DRBF Insights: Contracts Used on Offshore Wind Projects

Dr. Götz-Sebastian Hök, Berlin FIDIC Legal Advisor FIDIC Adjudicator (FIDIC President´s List) FIDIC accredited trainer Chair of FIDIC Trainer Assessment (2011-2016) IHK Berlin certified trainer (TTT programme) FIDIC CC TG 11, 22 (Chair TG 22)

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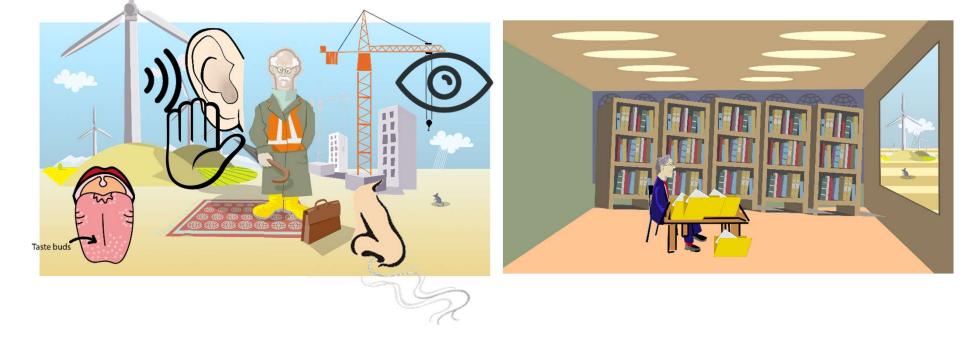


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Offshore - Dispute Adjudication Boards







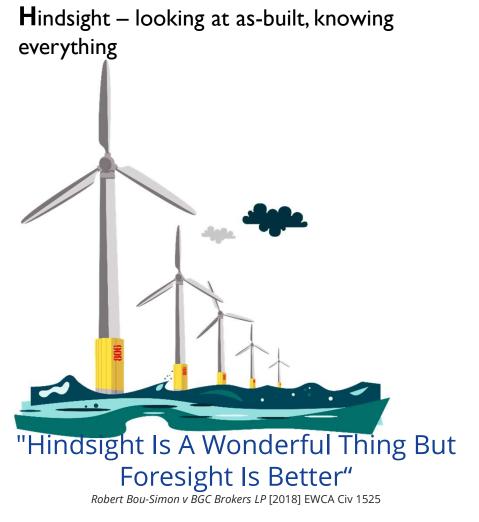
DAB \rightarrow What makes a difference

Foresight – looking at progress but knowing nothing yet

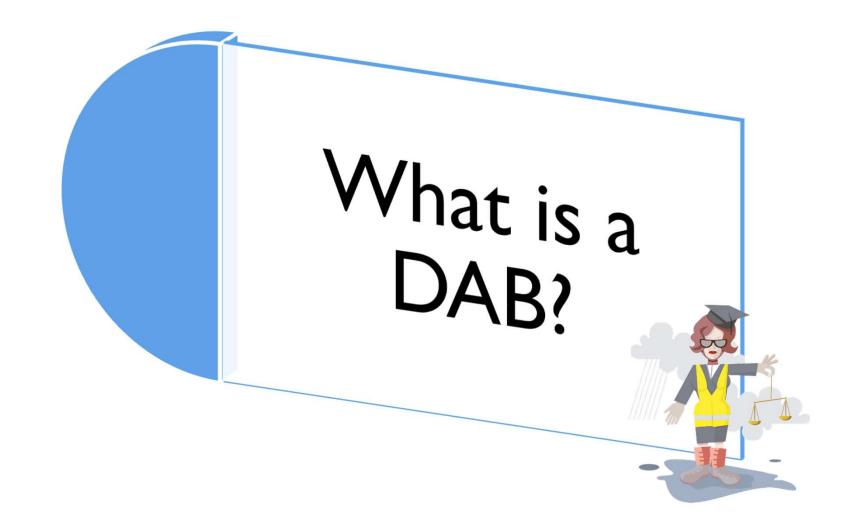


In hindsight, people consistently exaggerate what could have been anticipated in foresight. They not only tend to view what has happened as having been inevitable but also to view it as having appeared 'relatively inevitable' before it happened. People believe that others should have been able to anticipate events much better than was actually the case.

Baruch Fischhoff, For Those Condemned to Study the Past: Heuristics and Biases in Hindsight, in Daniel Kahneman, Paul Slavic, and Amos Tversky, eds, Judgment under uncertainty: Heuristics and biases 335, 341 (Cambridge 1982) (offering a thorough analysis of potential causes of the bias).

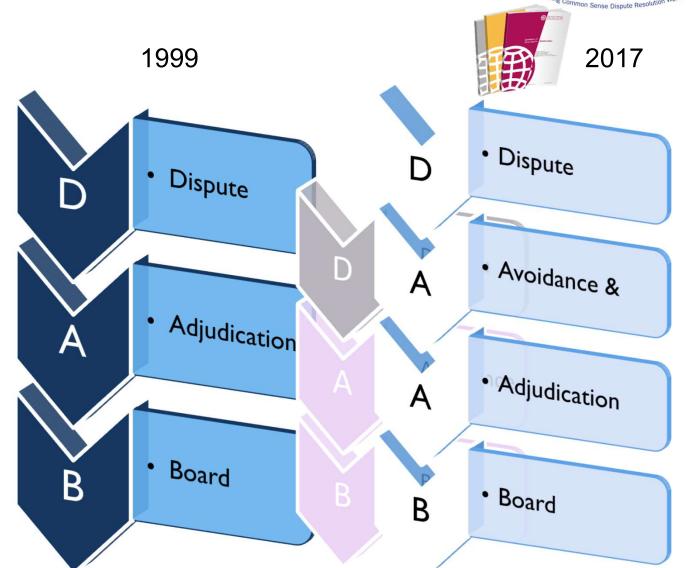






What is a Dispute (Adjudication) Board? It is a board

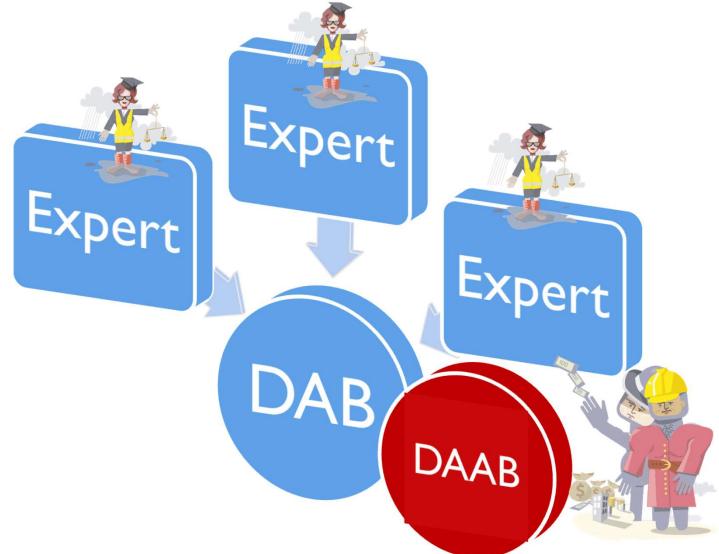
- It is a board aimed at the resolution of disputes.
- It is a job site dispute and dispute avoidance panel.



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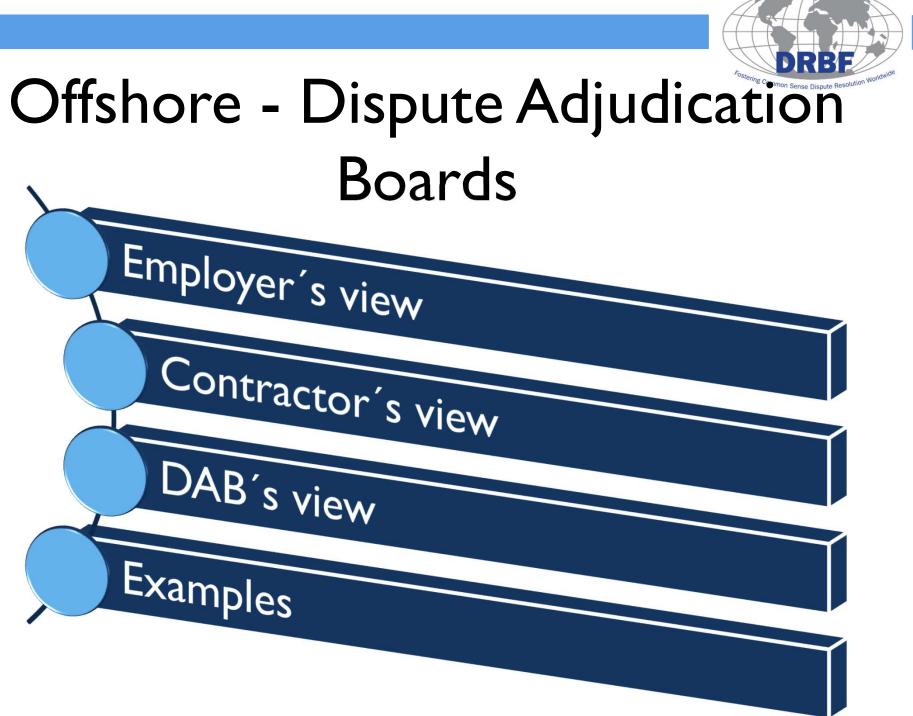
DRBE





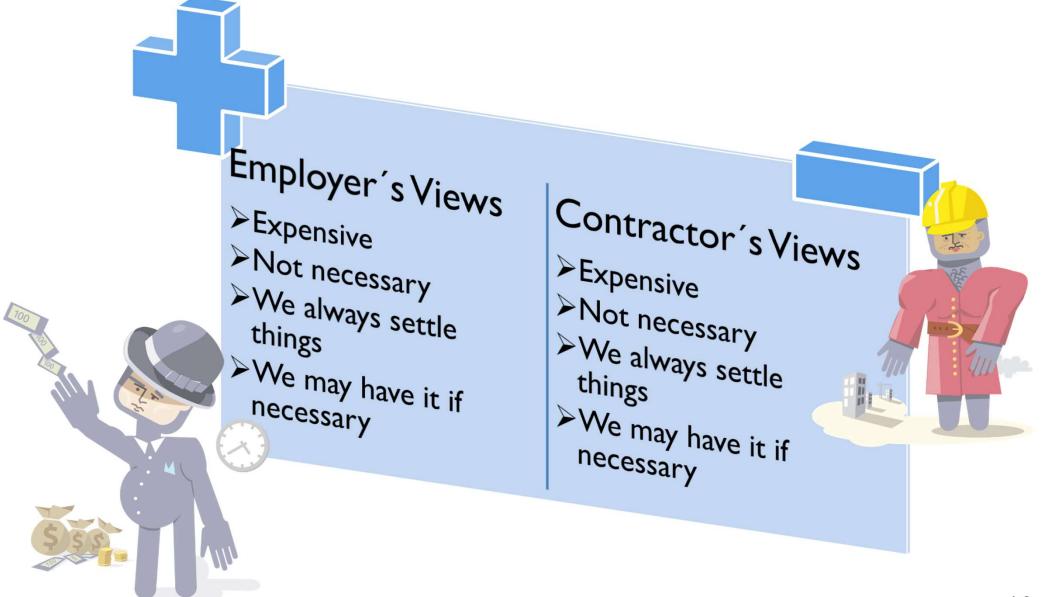


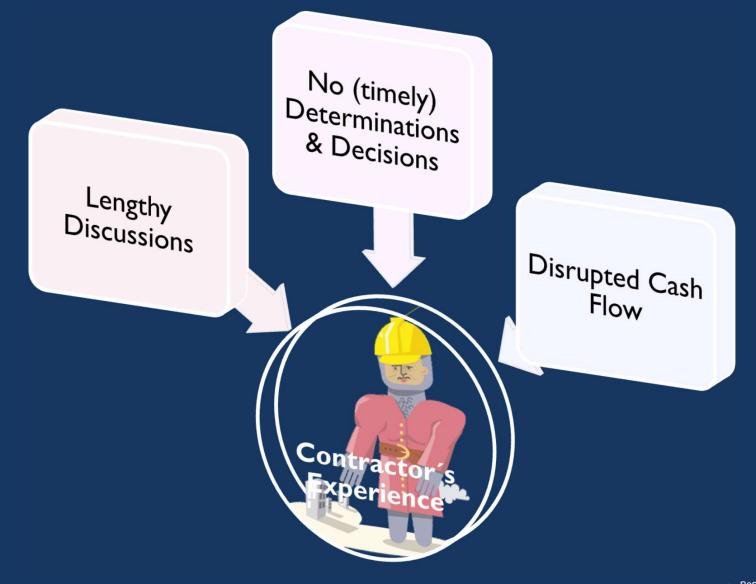




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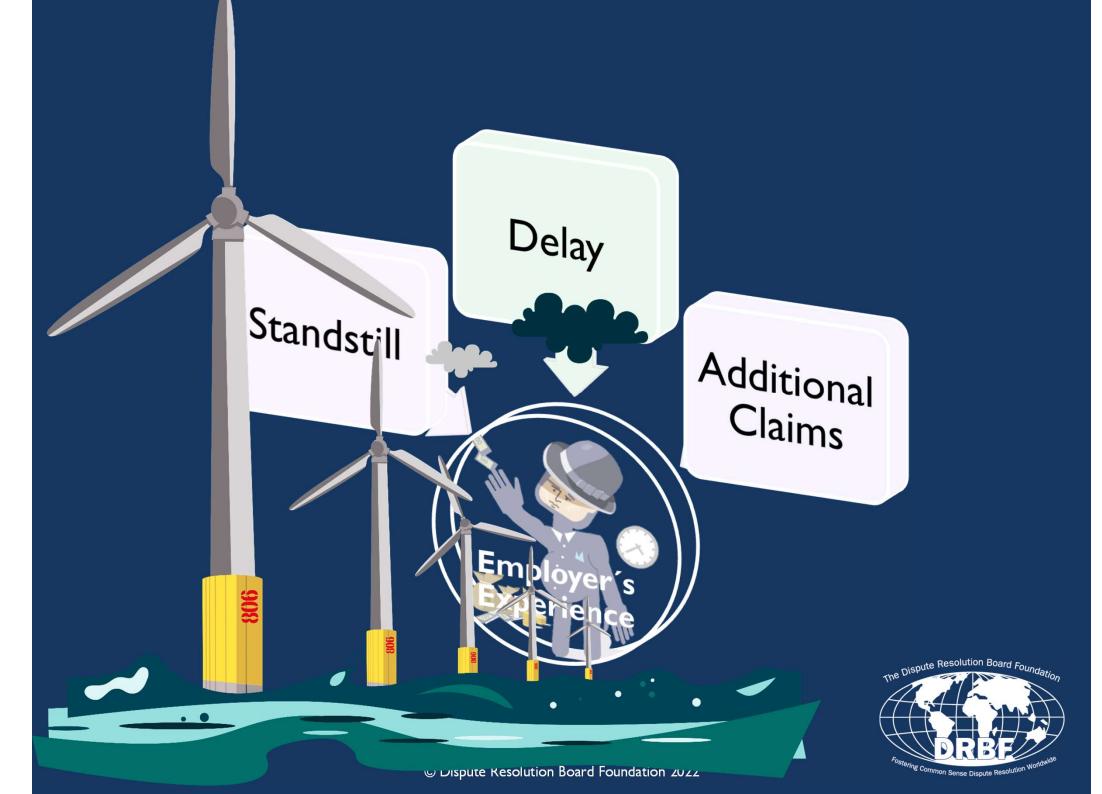




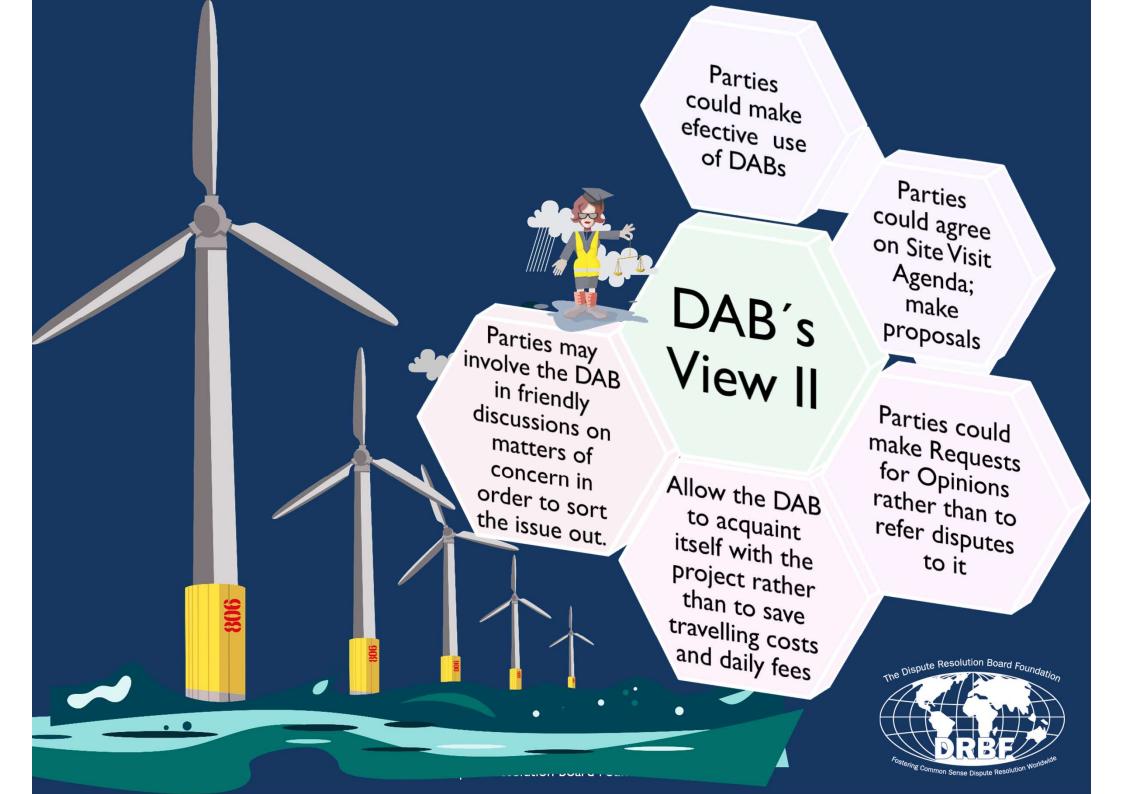


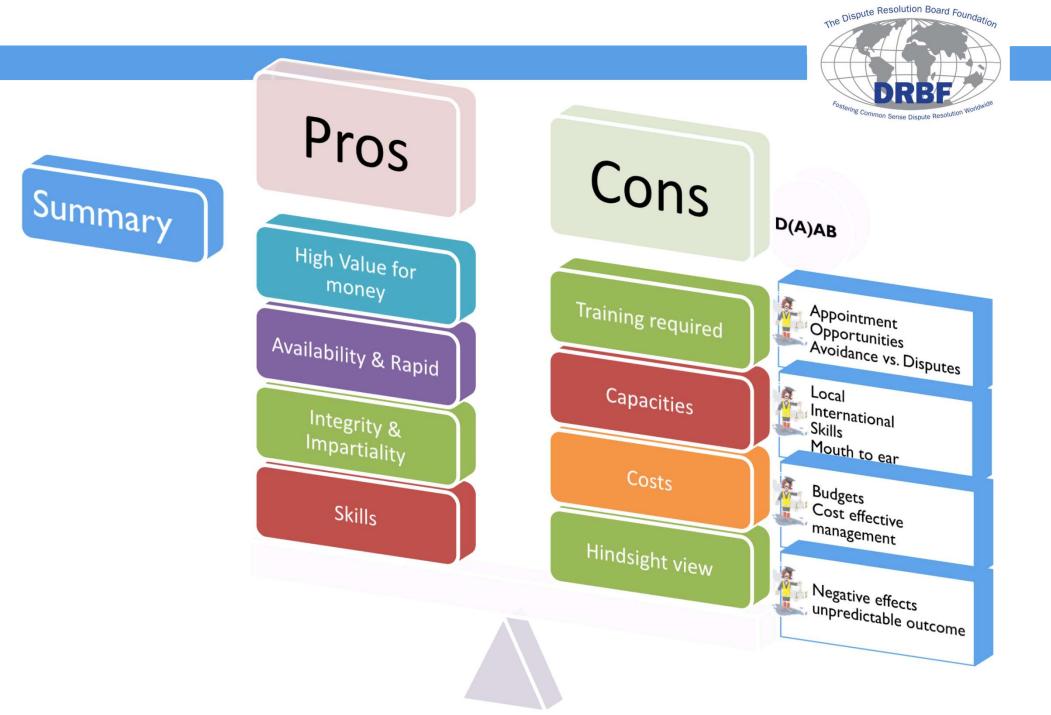


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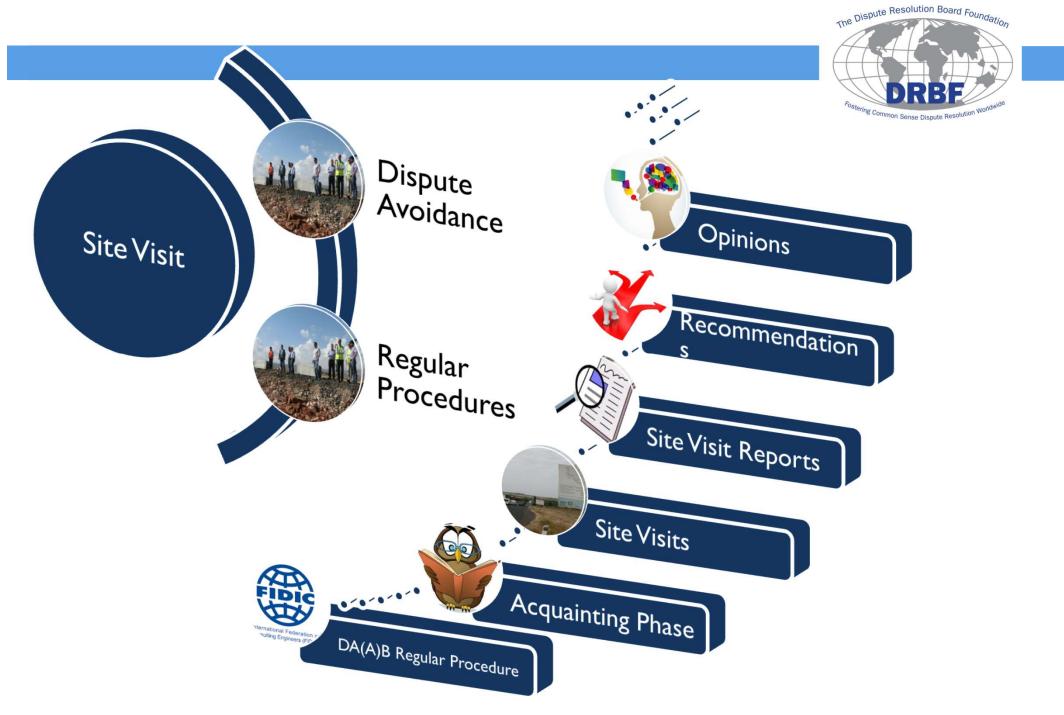
Example

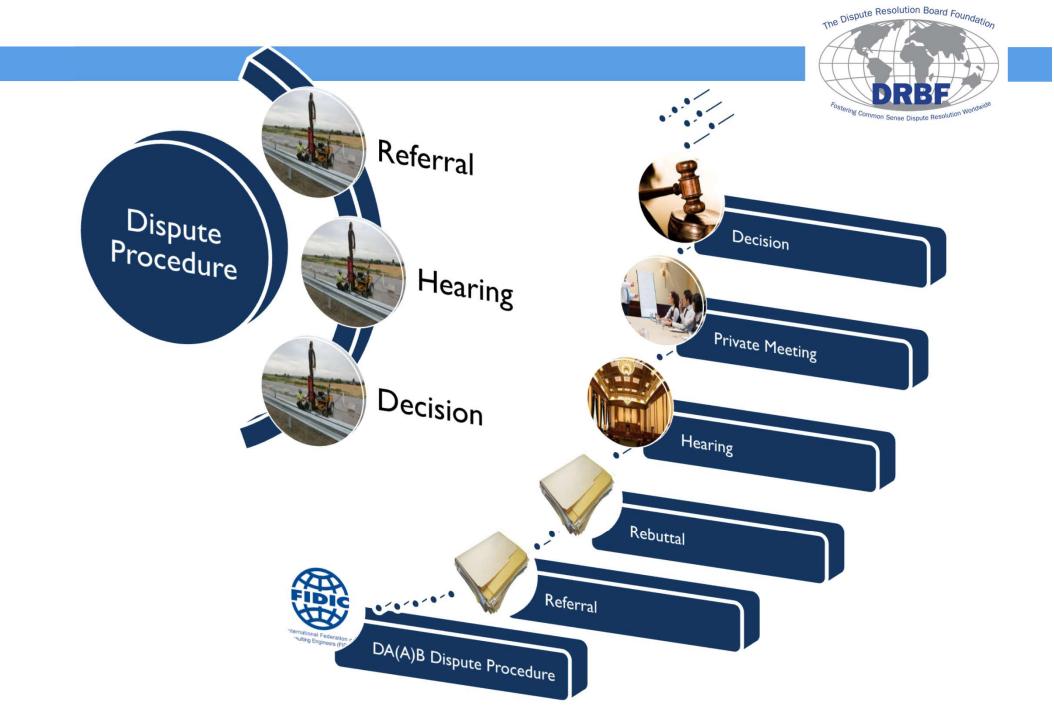


Scour protection issue

Vessel

- ➤ Fall pipe issue
- Survival criteria
- Special Working conditions exposed to
 wind, wave, tide, etc.







Project Profile

- The standard procurement approach for major offshore construction projects, whether oil and gas projects, offshore wind farms or sub-sea interconnector projects, is to award
 - > multiple packages or contracts across various specialist contractors and equipment suppliers, all coordinated and managed by a single employer,
 - \succ rather than
 - a single responsibility engineering, procurement and construction (EPC)/turnkey contract -more typical to onshore power and infrastructure projects.
- Multiple packages or contracts
 - involve interface issues resulting from coordination and cooperation issues
 - impose restrictions on innovative powers of contractors
 - involve more contract and project management capacities and skills with the employer than under single responsibility contracts



Project Profile & Conclusions

- Hence, offshore projects are exposed to contentious issues.
- A strategy that may solve a considerable number of contentious issues early, is the engagement of (and regular engagement with) a DAB/DAAB,
 - comprised of experienced sector-specialist practitioners who meet a clearly defined profile and collaborate with the parties in resolving matters rapidly, as and when they arise, in the joined endeavor to complete the works successfully (avoiding any negative impact by continued uncertainty and possible disputes).

DAB Member Profile

- Legal or contractual profile requirements may exist
- In any case, attention should be paid to
 - Soft Skills → which one's?
 - > hard Skills → which one´s?
 - \succ availability
 - > no conflict of interest





"Offshore" profile of adjudicators vs. onshore profiles

What is the appropriate and suitable DAB member profile in offshore projects?

Soft Skills	9 %
Contratc Knowledge	73 %
HUET certificate & BOSIET	3 %
Offshore engineering	15 %
05050 leave a size a (022) (stars	

25856 Impressions / 233 Votes



DAB Member Profile [Services]

"Offshore" profile of adjudicators vs. onshore profiles.

> Services (not exhaustive)

- > Unexploded ordnance survey and removal
 - Seabed inspection as well as the clearance, disposal and destruction of unexploded ordnance
- \succ Foundation installation
- ➤ Subsea cable installation
- Diving and ROV services
- > Supply and installation of high voltage stations
- Seabed preparation and scour protection



DAB Member Profile [FIDIC Requirements]

- When appointing the DAAB Member, each Party relies on the DAAB Member's representations that he/she is:
 - a) experienced and/or knowledgeable in the type of work which the Contractor is to carry out under the Contract;
 - b) experienced in the interpretation of construction and/or engineering contract documentation; and
 - c) fluent in the language for communications stated in the Contract Data (or the language as agreed between the Parties and the DAAB)



DAB Member Profile [Nautics]

"Offshore" profile of adjudicators vs. onshore profiles.

- Nautic knowledge: Beaufort scale, nautic miles, tide, survival criteria
- Special Requirements
 - > BOSIET (Basic Offshore Safety Induction and Emergency Training)
 - > HUET (Helicopter Underwater Escape Training) & certification
- Standards (Examples):
 - ISO 19900:2019 Petroleum and natural gas industries General requirements for offshore structures
 - American Clean Power Association (ACP) Offshore Compliance Recommended Practices: 2022 Edition (OCRP-1-2022) approved by American National Standards Institute (ANSI) Board of Standards Review
 - ISO 29400:2020 Ships and marine technology Offshore wind energy Port and marine operations



DAB Member Profile [Contract Knowledge]

"Offshore" profile of adjudicators vs. onshore profiles.

- Contract knowledge related to the standard form of contract which is in use [likewise]
- Insurance: Hull insurance, marine warranty surveying (primarily concerned with ensuring safe marine operations that would eliminate and/or reduce the risk of personnel injury and damage or loss of structures, equipment and the environment), Transportation & Installation (T&I)



Summary & Conclusions

- Offshore & marine works are carried out under special conditions
 DAB Members will have to take in account such conditions
 DABs can easily be used in such an environment
- Offshore & marine works require special knowledge & skills
 DAB members may have to qualify themselves
- > Adjudicator profiles may have to be clearly identified and specified
- DAAs and related procedural Rules might require some amendments





thank you for your kind attention!

Offshore construction contracts: Different approaches to resolving disputes

Mary Anne Roff, Partner, Clyde & Co LLP

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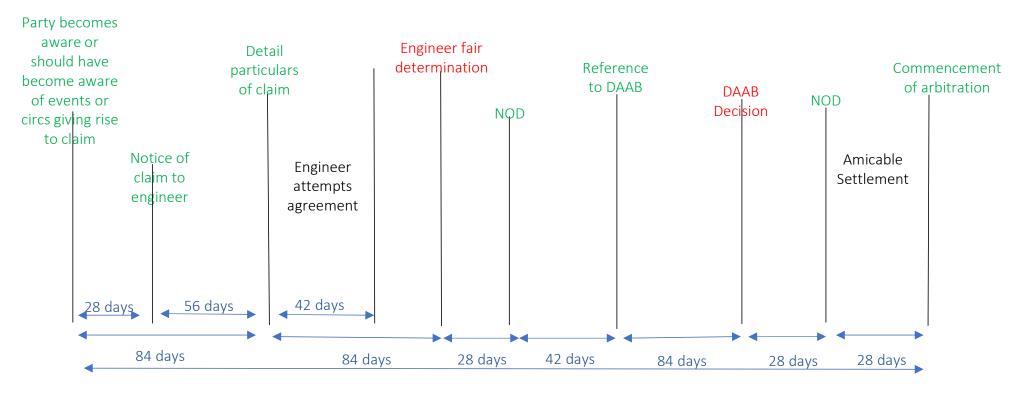


Types of contract

- FIDIC 2017 Clause 21 (Clause 20 in 1999 suite)
 - BIMCO Law and Arbitration Clause London (2020) and Mediation/ADR clause 2021
- LOGIC Clause 37
- NEC3/NEC4 Option W1/W2/W3
- Bespoke



FIDIC 2017 – Dispute Resolution



378 days

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Possible pros and cons

Advantages

FIDIC is well known and frequently used for offshore renewable construction projects

Aims at resolving disputes whilst Works are ongoing

Designed to promote amicable settlement of disputes

Adjudication

Aims to have disputes resolved by people with the requisite expertise

Cash flow advantages for the contractor

Speedy enforcement of DAAB decision

Disadvantages

Standard form dispute resolution process is complex

Frequently amended at negotiation stage

Process can be very lengthy

Notice Periods as conditions precedent

How realistic are the roles for the Engineer and DAAB?

Pay now, argue later

Risk of dispute continuing - duplication and expense

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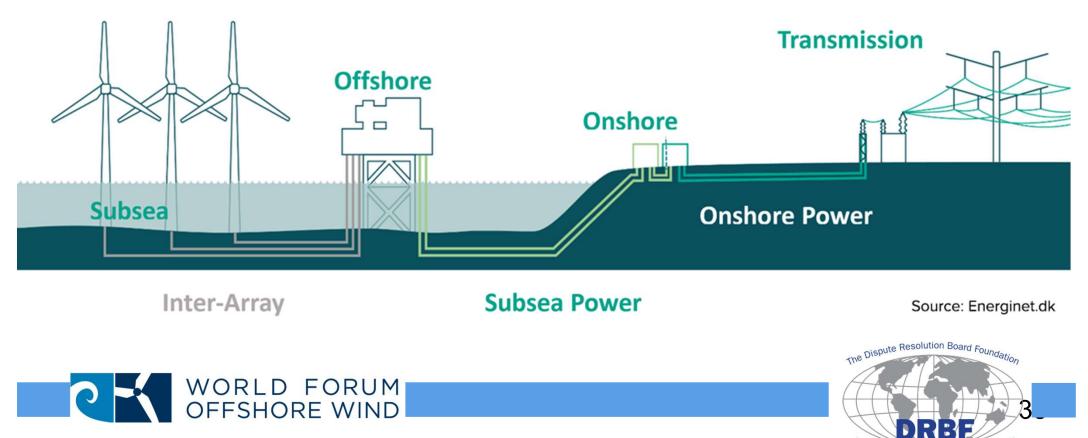
Offshore Wind



Offshore Wind Energy

More than just Wind turbines

- Turbines
- Cables
- Substations
- Grid connection



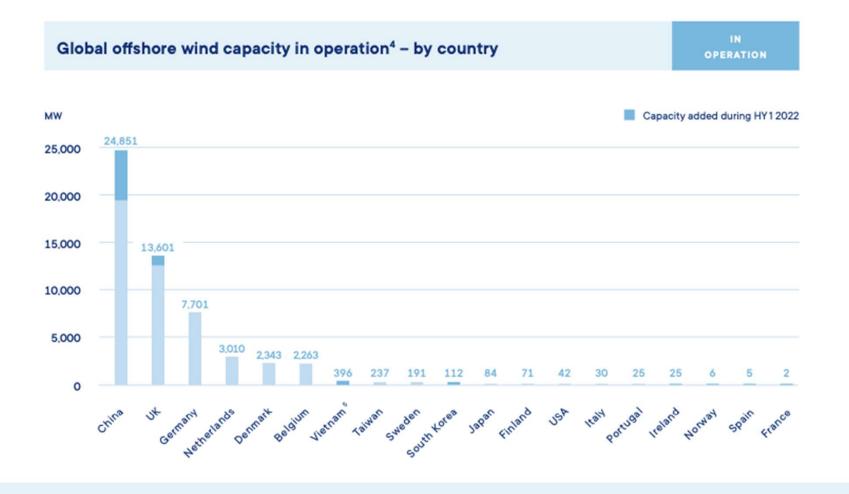
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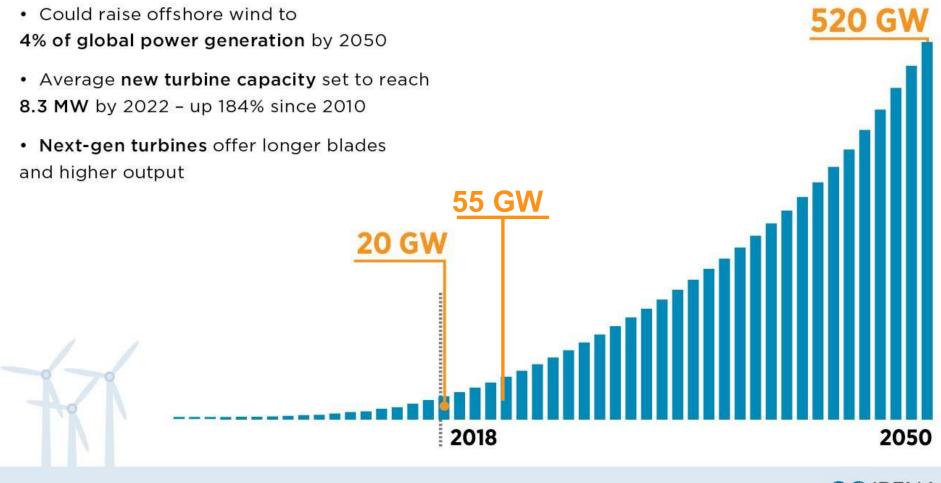


- China's growth continues with 5.1 GW of newly installed capacity during HY1 2022, increasing its total installed capacity to 24.9 GW
- In the UK the 1.3 GW Hornsea 2 project was put into operation which brings the UK's total installed capacity to 13.6 GW
- Germany's offshore wind capacity stagnates at 7.7 GW with no new offshore wind projects put into operation during HY1 2022





Offshore wind capacity set to reach 520 GW by 2050



www.irena.org







Offshore construction contracts: Role of the Engineer

Gerard Monaghan, Nicholas O'Dwyer Ltd & DRBF Ireland Country Representative

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FIDIC 2017 DAAB Procedural Rules

Rule 1

Objectives

- 1.1 The objectives of these Rules are:
 - (a) to facilitate the avoidance of Disputes that might otherwise arise between the Parties; and
 - (b) to achieve the expeditious, efficient and cost effective resolution of any Dispute that arises between the Parties.



Potential Dispute Flashpoints

- → New Technologies & Standards
- → Sequencing of Major Operations
- ➔ Delay cost of vessel hire
- → Integration of Onshore & Offshore Elements
- ➔ Transmission System interface



A DB Perspective

DB Challenges in Offshore Projects

- → General complex contract arrangements typically 4 or 5 major contractors rather than an EPC
- Challenging Environment permanent offshore structures with grid connection
- > Currently no industry specific contractual mechanisms providing for an effective DB process,
- The Industry introduces new/additional stakeholders and/or influencers not catered for in standard forms of contract like e.g., FIDIC,
- Standard forms of Contract are not drafted specifically for heavily equipment loaded (e.g., vessels, cranes, special purpose equipment) projects,
- → In addition to the Law underpinning the Contract there may be Maritime Law to deal with,



A DB Perspective

DB Challenges in Offshore Projects

- Often extreme impact of unforeseen or unpredictable issues (e.g., UXOs or the Weather) that may negatively affect the risk balance,
- Standard contractual terminology is often insufficient for the specific offshore industry (e.g., "Site").
- → Whilst DBS are used they are not the norm





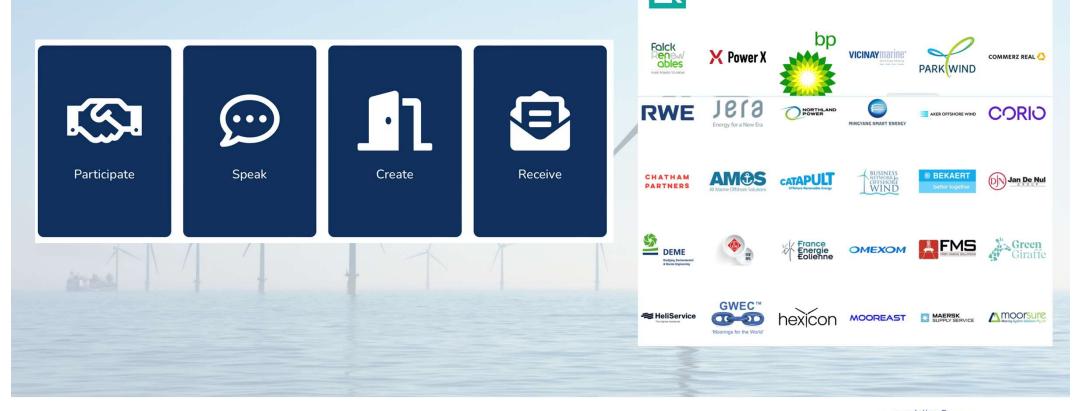


Project Owner objectives for Offshore

From a PMO perspective project owners typically want (or should want !) the following:

- Real time tracking of programme, cost, quality metrics
- Appropriate contract forms that identify the optimum risk balance
- An Owners Engineer that understands the risk balance and deal entered into
- A DAAB that understands the risk balance and deal entered into
- Optimum Arrangement
 Owners Engineer & DAAB operating as a Project Management Tool
 Beneficial Output
 Efficient project delivery Avoidance of disputes Rapid Resolution of disputes

World Forum Offshore Wind (WFO) Orsted Dolfines The world's only organization 100% focused Gard Poul Schmith on promoting offshore wind energy on a global SteepF renewables scale. R d i davit international-Zische





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WFO's **Offshore Dispute Resolution Committee (ODRC)** WORLD FORUM OFFSHORE WIND OFFSHORE DISPUTE RESOLUTION COMMITTEE



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ODRC

OFFSHORE DISPUTE RESOLUTION COMMITTEE



ODRC Offshore Dispute Resolution Committee

THIAL

Committee gathering

once every three

months



ODRC is an entity of WFO whose purpose is to promote and develop alternative dispute resolution in Offshore Wind field and to establish Alternative Dispute Resolution Rules adapted to it.

The Committee receives, organizes and manages the input for the dispute resolution rules and facilitates their development and contributes to the promotion of the general work of the WFO.

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Way forward













2. Skills and reach

Skills covered already:

- Soil/Geotechnical
- Marine
- WTGs
- Foundations
- Sub-stations
- Cables
- Vessels
- Coating
- Loads
- Electrical/Mechanical Engineering
- Harbor Logistics
- SCADA
- Software
- Schedule analysis
- Commercial
- Legal



BACKUP



- Globally, installed offshore wind capacity reached 54.9 GW by the end of HY1 2022, 45% of which (24.9 GW) is now installed in China
- Worldwide, 33 new offshore wind farms were put into operation during HY1 2022 in China, Vietnam, the UK and South Korea
- Worldwide, 248 offshore wind farms³ are currently in operation of which 134 are located in Asia, 112 are located in Europe and 2 in the USA



September 2022

WORLD FORUM OFFSHORE WIND

