Construction Risks, Contracts & Commercial Leadership

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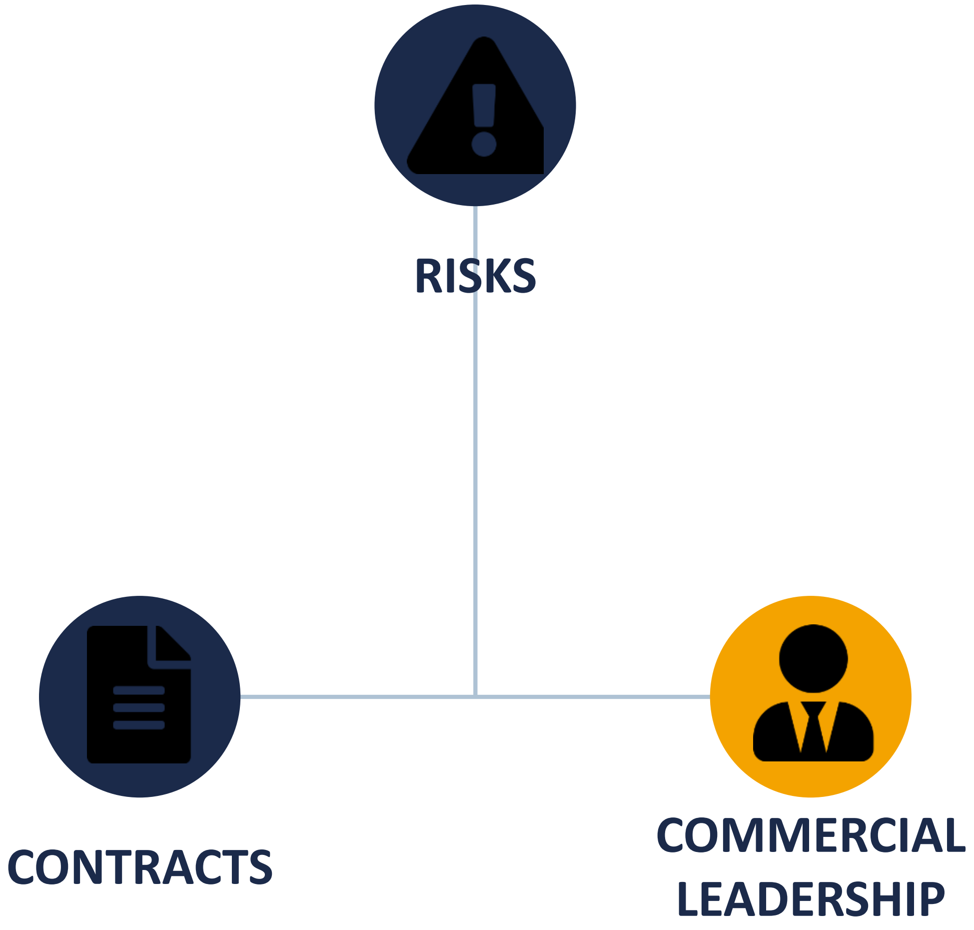
Table of content

Introduction



Construction Risk

What Is Construction Risk?

WHY PROJECTS ARE RISK-PRONE

- Fixed completion dates
- Multiple contractors & suppliers
- Dependence on external approvals
- Changing economic conditions
- Weather & environmental exposure
- Significant financial commitment
- Complex legal obligations

CONSEQUENCES

- Causes delays
- Financial Loses
- Disputes
- Reputation

Construction Risk

Financial & Contractual Risk in Practice

Financial Risks

Affect project profitability and cash flow.

- Inflation & material price escalation
- Labour cost increases & currency swings
- Rising interest rates, poor cash flow
- Delayed client payments
- Insolvency of contractors or suppliers

EFFECTS: Budget overruns · Reduced margins · Suspended works · Bankruptcy

Contractual Risks

Arise from poorly drafted or misunderstood contracts.

- Ambiguous clauses & scope uncertainty
- Undefined responsibilities
- Improper risk allocation
- Payment disputes & delay claims
- Liquidated damages

EFFECTS: Poor contract administration often results in litigation.

Construction Risk

Technical, Schedule & Safety Risks

Technical

- Design errors & defective workmanship
- Equipment failure, inadequate specs
- Geotechnical surprises

Often requires redesign, rework & added expenditure.

Schedule

- Delayed permits, weather disruptions
- Material shortages, labour strikes
- Slow decision-making

Delays increase overhead & may trigger penalties.

Health & Safety

- Falls from height, electrocution
- Heavy equipment accidents
- Fire, explosions, confined spaces

Poor performance risks fatalities & legal sanctions.

Construction Risk

The Risk Management Process

1 Identification

Brainstorming, expert interviews, site investigations, historical data

2 Assessment

Evaluated by probability, impact, detectability & urgency

3 Response Planning

Avoid, reduce, transfer, accept, or exploit

4 Allocation

Assigned to the party best able to manage it

5 Monitoring

Risk registers updated throughout the project

RISK ALLOCATION EXAMPLE: Design risk → Designer · Construction risk → Contractor · Financing risk → Client · Political risk → Government

Construction Contracts

ESSENTIAL ELEMENTS

- Parties & scope of work
- Contract price & payment terms
- Programme & milestones
- Variations procedure
- Extension of Time (EOT) provisions
- Insurance & performance securities
- Quality & defects liability period
- Termination & force majeure clauses
- Dispute resolution procedures

Construction Contracts

Standard Forms of Contract

JCT

Traditional & design-build forms; prescriptive, well-tested clauses for building projects

NEC3 / NEC4

Collaborative drafting; early warnings and compensation events; multiple pricing options

FIDIC

Dominant on infrastructure; Red (build), Yellow (design-build), Silver (EPC/turnkey)

PPP

Highly negotiated, used where funding or concession structures need tailored risk terms

Construction Contracts

JCT vs FIDIC: Two Contract Philosophies

Both are widely used standard forms of construction contract, but they allocate risk differently and suit different project contexts.

JCT

Joint Contracts Tribunal

- Reflects UK construction law & practice
- Balanced, generally shared risk allocation
- Relies on statutory provisions for payment & adjudication
- Simpler structure — well suited to domestic projects

FIDIC

Fédération Internationale des Ingénieurs-Conseils

- Widely used on international projects
- Risks allocated more explicitly, with detailed procedures
- Stricter notice requirements & formal claims procedures
- More procedural — suited to large, complex, multi-jurisdiction projects

Construction Contracts

Key Differences & Shared Ground

KEY DIFFERENCES

- JCT reflects UK law & practice; FIDIC is built for international projects
- FIDIC provides more detailed mechanisms for claims, notices & disputes
- Notice requirements are generally stricter under FIDIC
- FIDIC claims procedures are more comprehensive & formal, with defined timelines

RISK CLAUSES COMMON TO BOTH FORMS

- Delay & extension of time
- Variations / change management
- Payment & certification
- Insurance & indemnities
- Design responsibility
- Defects liability
- Suspension & termination
- Force majeure / exceptional events
- Dispute resolution

Commercial Leadership

Beyond Compliance: Strategic Value

Commercial leadership is the strategic management of the financial, contractual, and commercial aspects of a project — maximizing value while balancing risk and fostering productive stakeholder relationships.

It goes beyond contract compliance — aligning execution with business objectives, market conditions, and long-term strategy.

Maximize profitability

Protect cash flow

Manage commercial risk

Deliver value for money

OBJECTIVES

- Ensure contractual compliance
- Build strong client relationships
- Enhance organizational reputation
- Support sustainable business growth

Commercial Leadership

The Role of Commercial Management

Commercial management — led by quantity surveyors and commercial managers — translates the contract and its risk allocation into a managed financial outcome across the whole project lifecycle.

1

Pre-Contract

Cost planning, budgeting, procurement advice, risk pricing

2

Contract Formation

Negotiation, risk allocation review, terms agreed

3

Post-Contract

Cost control, interim valuations, change management

4

Final Account

Settlement, claims resolution, lessons learned

Commercial Leadership

Five Core Responsibilities

Strategic Planning

Bid/no-bid decisions, pricing strategy, risk-based estimating

Cost Management

Budgets, forecasts, variance analysis, earned value reporting

Contract Management

Review, negotiation, variations, claims, subcontracts

Procurement Leadership

Supplier strategy, negotiation, subcontract performance

Stakeholder Management

Clients, consultants, financiers, regulators, internal teams

Commercial Leadership

Competencies of Successful Commercial Leaders

1. Strategic thinking
2. Financial literacy
3. Negotiation skills
4. Contractual expertise
5. Risk management capability
6. Emotional intelligence
7. Communication skills
8. Decision-making under uncertainty
9. Ethical judgment
10. Adaptability

Conclusion

How Risks, Contracts & Leadership Interlock

RISKS
Inherent uncertainties affecting outcomes

CONTRACTS
Legal framework for allocating risk

LEADERSHIP
Applies provisions & drives decisions

WORKED EXAMPLE

Unexpected ground conditions are encountered on site.

1. The contract determines whether the contractor or client bears the risk
2. The commercial leader evaluates the contractual entitlement
3. Financial impact is quantified
4. Compensation or time extension is negotiated
5. Disruption is minimized while preserving the client relationship

In construction risks management, who is more important player/leader between project Manager and Commercial Manager?

In construction risks management, neither player is universally more important; rather, they hold equal, co-dependent leadership roles over different halves of the risk landscape. The **Project Manager (PM)** is ultimately accountable for the overall delivery, schedule, and operational integration, while the **Commercial Manager (CM)** owns the legal protection, contract, procurement strategy, and profit margins.