

Renewables and Dispute Boards

Nic Rigby

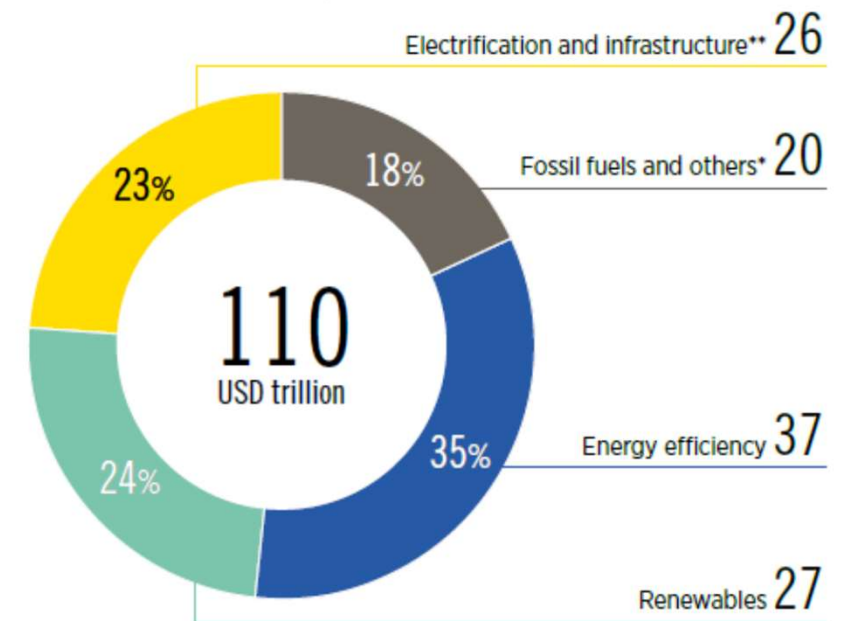
Dispute Resolution Board Foundation. *Moving projects forward* since 1996.



Follow the \$

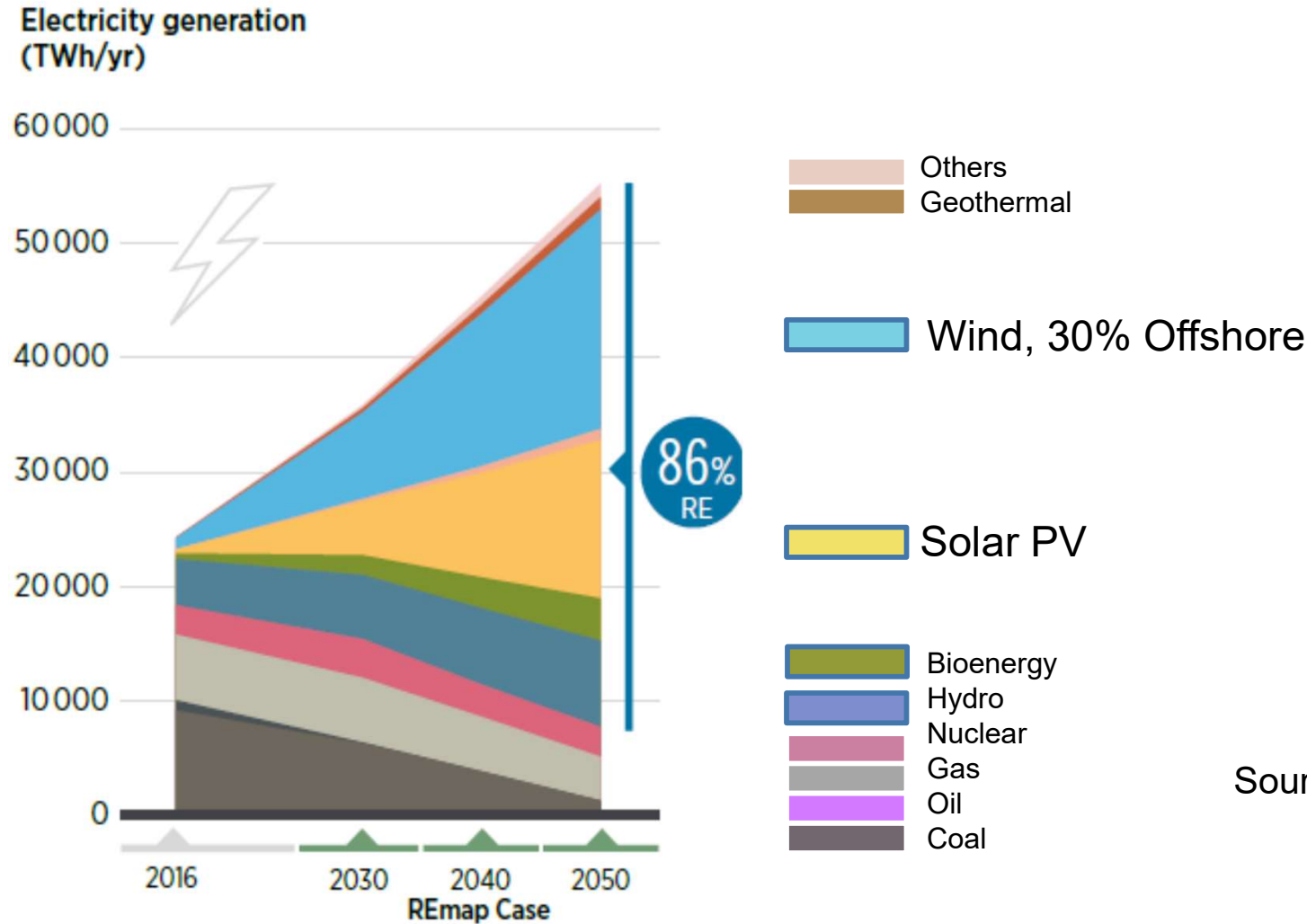
- Climate change means spend not stop
- New industries
 - Renewables
 - Energy efficiency
 - CCS, Nuclear
 - Electrification
 - » Heat/Transport/ Hydrogen

REmap Case cumulative investments, 2016-2050
(USD trillion)



Annual spend 25% of current global construction \$12 Trillion pa

Big winners = Wind, Solar PV



Source IRENA 2020

Where can DBs make a difference?

| Renewable Energy Sector | Complex | Term | Contract |
|-------------------------|---------|--------|----------|
| Onshore wind | Medium | Short | EPC |
| Offshore wind | High | Medium | Multiple |
| Solar PV | Low | Short | Simple |
| Energy from Waste | High | Medium | EPC |
| Bioenergy (excl EfW) | Low | Medium | EPC |
| Hydro | High | Long | EPC |

Renewables & Dispute Boards

John Halcrow

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Elements comprising an Offshore Wind Farm

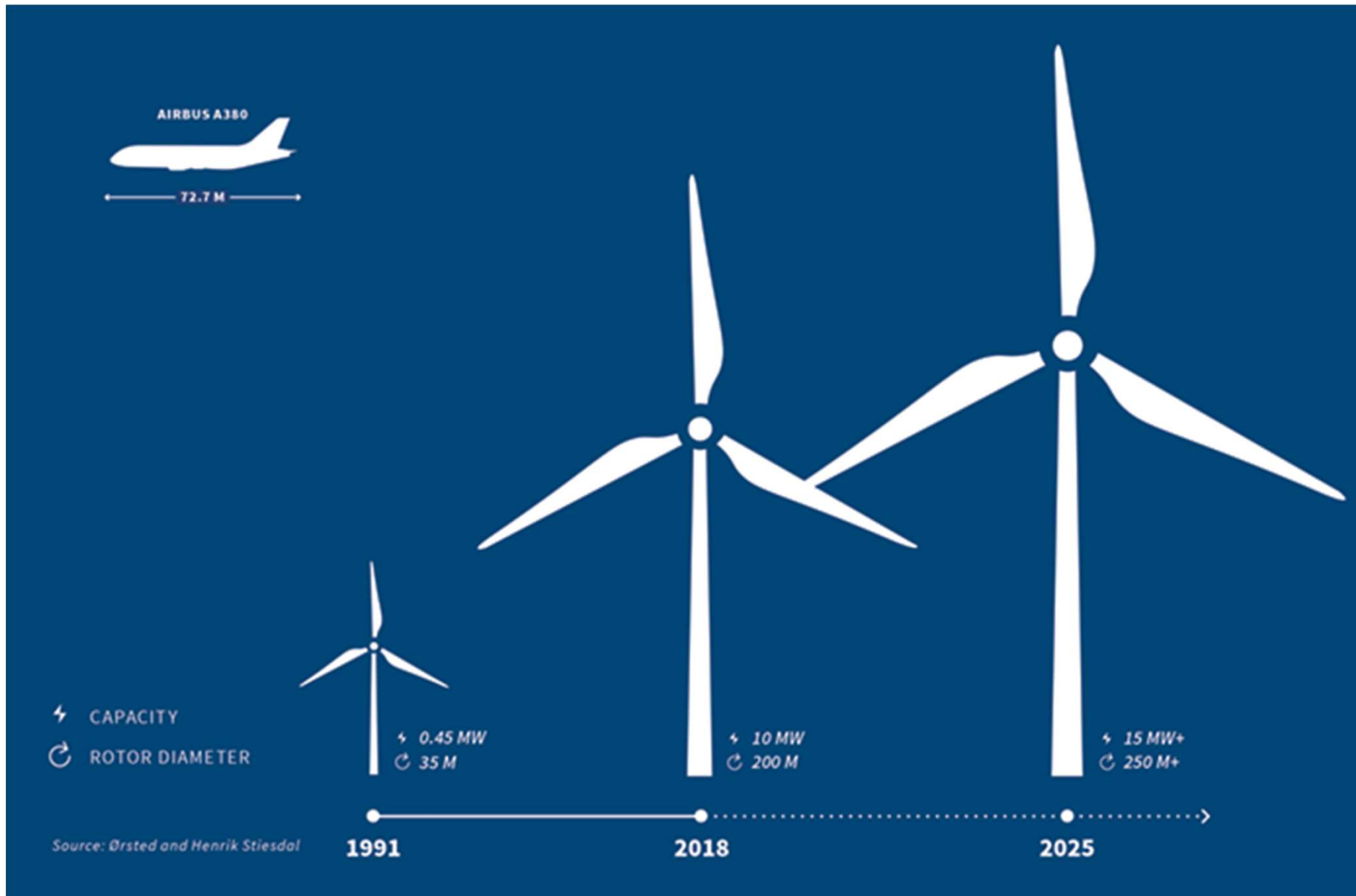
→ Wind Turbine Generators (WTGs)

→ Balance of Plant:

- Fabricating WTG foundations
- Installation of WTG foundations
- Installation of WTGs
- Construction of Offshore Sub-Station
- Installation of Offshore Sub-Station
- Cable supply and laying:
 - » Inter-field array
 - » Export

→ Onshore Works:

- Construction of Onshore Sub-Station
- Grid connection







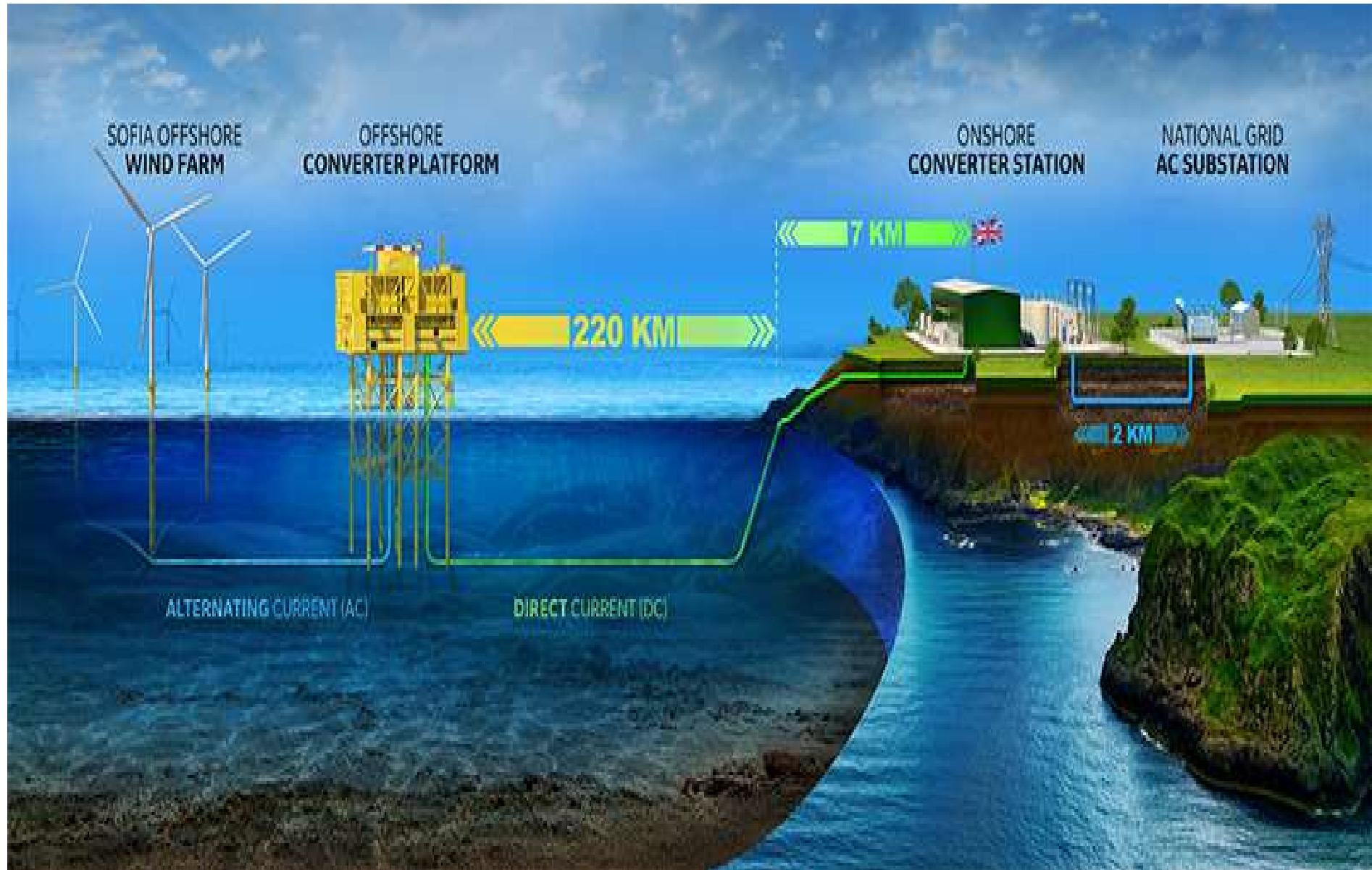




Bringing the energy ashore

- ➔ Transmission Networks
 - ➔ Generator – OFTO – Regulator

- ➔ Current arrangements likely to change
 - ➔ Number and scale of new developments



Future Technical Developments

- ➔ Nett Zero Targets & Electrification of Oil & Gas Installations
 - ➔ North Sea Transition Deal: £3bn investment
- ➔ Transmission Networks
 - ➔ Physical limitations
 - ➔ Coordination for efficiency
- ➔ Mitigating intermittency of wind power
- ➔ Storage Solutions – Batteries / Hydrogen Electrolysis

Potential Dispute Flashpoints

- ➔ New Technologies & Standards
- ➔ Sequencing of Major Operations
- ➔ Integration of Onshore & Offshore Elements
- ➔ Transmission System Operation

Renewables and Dispute Boards

Dr Keith Daly LLB FPD

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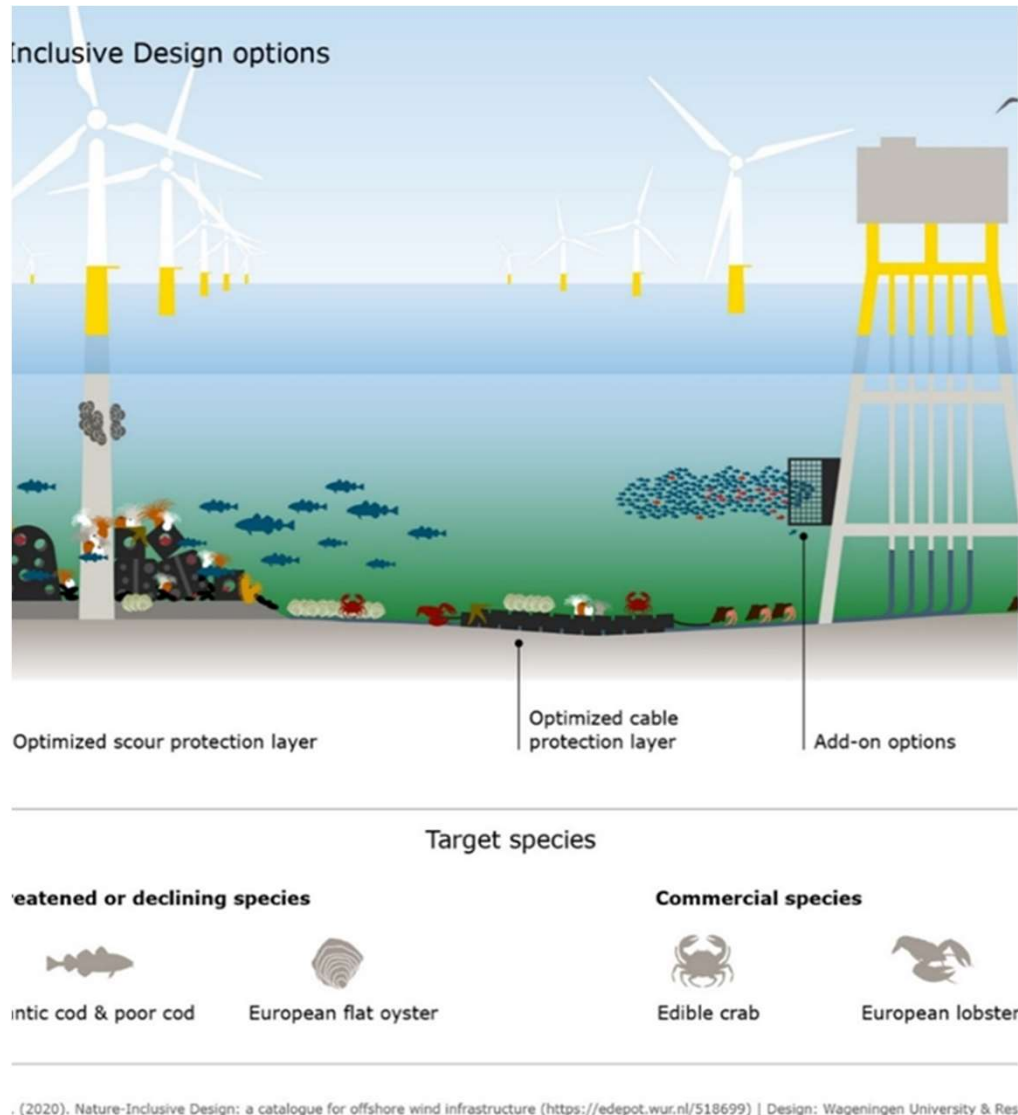


Focus

1. Disputes in the Renewable Energy sector.
2. Early engagement pre contract drafting specifically around nature inclusive options would reduce adversarial contract management.
3. Early engagement of tenderers specifically around developing employer requirements and legislation obligations would reduce impact of problematic contract disputes.
4. Extending tender periods to ensure sufficient design development would minimise understanding of requirements associated with climatic best practice, reducing disputes or crystallising matters.
5. Collaborative approach to standardising of contract forms to take cognisance of environmental needs.



Introduction



The development of the renewable energy industry is a priority of economic policies in many countries, including the world's largest economies and top global players in the international trade.

Growing protectionism in the sector makes disputes a likely result both in bilateral relations as well as at the multilateral forum.

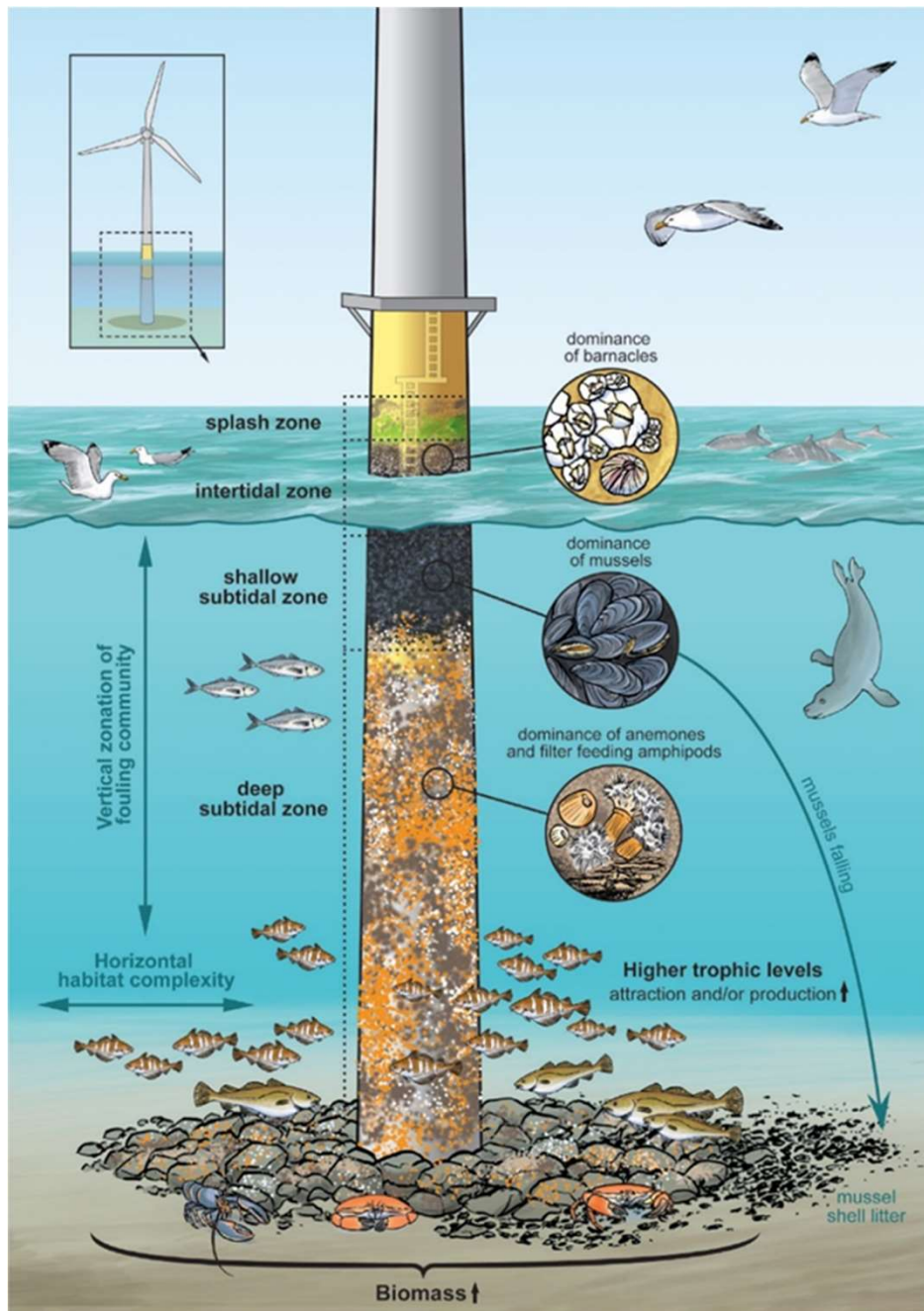
Arbitration is the preferred dispute resolution mechanism in international energy projects.

Adjudication and DB's should be considered the dispute resolution mechanism of choice for such projects.

Adjudication



1. **GLOBAL ENFORCEABILITY:** It is common for renewables projects to involve several international parties, whose assets might be in jurisdictions other than those in which the project or other parties are based. Subjecting disputes to international adjudication rather than domestic court litigation will mean that the 'winning party' is better able to enforce its rights. There are over 160 state parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), pursuant to which arbitral awards can be enforced in contracting states as if they were a judgment of the national courts.
2. **DECISION-MAKERS WITH RELEVANT EXPERIENCE:** Renewables projects often involve complex, and sometimes pioneering and relatively "untried and untested", technology. Specific types of contractual frameworks are also typically used, including power purchase agreements. Unlike in court proceedings, DBs can help the parties to improve the process of resolving the dispute. That means decision makers with relevant industry experience or familiarity with the specific technology involved can be appointed, rather than the dispute being left in the hands of a court-appointed judge with no or little relevant experience.



3. **PRIVACY AND LACK OF PRECEDENT:** Early selection of DB process , included and recognised by Employers and Developers .This can be particularly attractive to those involved in the renewables industry, where projects often involve commercially sensitive pricing information and new, developing, or even patented technologies, or where newly emerging "players" might be eager to avoid the adverse reputational consequences that can follow from being known to be embroiled in a dispute.
4. **FLEXIBILITY OF PROCESS:** Disputes may arise in the renewables sector before construction has completed, or before "Final Acceptance" occurs.A swift resolution will often be important in order to ensure that delay is minimised, and the parties are not exposed to costs claims. Several contracts now offer expedited forms of proceedings.
5. **NEUTRALITY:** It is common for renewables projects to involve parties from different jurisdictions.

The first steps in any successful adjudication and DBs are getting the adjudication and DB agreements right. Failing to do so can lead to costly and time consuming satellite disputes, potentially heard in the forum that you had been seeking to avoid.



WASTE TO ENERGY THE NEED FOR DISPUTE BOARDS

Sean Sullivan Gibbs MICE, FRICS FCICES



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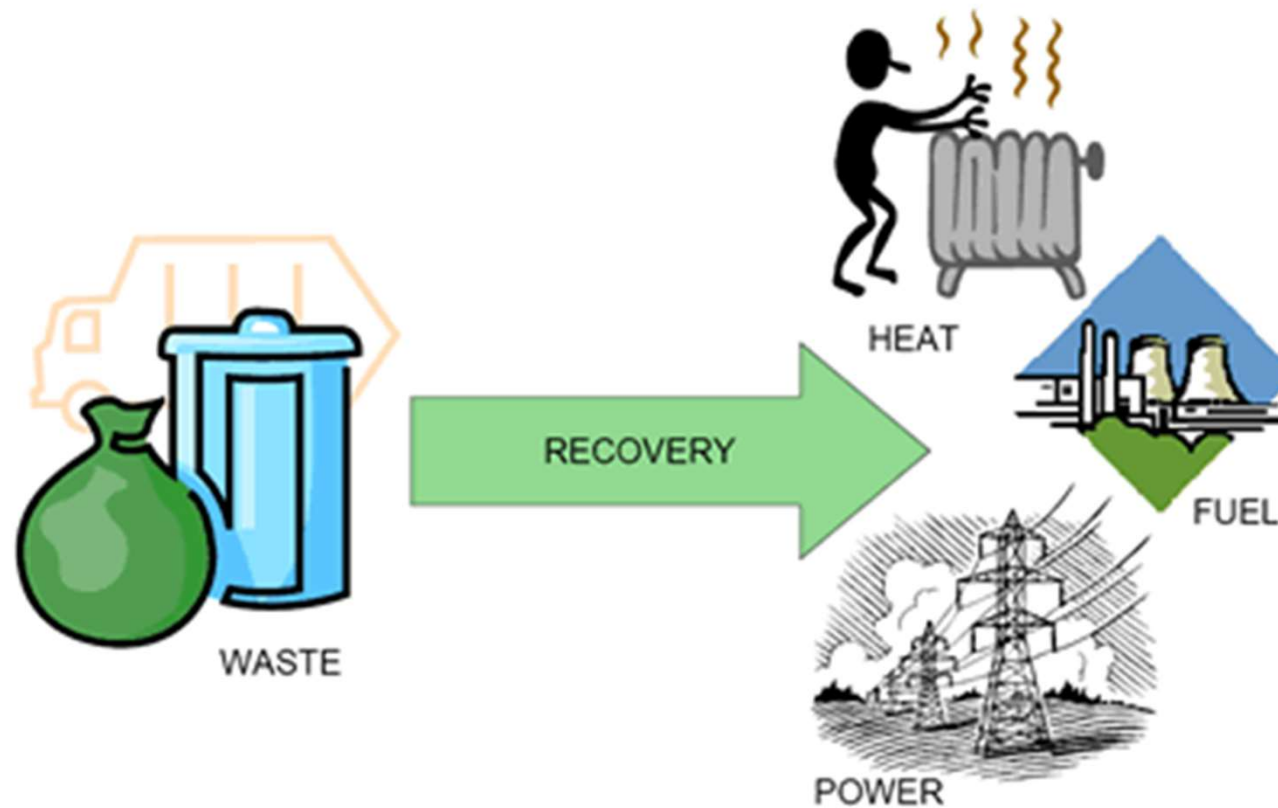


MARKET SIZE

→ Global Waste To Energy (WTE) Market to Reach **\$48.5 Billion** by 2027

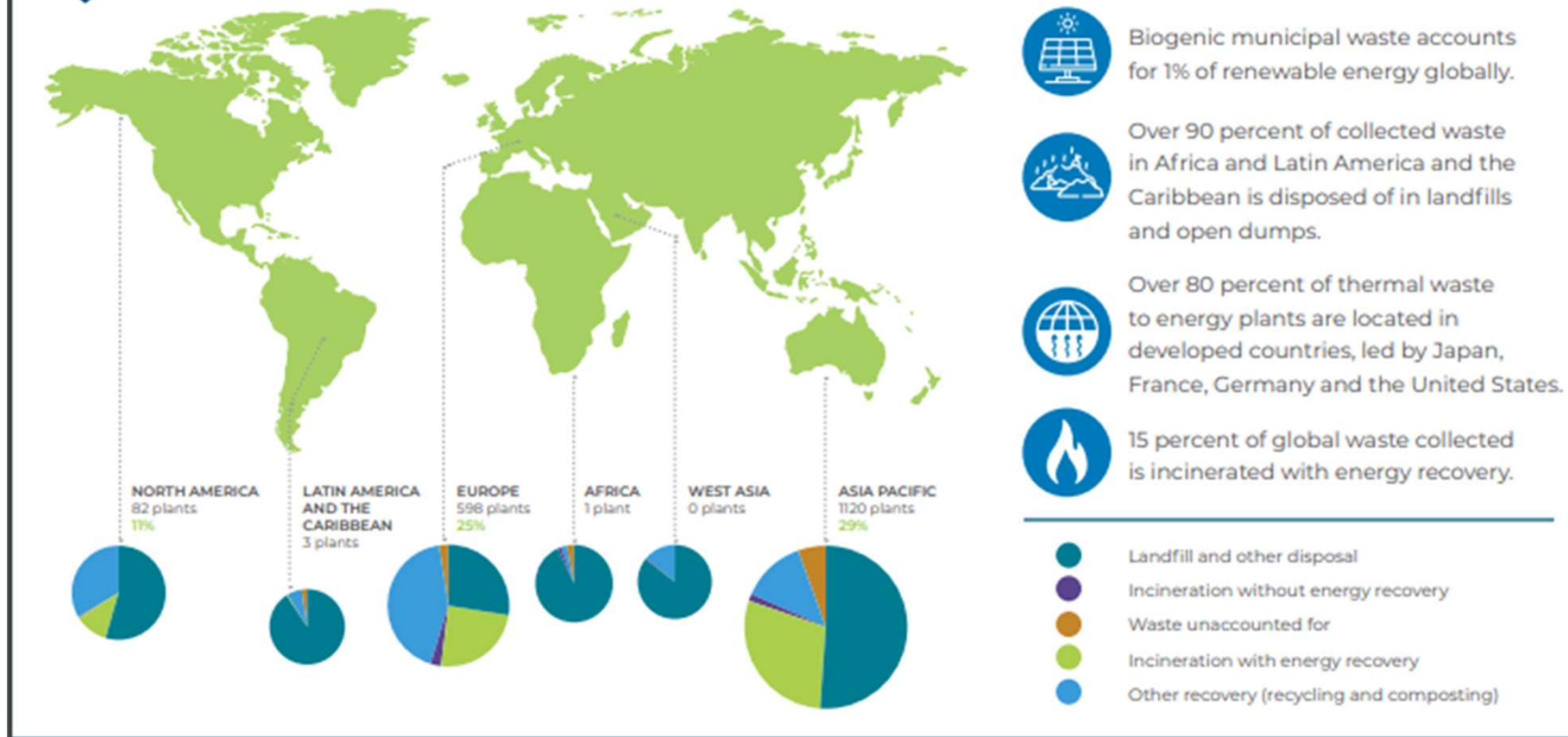
Amid the COVID-19 crisis, the global market for Waste To Energy (WTE) estimated at US\$ 32.3 Billion in the year 2020, is projected to reach a revised size of US\$ 48.5 Billion by 2027, growing at a CAGR of 6% over the period 2020-2027.

WASTE PROCESSING



Africa & Asia Cut Landfilling

CURRENT STATUS OF WASTE TO ENERGY



History

➔ The first incinerator or "Destructor" was built in Nottingham UK in 1874 by Manlove, Alliott & Co. Ltd. to the design of Alfred Fryer.

The first US incinerator was built in 1885 on Governors Island in New York.

The first waste incinerator in Denmark was built in 1903 in Frederiksberg.

The first facility in the Czech Republic was built in 1905 in Brno.

UK EXPERIENCE

→ The UK experience of waste to energy has been bad !

Projects have been marked by disputes and insolvencies !

The problems in the UK will be encountered globally !

NEC / ICHEME / FIDIC

Repeated Litigation

→ MW High Tech Projects UK Ltd v Haase Environmental Consulting GmbH [2015] EWHC 152

"MW") seeks declarations as to the proper construction of their contract with the defendant ("HEC"), pursuant to which MW appointed HEC to develop and complete the design of the process engineering elements of a waste energy plant at Brookhurst Wood Landfill site, Horsham, in West Sussex

Repeated Litigation

→ Engie Fabricom (UK) Limited v MW High Tech Projects UK Limited [2020] EWHC 1626 (TCC).

MW main contractor for construction of new energy from waste plant Hull Engie Fabricom UK Limited (EFL) was its sub-contractor, tasked with the installation of the gasification plant. The sub-contract was an amended IChemE Yellow Book 4th Edition. Under clause 47 of the sub-contract, adjudication was only available where the Construction Act applied !

Repeated Litigation

→ C Spencer Limited v M W High Tech Projects
UK Limited [2020] EWCA Civ 331

IChemE Form of Contract for Civil Engineering Subcontracts
("the Brown Book"), 3rd edition 2013

£2,683,617.09 plus VAT

Repeated Litigation

→ Essex County Council v UBB Waste [2020]
EWHC 1581 (TCC)

TCC held that an authority was entitled to terminate a Private Finance Initiative (PFI) contract where the contractor was unable to pass acceptance tests. Among other things, the judgment considered relational contracts and the implied duty of good faith, whether there was an implied time limit for exercising termination rights and the independence, impartiality and objectivity of expert witnesses.

FUNDERS PULL OUT



Aviva is facing questions about its investments in energy after accounts for three power plants it has built showed they are mired in legal disputes.

The FTSE 100 insurance group's investment division has ploughed at least £200 million of investors' money into the construction of the plants, which generate electricity from biomass and waste.

DUBAI



- ➔ The \$900m Dubai waste-to-energy (WTE) project has reached financial close, with Japan Bank for International Cooperation (Jbic) and a number of private financial institutions providing loans for the project..

ABU DHABI

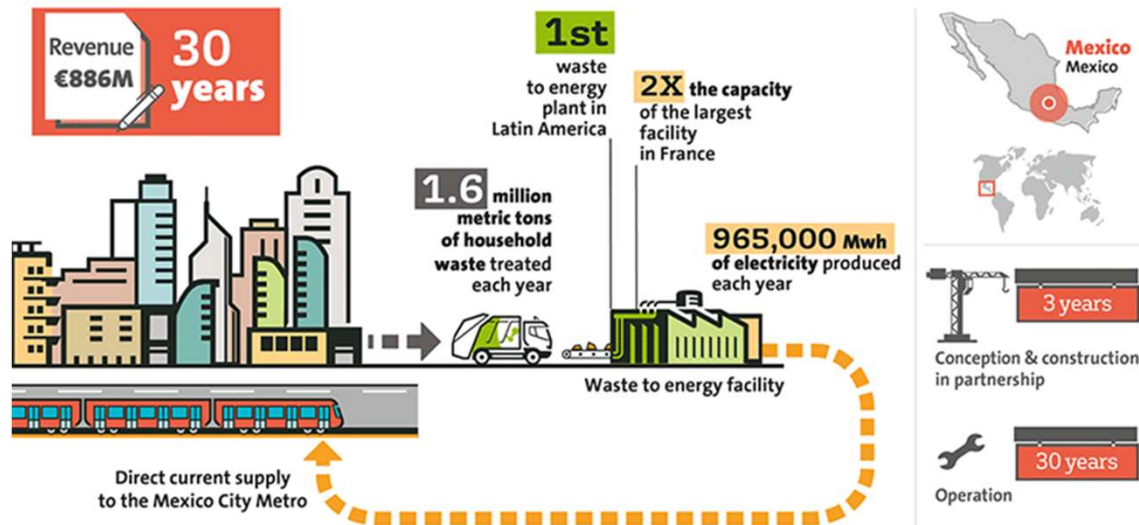


- ➔ (RFQ) for the planned waste-to-energy (WTE) project in Abu Dhabi is expected to be issued by mid-April. Capacity of between 600,000 and 900,000 tonnes of waste per year

MEXICO

In Mexico, **Veolia** will build and operate one of the largest waste to energy facilities in the world

The City of Mexico chooses **VEOLIA**



INJUNCTION

 NEWS

Court halts construction of Mexico City waste-to-energy plant

[Bnamericas](#)

Published: Tuesday, October 16, 2018

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A Mexico City court has ruled that the 33-year contract to design, build, operate and maintain the [El Sarape waste-to-energy plant](#) – which is structured to be developed as a [service provision project](#) – must be suspended.

The ruling was made in response to an appeal filed by a private citizen who argued that the service fees the Mexico City government will have to pay for the treatment of its waste over the duration of the contract are excessive for a project of

FIDIC



1999 DAB

Dispute Adjudication Board

2017 DAAB

Dispute Avoidance &
Adjudication Board

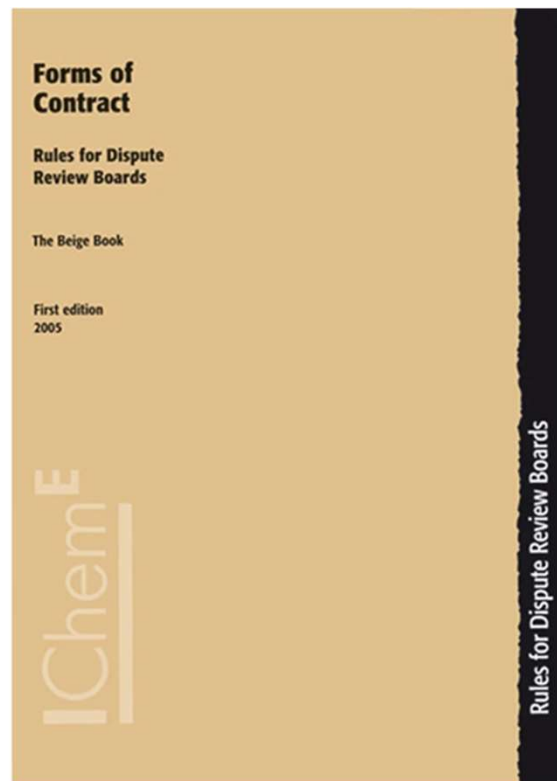
NEC 4



DAB

Dispute Avoidance Board

ICHEME



DRB Dispute Review Board

