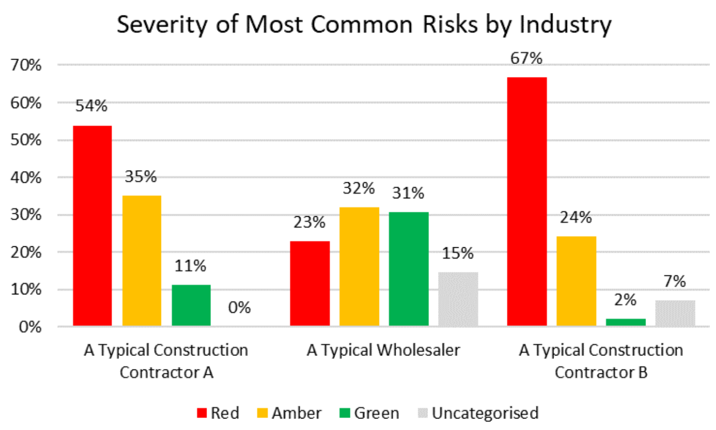
The Sharpe & Abel team examined the differential risks faced by companies from different industries. The result surprised even our most seasoned of lawyers.

Getting to know our clients very well is part and parcel of our approach at Sharpe & Abel. We form deep partnerships with our clients, giving us deep familiarity with their business and a thorough understanding of the legal risks they face. As a modern, data driven organisation, we provide feedback in the form of regular analysis to our clients.

Recently we took time out to take a longitudinal look at client risk across a range of clients. The analysis provides some surprising insights into client's legal risk, and that these risks are not a necessity of doing business. The analysis dug into the legal risks that companies were asked to take on in their contracts, prior to any mitigating actions, such as re-negotiation by the contract and legal teams.

Legal risks are rated red, amber or green to highlight their severity. This chart illustrates our findings by picking out some typical companies and the severity of the risks they face.



As shown, both the construction companies experience higher proportions of red risks compared to green risks. Having a high percentage of red-rated risks is dangerous for companies, as if they were to materialise, it would have a large negative impact on the company. By comparison, a typical wholesale company is showing a much smaller percentage of red-risks – 44% less red risks and 29% more green risks than typical construction contractor B.

This data suggests that construction companies are riskier businesses to be involved with. The overall risk profile of infrastructure and construction companies is substantially different from other companies, and significantly higher. Whilst it is not surprising that construction companies face greater risks, the starkness of the difference was surprising to even our most seasoned lawyers.

Implementing risk management strategies to manage this risk is therefore more important in these industries than anywhere else. Failure to implement these strategies exposes the company to an unnecessarily high level of harmful risk. At Sharpe & Abel we specialise in preventative legal services that lower your level of risks.

However, it is commonly assumed in the construction & infrastructure sector that such risks are part & parcel of doing business. Our data flatly contradicts this view. If risks were standard for the industry, we would expect to see this as a relatively consistent percentage of red risks across the companies, but this is not the case. The differential in the risks faced by the above two clients in the same industry is surprising, with one facing 54% red risks whilst another saw over two thirds of risks rated red.

Clearly different companies are offered different risks, and therefore when presented with these risks at contract negotiation time, it is not necessary for clients to accept them simply as a cost of doing business. Some clients are better at avoiding these risks than others.

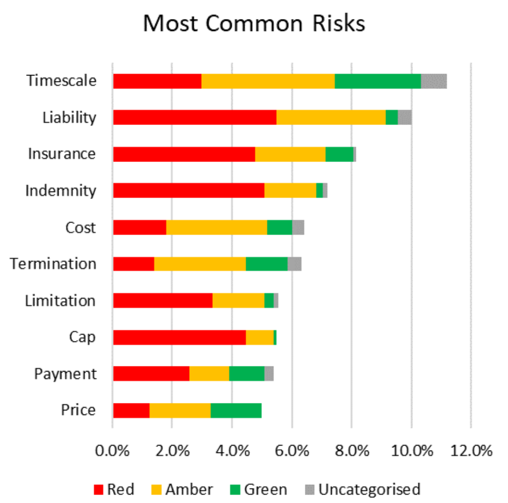
Key take-aways:

- Construction and infrastructure subcontractors are asked to take on a disproportionately high level of risks in their contracts.

- These are not a necessary cost of doing business, but with careful review and negotiation can be designed out.

Types of risks and what to do about them

It is important for companies to understand the types of risks that they are taking on, and the severity of these risks, to manage them better and reduce the possible impact they may have on their company. The information shown below demonstrates that it is possible to be able to provide recommendations to reduce risk for companies through comprehensive and diligent legal analysis.

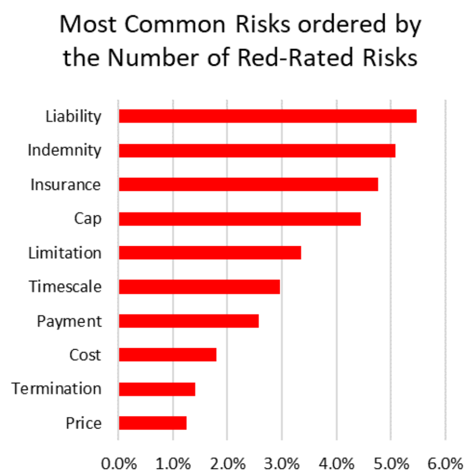


- The most common risk that companies are experiencing is timescale, referring to the time in which certain actions need to be completed by, with over 11% of all risks analysed.

- Liability – the agreement to pay for losses/damage that may be caused by you or another party – was the 2nd most frequent, accounting for 10%.

- The 3rd most frequent risk was insurance, followed by indemnity. These 3 risks following timescale are all similar risks relating to liabilities.

But which are the most common severe risks? When viewing the data in terms of the number or proportion of red-rated risks within each risk, the order is different.



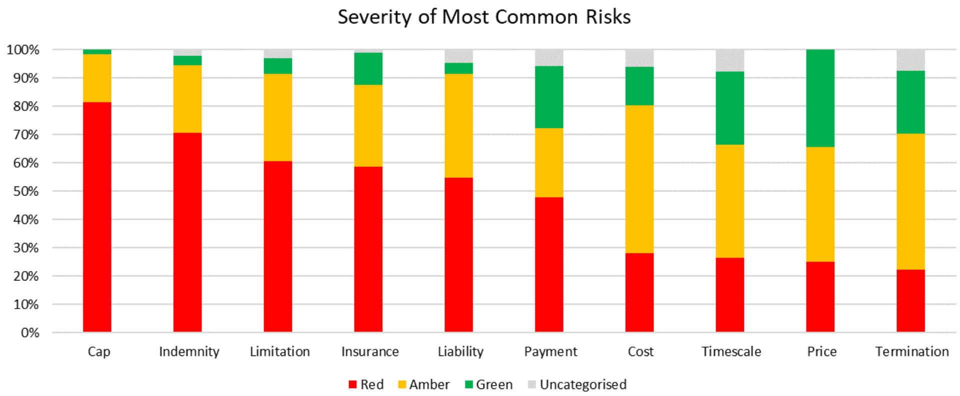
- Liability, which was 2nd most common risk, is also the risk with the greatest number of red-rated risks. So, it is significant both in terms of severe risks and risk overall

- Timescale is now 6th, so whilst it is a common risk, it is less likely to be red.

- The absence of a cap on your liabilities has moved from 8th most common to 4th in the number of red-rated risks. Cap refers to the limit on the maximum that the counterparty to the contract can claim from the client and is important to prevent substantial losses being claimed, hence it is not surprising that it has such a large proportion of red-rated risks. In fact, 81% of these risks are rated red – the most likely risk to be rated red. So, whilst less common, it is often a significant red risk.

- But clauses related to getting paid for the contract and the price for the contract were less common in both charts. So, they are both less common and more likely to be green.

- The top 5 risks after cap are all related to liabilities and indemnities.



What does all this show?

- The biggest source of risks in contracts are timescale risks. This means that your company can be exposed to risk simply by not doing things within the timescales it has agreed to do them in within a contract. Thus, the biggest source of risk is something that companies control themselves. Risk can therefore be reduced simply by good contract management

- The frequency of liability risks indicate that contracts are the biggest single source on non-statutory legal obligations. Negotiating out liabilities is a critical means to reduce the legal obligations on your company, and therefore reducing potential costs.

- Agreeing a cap on your total liabilities is a key means to reduce risk, and one that is rarely there by default, so it needs to be negotiated in. It reduces the maximum cost your company can pay out in the event something goes wrong.

- Good, comprehensive insurance is a key risk mitigation strategy.

- Indemnities are high no matter which way we cut the data. This is because they have the most significant impact on your costs should they materialise. Mitigating them is therefore essential to protecting your bottom line.