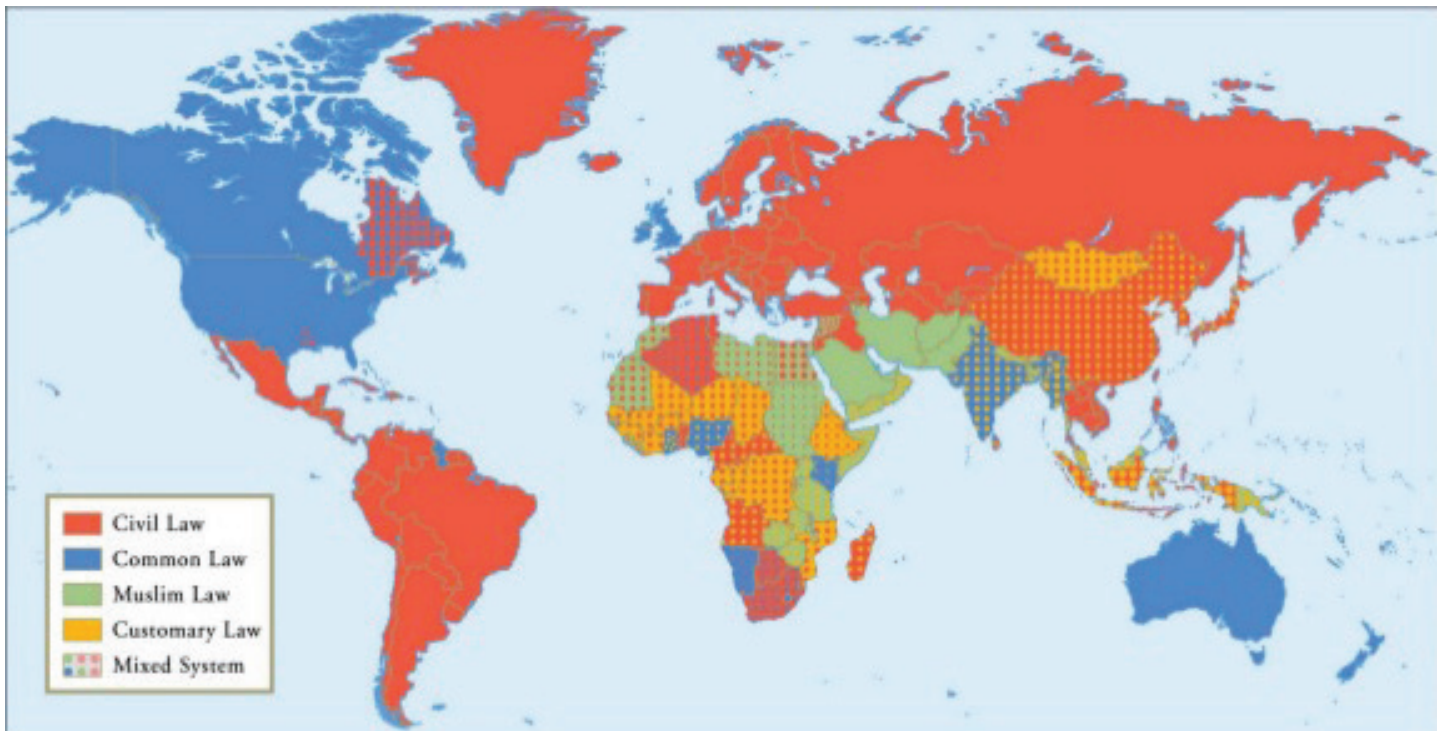
Performance Commitments

- a. The EPC contract consists of certain clauses pertaining to performance guarantees, which if not attained, are payable by the contractor.
- b. The contract must contain a genuine pre-estimate of the loss the company will suffer, if satisfactory performance is not attained. This should be done at the time of signing the contract.

Companies also need to have a fine understanding of the governing laws, as they change from one country to another. Some countries follow Common Law and others follow Civil Law. They are built keeping in mind fairness and reasonableness. Let's discuss the main differences between common laws and civil laws.

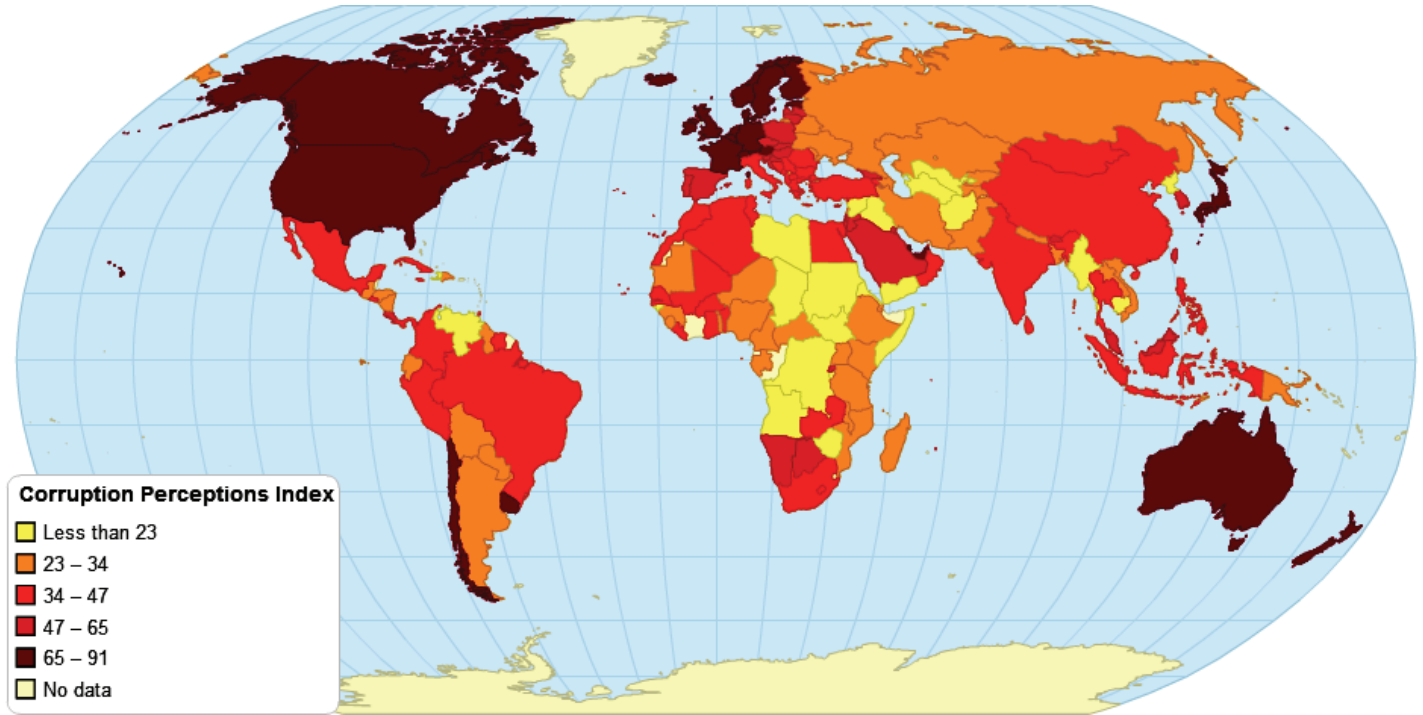
Common Law	Civil Law
1. Common law is not codified.	1. Civil law is codified set of laws.
2. Judicial precedents are binding.	2. Judicial precedents are not binding.
3. Judges make rulings, set precedent, and moderate between the conflicting parties.	3. Judge's role is to establish the facts of the case and to apply the provisions of the applicable code.
4. Main source is judicial precedents or case law.	4. Statutes and other subsidiary legislations are the main sources.
5. An adversarial system.	5. An inquisitorial system.
6. Countries following Common Law: USA, Canada, England, India	6. Countries following Civil Law: Germany, Spain, France, China, Japan

Legal Systems Across The Globe



2. Compliance & Sustainability

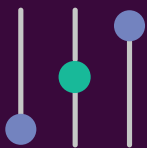
What should one do if they encounter frauds and experience breach of trust? There are various conventions such as OECD, US FCPA, and UK Bribery Act that act as a strong deterrent against such violations. Also, the agreements should be sustainable across 3 dimensions; economic, social, and environmental. Moreover, creation of special agreements such as FIDIC contracts, joint operating contracts, International Study and bid group agreements, International area of mutual interest agreements, International farmout agreements is also necessary to bail out of few situations. One of the main compliance issues is corruption. The diagram below marks countries according to the corruption perception. Heading: Corruption Perception Index, 2015.



The below chart gives a detailed account of the Anti-Corruption Compliance Program of an Oil & Gas company.

Code of Ethics

Internal Regulations



- Code of Ethics Anti-Corruption Compliance program Constitutes a system of rules and controls for the prevention of crimes of corruption and aimed to strengthen the implementation of the “zero tolerance” principle already contained in the.
- Anti-Corruption Guidelines, which identify the areas of activities at risk of corruption and establish the relevant principles for their management.
- Specific Regulation - it disciplines in detail the system of rules and behaviors to follow in the management of areas at risk of corruption.

Top Level Commitment



Top Management commitment in the fight against corruption.

Due Diligence



Due diligence activities on third parties at risk.

Communications & Training



- Spread of the adopted regulations.
- Training of Company's Personnel (e-learning; workshop).

Managing Red Flags



i.e. Internal audit outputs, whistle blowing and initiation of court inquiries.

Adoption & Implementation



The adoption and implementation of the Anti-Corruption norms it is compulsory for Company and for all its subsidiaries. Company uses its influence, as far as reasonable according to circumstances, to make the companies, where it owns a non controlling participating interest, to respect the above mentioned standards.

Disciplinary Actions & Contractual Remedies



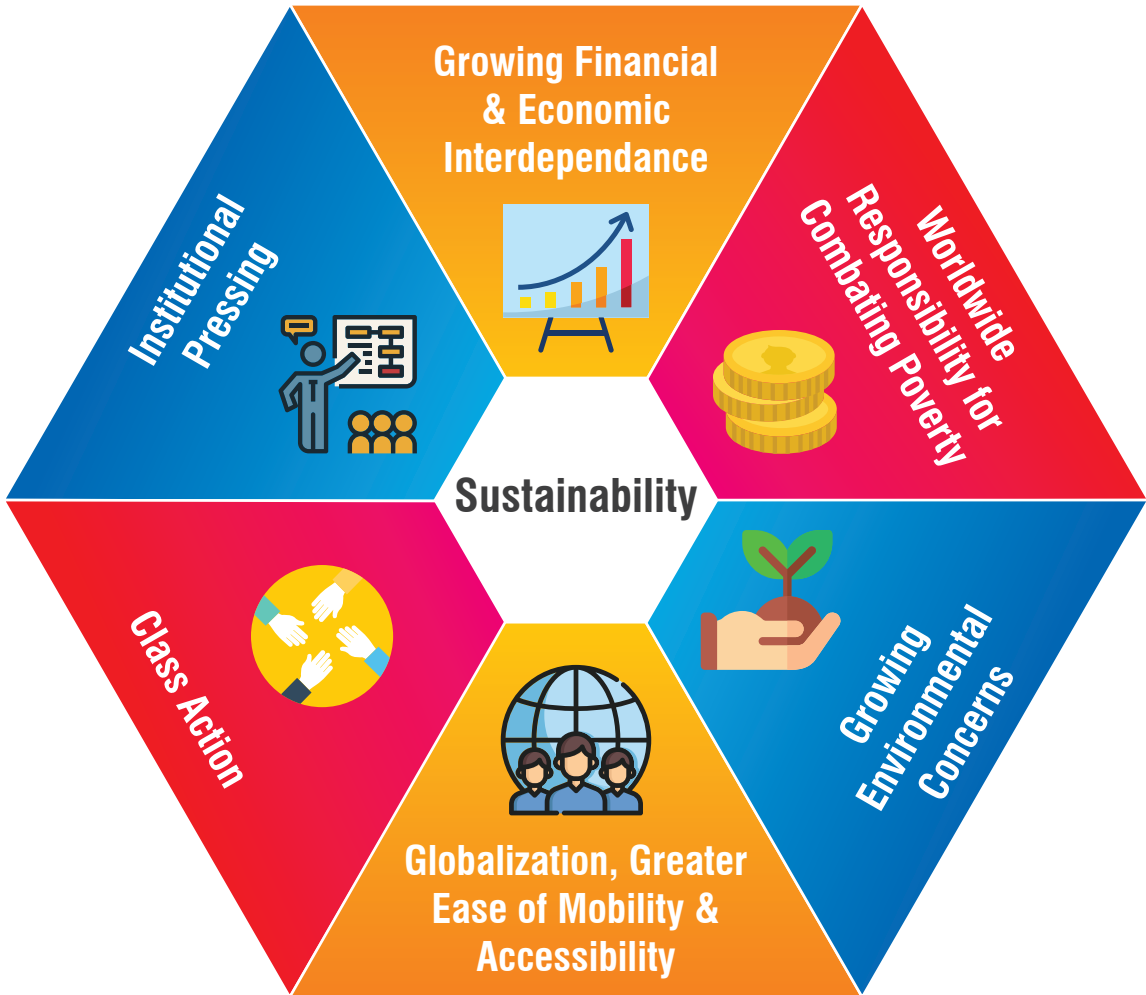
Application of disciplinary measures against employees or actions and remedies against business partners in the event of violations.

Anti-Corruption Legal Support Unit



- Constitutes focal point on the subject both inside and outside Company;
- Identifies and evaluates the risks of commission of corruption crimes;
- Elaborates, monitors and updates the design of the anti-corruption compliance program (clear and accessible politics and procedures);
- Supervises the training of Company’s Personnel;
- Makes periodic reports on the activities carried out by the internal structures of control.

To create long-term value by embracing opportunities, Corporate Social Responsibility (CSR) is taken into account. It manages risks through economic, environmental, and social development.



The Oil & Gas industries should also become more sustainable as it has a long-term financial impact as well. They must create value by measuring, accounting, and reporting the economic, social, and environmental impact of their activities. The table below shows what Oil & Gas companies can do to make the environment more sustainable.



Oil companies can do the following things to create a more sustainable environment.

	They can construct plants for recycling used Oil
	They can design eco-friendly solutions and replace them with hazardous solvents
	They can build reusable wooden mats that can be used by the crew for the time being and then move to the new location
	They can migrate completely from paper to electronic systems. This will not only help save trees but human-error as well
	They can reduce Gas Flaring, which is the combustion of gases over a short period to burn off gases that are released during oil production
	They can themselves bring a change in the Fracking regulations by disclosing the chemical additives used in the hydraulic fracturing fluid and thus spread an awareness in the industry
	They can implement Corporate Responsibility programs (CSR) backed by the government with performance guidelines



They can give back to the community by performing various charitable deeds and contribute to the overall success of the community



They can do voluntary sustainability reporting by providing information on economic, social, environmental, and governance performance



They can invest in developing unconventional Oil & Gas programs of energy development that will significantly reduce environmental degradation in the coming times

3. Dispute Resolution

The methods through which disputing parties agree to have a ‘finally determinative’ rather than a ‘temporary disruptive’ outcome, are called binding methods of dispute resolution. Companies should take care of the fact that business activity with the opposing party does not halt, by ensuring the mechanism of dispute resolution. Let’s take a look on three different type of resolution techniques that Oil & Gas companies can opt in such conditions.

Litigation

Merits	Demerits
a. Both parties are given enough time to present their argument with concrete evidences	a. Though the decision is final, it can be challenged and in some cases, the decision is overturned. This leads to waste of time and money.
b. Since the verdict is final, one party emerges as the winner and the other as loser	b. Since these cases are open to the public eye, Oil & Gas industries are reluctant to use this method
c. The proceedings are transparent and open to the common masses	c. Although the verdict is enforceable in the said jurisdiction, it becomes difficult to enforce the same in a foreign jurisdiction, unless a contract exists between both the countries
d. It works as a model for future similar cases	

Arbitration

Merits	Demerits
a. Based upon the complexity of the case, both the parties have the right to choose the arbitrator	a. Though it is less costly and time-saving, it can prolong for even longer than Litigation, if either of the parties is determined to do so
b. Cases are held privately, away from the public eye. Thus, confidentiality is ensured.	b. This method does not provide a lot of scope to challenge the verdict, once it has been awarded
c. Usually consumes less time and money as compared to the Litigation technique	c. The decision is yet not enforceable in countries that haven’t signed the 1958 New York Convention
d. Both the parties can decide the venue for arbitration	

Expert Determination

Merits	Demerits
a. Involves an industry expert who is well aware of the industry. This gives confidence to the disputants that the case will reach a fruitful conclusion.	a. The final verdict provides a very small room to be overruled.
b. Here, the outcome is final. It cannot be further challenged	b. This method doesn't goes into the technicalities of the law. It is only to settle issues relating to the financial and technical side of the dispute
c. It is far less time consuming and cheaper as compared to Litigation and Arbitration.	c. The field expert concludes the outcome based on his own findings
d. The disputants reserve the power to set their own rules and regulations	

Conclusion: Today, there exist myriad programmes on Oil & Gas Contracts Drafting, Negotiation & Dispute Resolution but unfortunately, most of them are devoid of practice tools, tips and techniques on all key elements that are necessary for drafting, negotiating and interpreting oil & gas and international contracts. The course will also cover both theoretical and practical aspects of the management of oil & gas disputes. It will investigate how to prevent litigation and the ADR (Alternative Dispute Resolution) processes. The class will be structured to optimize interactivity. In our 4 day workshop, Pietro Galizzi, will teach you how to sail your way through the nitty-gritties of Oil & Gas Contracts, using presentations/slides, continuous dialogue with the class (including the “cold call” questioning strategy), along with analysis of some concrete commercial and court cases. We urge you not to miss this opportunity, and take-home expert Contract drafting skills that will benefit your company in the long run.



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