

Dispute Resolution Boards in onshore wind

Robin Wood

Tools to avoid and manage claims

- Objectives of the Dispute Resolution Procedure
- Not the same for every project, may include:
 - Speed
 - Cost
 - Justice
 - Enforceability
 - Maintain commercial relationships
 - Complete the project
 - Certainty
- Need to understand the project and the parties in order to decide on priorities
- Consider need for rights of appeal as well as international enforcement

A spectrum of options



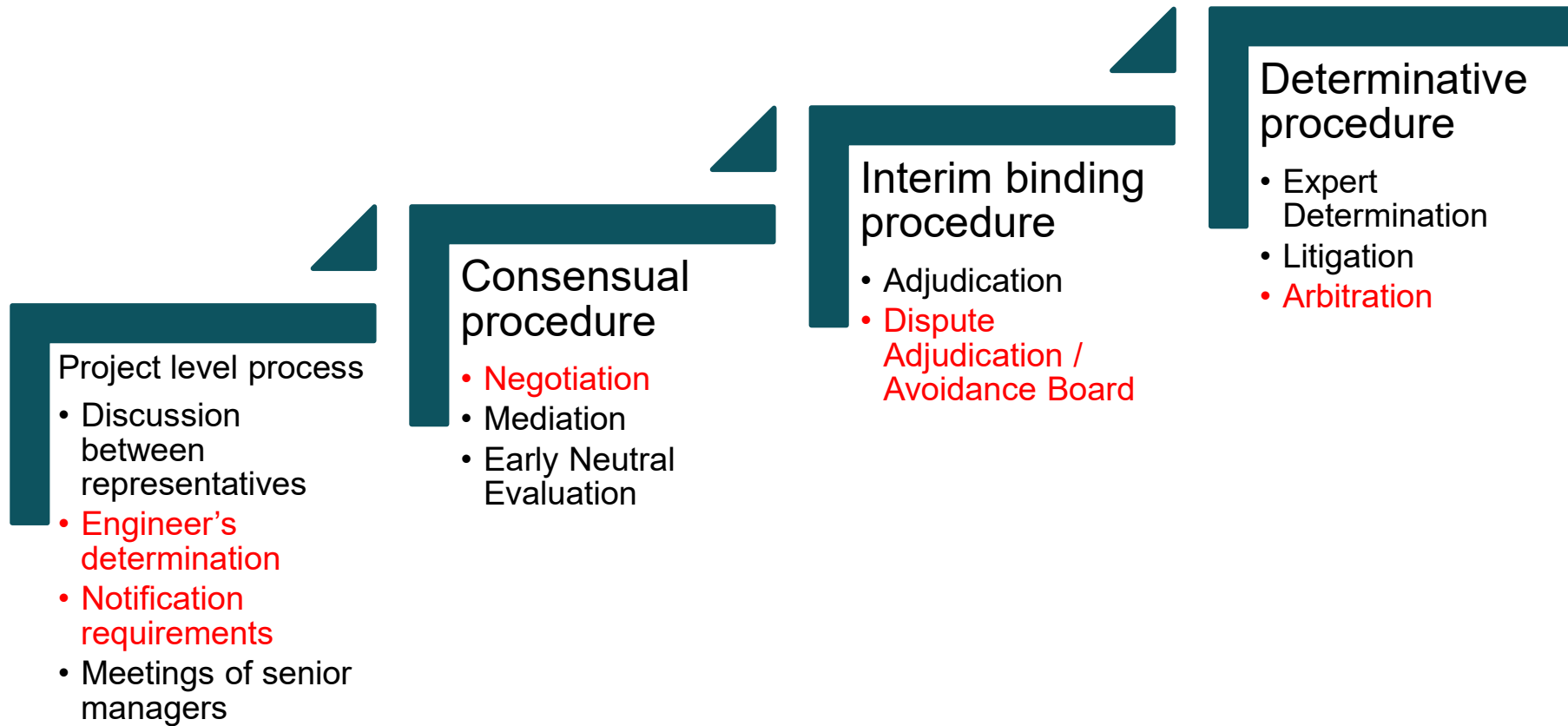
Consensual

- Advantages
 - Preserves relationship
 - Parties retain control
 - Often cheaper
 - Often quicker
- Disadvantages
 - No guaranteed decision
 - May be difficult to enforce
 - Depend on parties' relative bargaining power

Determinative

- Advantages
 - Guaranteed decision
 - Enforceable
- Disadvantages
 - Slower
 - Often more costly
 - Often damage relationship
 - Parties lose control

Tiered dispute resolution clauses



Onshore Wind and Dispute Boards

Nic Rigby

Dispute Resolution Board Foundation. *Moving projects forward* since 1996.



Onshore Wind – Best of the Best

- 27% of all generation capacity added in 2020 was onshore wind
- Lowest cost renewables in most countries
- Easier to build
 - EPC contracts available
- Onshore wind does have shortcomings
 - Load factor, intermittency
- Change the countryside or climate change

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- Unexpected changes
- Tight deadlines
- Late changes to improve project can cause risk
- Sub contract supplier issues

Financial Investment Decision

- Consenting Issues
- Grid connection
- Access rights
- Access to materials
- Change=risk but
 - Sticking plaster/ Contract is an oxymoron

Solutions

- Evaluate risks
 - Independent pre signing review of contracts
- Learn from the past
- Contractual certainty
 - Options are OK
- Plan to negotiate
- Use Value Engineering (FIDIC yellow 13.2)
- Dispute Board/ Expert evaluation of contract
 - No one likes early demands/ concessions

Onshore Wind and Dispute Boards

Niels Emsholm

Dispute Resolution Board Foundation. *Moving projects forward* since 1996.



RWE Renewables Onshore – best practises

- Projects
 - Examples and best practises.
- PACT
 - Professional
 - Aligned objectives contract, management, sites
 - Competence
 - Teams
- Different conflicts – different tools
- Plans within RWE Renewables onshore strategy. Challenges in choices and implementation for BoP, WTG and PV and in different countries

RWE Renewables onshore – best practices to avoid disputes and next steps



Internal project mechanisms

Advantages

Generally faster and more cost-effective

Accommodates history and project specifics

Determination criteria more open (time, commercial, contractual, pragmatic)

Disadvantages

Delays if identified dispute not managed well
– risk adverse or missing skills in teams

External project mechanism

Advantages

Neutral ?

Maintain relationship

Keeps pace – if managed correctly

Theoretically better access to 3rd party expert (legal or technical – especially when smaller projects)

Disadvantages

Program risk and cost less controlled



Future trends in onshore wind and consequences for disputes

Grant Greatrex

April 21st, 2022

Key trends driving complexity & risk

The configuration of Onshore wind projects will increasingly be driven by hybridization, by coupling with storage solutions and electrolyzers, with more sophisticated PPAs

Hybridization with PV & other RE technologies

Hybridization with BESS & other storage technologies

Dedicated RE source for green hydrogen generation

RTC and integrated PPA contracts, grid services

- **Extended technology & supply chains**

- **Multiple suppliers & EPCs**

- **System performance warranties**

- **Multiple “back-to-back” OEM guarantees**

- **Multi-layered degradation & failures**

- **High contractual complexity & “hand-offs”**

- **Multiple revenue streams & penalties**

- **Complex root cause analysis**