

GUIDANCE NOTE 3.1.1

Dispute Resolution

Dispute Resolution

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Forward

The purpose of this document is to provide guidance on dispute resolution when using the Public Works suite of Contracts. This document sets out the various dispute resolution mechanisms available for use under the Public Works Contracts and how a dispute can flow through different processes to its ultimate resolution.

The forms of dispute resolution included in the suite of Public Works contracts include *Dispute Management Procedure*, *Conciliation*, *Arbitration* and the *courts*. The suite of contracts have 2 varying conciliation procedures detailed, depending on the form of contract in use. This document sets out the limitations on the use of each procedure and the main differences between the dispute procedures within each contract.

In addition to the different procedures certain forms of contract introduce designated persons to fulfil prescribed roles on a contractual basis to support the Parties during disputes. These roles are discussed and explained further in this guidance note.

Below is a table setting out the procedures available in the Public Works Contracts for dispute resolution:

| Contract Form | Without Prejudice Discussion | Dispute Management Procedure | Conciliation | Arbitration |
|--|------------------------------|------------------------------|--------------|-------------|
| PW-CF1 | ✓ | ✓ | ✓ | ✓ |
| PW-CF2 | ✓ | ✓ | ✓ | ✓ |
| PW-CF3 | ✓ | ✓ | ✓ | ✓ |
| PW-CF4 | ✓ | ✓ | ✓ | ✓ |
| PW-CF5 | ✓ | ✗ | ✓ | ✓ |
| PW-CF6 | ✓ | ✗ | ✓ | ✗ |
| PW-CF7 | ✓ | ✗ | ✗ | ✓ |
| PW-CF8 | ✓ | ✗ | ✗ | ✗ |
| PW-CF9 | <i>Framework Agreement</i> | | | |
| PW-CF10 | ✓ | ✗ | ✓ | ✓ |
| PW-CF11 | ✓ | ✗ | ✓ | ✗ |
| <p>Note: The Parties to all Public Works Contracts submit to the jurisdiction of the Irish Courts.</p> <p>Note: All contracts entered into on or after the 25th of July 2016 are subject to statutory adjudication under the Construction Contracts Act, 2013</p> | | | | |

1.1 Introduction The Dispute Management Procedure, (DMP), is a new dispute resolution process under the Contract that was brought about as an amendment following the review of the Public Works Contracts. The review proposed a number of interim amendments amongst which was the inclusion of informal dispute resolution methods to reduce the volume of disputes that are currently being referred to the formal procedures prescribed in the Contract.

For all projects carried out under Public Works Contract Form PW-CF1 to PW-CF4 inclusive the Parties to the Contract may engage in a, without prejudice, dispute resolution process on certain disputes prior to reference to conciliation. Sub-clause 13.1 of the Conditions of Contract details the Dispute Management Procedure for resolution of disputed Employer's Representative Determinations issued under Sub-clause 10.5.4 and 10.5.5 of the Conditions of Contract. The procedure shall consist of meetings of the *Project Board*, as defined under Sub-clause 13.1.2 of the Contract, for the purpose of reviewing disputes referred thereto with the intent of reaching a resolution.

1.2 Establishing the Project Board

The Project Board shall be made up of persons nominated to represent the Parties to the Contract. In Schedule Part 1A of the Contract, the Employer shall select the number of members each Party shall nominate to the Project Board. The minimum number of members shall be one from each Party and the maximum number shall be three from each Party. The Employer must select the number of members prior to issuing the Schedule at tender stage, otherwise the default shall be 1 member from each Party.

Schedule Part 3A of the Contract contains three form fields to be in filled by the Employer with details of their proposed members and their role within the Employer's organisation or relationship to the Employer's organisation. The Employer is not required to input the details of their proposed members when issuing the Schedule at Tender Stage, however the information must be notified to the Contractor when issuing the Letter to Successful Tenderer and input into the Schedule Part 3A prior to issue of the Letter of Acceptance

Schedule Part 3A of the Contract also contains three form fields to be in filled with details of the Contractor's proposed members of the Project Board and their role within the Contractor's organisation or relationship to the Contractor's organisation.

The Contractor is not required to disclose the details of their members when returning the Schedule at Tender Stage, however the information must be confirmed to the Employer in response to the Letter to Successful Tenderer. The Employer will then input the details into the Schedule Part 3A prior to issue of the Letter of Acceptance

**1.3
Constituents of
a Project Board**

The minimum number of members that each Party shall have on the Project Board is 1. The maximum number of members that each Party shall have on the Project Board shall be 3. The Employer shall confirm in Schedule Part 1A of the Contract, when issuing the document to all tenderers, the number of members each Party shall have on the Board.

The Employer should base the number of members required to have on the Project Board on the size and complexity of the project. The Employer should give consideration to aspects such as technical complexity, anticipated Contract Sum, Contract Duration, available resources, etc.

At least 1 member from each Party to the Project Board must hold a construction related role within the Party's organisation, or have a construction related qualification or have a construction related background that could be described as relevant to the project scope.

Neither the Employer's Representative nor the Contractor's Representative may be members of the Project Board, nor in the case of PW-CF1 and PW-CF3 shall members of the design team or the design team's organisation be members of the Project Board. However, the Employer's Representative or the Contractor's Representative or the design team or members or their staff may be invited, either individually or as a collective, by the Project Board, to attend, observe or contribute information to Project Board meetings.

All members of the Project Board must have the capacity and authority to negotiate agreements that will be binding on the Party that they represent. It is advised that the members of the Project Board should come from senior management level in each organisation, however where such a resource is not available, each Party will be entitled to bring in persons external to their organisation. Where a Party elects to avail of persons external to their organisation, those persons must be authorised to negotiate agreements that will be binding on the Party that they represent. The Employer may wish to consider the possibility of a person from the Sanctioning or Funding Authority sitting as a member of the Project Board on their behalf.

In general the type of person that should be considered for membership of the Board by both Parties would have knowledge and experience in the construction industry, commercial and technical dispute resolution, alternative dispute resolution methods, commercial decision making, commercial negotiation, etc.

Part 1

The Dispute Management Procedure

Section 1.4 Function of the Project Board

Section 1.5 Running of the Project Board

1.4 Function of the Project Board

The sole function of the Project Board is to review disputed Employer Representative Determinations issued under Sub-clause 10.5.4 and 10.5.5 of the Conditions of Contract and referred to the Dispute Management Procedure under sub-clause 13.1 of the Contract, with an intent to negotiate a resolution without the need to formally refer the dispute to conciliation.

The Project Board shall not review disputes arising under any other clause or sub-clause in the Contract or any dispute arising from the Contract or any dispute outside the Contract.

All agreements shall be based on the rights and obligations of the Parties to the Contract.

1.5 Running of the Project Board

Within 28 days of the date of the Letter of Acceptance, which has the precondition that the names and details of the Project Board members are confirmed to each Party and inserted in Schedule Part 3A, a preliminary meeting of the Project Board must be held. At the preliminary meeting, the Project Board should agree:

- i) a protocol for all future meetings with respect to review disputes referred to it under sub-clause 13.1 of the Contract and
- ii) a schedule of dates for standing meetings of the Project Board.

The operating procedure by which the Project Board hears, discusses and resolves disputes referred to it, is at the discretion of the Project Board. All discussion, engagement and correspondence between the Parties, via the mechanism of the Project Board, will be ‘without prejudice’ and cannot be referred to in any other correspondence or forum including any litigation.

At the preliminary meeting of the Project Board, the Standing Conciliator, (*See 3.6 below*), where appointed, may be requested to attend to advise on protocol for review of disputes referred to the Dispute Management Procedure, under sub-clause 13.1 of the Contract. If agreed by the Project Board the Standing Conciliator may be appointed as chair of the Project Board. The Standing Conciliator may not be a member of the Project Board.

Continued on next page

1.5 Running of the Project Board, (continued)

It is advisable that all members of the Board are present at the preliminary meeting, but at least 1 member from each Party must be present. In addition each Party should nominate a single point of contact from each Party, (a Party Lead, who may nominate a replacement from their Party's nominees where they are temporarily unavailable), who will have responsibility for activities such as;

- Confirming points of contact to the Contractor, Contractor's Representative, Employer and Employer's Representative to which disputes referred under sub-clause 13.1 shall be notified to the Project Board for review.
- Organising Project Board meetings and attendance thereof.
- Disseminating the information received from each member of the Project Board.
- Inviting the Employer's Representative or Contractor's Representative to inform the respective Parties to the Board of the details surrounding the dispute referred.
- Inviting Design Team Members to inform the respective Parties to the Board of the details surrounding the dispute referred.
- Inviting external consultants or advisors to advise the respective Parties to the Board on possible solutions to disputes referred.
- Disseminating the information on agreements reached, or failure to reach agreements, to the Party, (Employer or Contractor), the Party's representative, design team members, external consultants and advisors, etc.
- Contacting the Standing Conciliator, where one is appointed, to seek advice on the dispute referred where deemed necessary
- Contacting the Standing Conciliator to request that the Standing Conciliator draft the binding agreement where the Project Board require such a service.

Continued on next page

1.5 Running of the Project Board, (continued)

At the conclusion of the preliminary meeting of the Project Board a protocol for review of disputes and a schedule of standing meetings should be agreed. Once a dispute has been referred under the Contract to the Project Board, the Party Lead from each party should make contact with their Party's nominees and the Party Lead from the other Party, [and the Standing Conciliator where applicable], to confirm dates and times for the next formal meeting of the Project Board. The next meeting of the Project Board may be a scheduled meeting of the Project Board, or an interim meeting. . The Party Leads should then contact all necessary persons involved in the project to ensure all relevant information on the dispute is known prior to the meeting of the Project Board.

The Project Board must meet at least every 60 days, to review and discuss the disputes referred to it with the intent to resolve disputes by agreement based on the rights and obligations of the Parties to the Contract. The Project Board may agree to meet at shorter intervals or on an interim basis to review disputes referred. If no dispute is referred, the Project Board may, by agreement of the Project Board, defer the next scheduled Project Board meeting.

A minimum of 1 Project Board member from each Party must be present at all meetings of the Project Board and all members of the Project Board must be notified of meetings of the Project Board in advance of the meeting. If the Project Board reaches agreement on the dispute the Party Leads from each Party shall be responsible for disseminating information on the written agreement to their respective Party, their representatives, the design team, external consultants and advisers, etc.

All binding agreements reached to resolve a dispute shall be signed by the Employer and the Contractor, i.e. the Parties.

Where no agreement is reached by the Project Board to resolve a dispute referred to it by the end of the first Project Board meeting after the date of referral, the Board shall no longer review or discuss the dispute. The Project Board shall on the next Working Day following the Project Board meeting notify the Parties of the Project Board's failure to resolve the dispute. Either Party may refer the dispute to conciliation under sub-clause 13.2 of the Contract within a further 14 days of the date of notification from the Project Board. If the dispute is not referred to Conciliation within 14 days following the Project Board's notification then the original Employer's Representative determination issued under sub-clause 10.5 shall be binding.

Part 1

Section 1.6

Section 1.7

The Dispute Management Procedure

Restrictions of the Project Board

Effect of Adjudication under the Construction Contracts Act 2013 on the Dispute Management Procedure

1.6 Restrictions of the Project Board

The Project Board shall not review disputes arising from any other clause or sub-clause in the Contract or any dispute arising out of the Contract or any dispute relating to the Contract or the Works. The Project Board shall not review any issues relating to the delivery of the project or administration of the Contract that do not have direct relationship to the dispute referred through sub-clause 13.1 of the Contract.

1.7 Effect of Adjudication under the Construction Contracts Act 2013 on the dispute management procedure

All contracts entered into on or after the 25th of July 2016 are subject to statutory adjudication under the Construction Contracts Act, 2013.

Adjudication will have the following impacts on the dispute management procedure:

1. Having commenced the dispute management procedure on a dispute, which is then referred to adjudication under the Construction Contracts Act 2013 [by either party] prior to the procedure reaching its conclusion, the dispute management procedure must adjourn until the adjudicator reaches a decision. In the event that a decision is reached by the adjudicator, the dispute management procedure for that dispute shall be terminated with immediate effect. No further action shall be taken by the Project Board in respect to that dispute. In the event that no decision is reached by the adjudicator the parties shall re-commence the dispute management procedure at the point at which it was adjourned.
 2. Where an adjudicator reaches a decision on a dispute referred under the Construction Contracts Act 2013, the same dispute shall not be referred to the dispute management procedure under the Contract.
-

2.1 Introduction

The Public Works Suite of Contracts consist of 10 forms of Contract, (PW-CF1 to PW-CF8 and PW-CF10 and PW-CF11), and a Framework Agreement, (PW-CF9).

The following table outlines the conciliation procedures for each form;

| Contract Form | Conciliation, (<i>with recommendation failing agreement</i>) | Conciliation, (<i>without recommendation</i>) | No Conciliation |
|---------------|---|--|------------------------------|
| PW-CF1 | ✓ | ✗ | n/a |
| PW-CF2 | ✓ | ✗ | n/a |
| PW-CF3 | ✓ | ✗ | n/a |
| PW-CF4 | ✓ | ✗ | n/a |
| PW-CF5 | ✓ | ✗ | n/a |
| PW-CF6 | ✗ | ✓ | n/a |
| PW-CF7 | n/a | n/a | Arbitration requirement only |
| PW-CF8 | n/a | n/a | Courts requirement only |
| <i>PW-CF9</i> | <i>Framework Agreement</i> | | |
| PW-CF10 | ✗ | ✓ | n/a |
| PW-CF11 | ✗ | ✓ | n/a |

Note 1: It is a requirement of the Contract under PW-CF1 to PW-CF 5 that, where the parties fail to reach agreement under conciliation, the Conciliator shall issue a written recommendation.

Note 2: Under PW-CF6 and PW-CF11 there is no requirement for the Conciliator to issue a recommendation where the Parties fail to reach agreement during conciliation.

Note 3: Under PW-CF10 where the Parties fail to reach agreement during conciliation, there is no requirement for the Conciliator to issue a recommendation, however it is advised that a recommendation should be issued.

2.2 PW-CF1 to PW-CF5

Sub-clause 13.2 of the PW-CF1 to PW-CF5 details the process and procedures of conciliation for use under these forms of Contract. The process may be commenced by either Party following referral of a dispute in accordance with sub-clause 13.2.1 of the Contract. The notice of referral shall state that it is given under sub-clause 13.2 and shall be notified to the named individual in Schedule Part 1A or Schedule Part 2A of the Contract.

The appointment of the Conciliator should be effected through the use of Model Form 1.16 *Appointment of Conciliator* as available on the Capital Works Management Framework website:

<http://constructionprocurement.gov.ie>

Note: *Disputes arising from sub-clause 10.5.4 and 10.5.5 of PW-CF1 to PW-CF4 that are referred to Dispute Management Procedure process under Sub-clause 13.1 of the Contract must complete that process prior to referral of the dispute to conciliation.*

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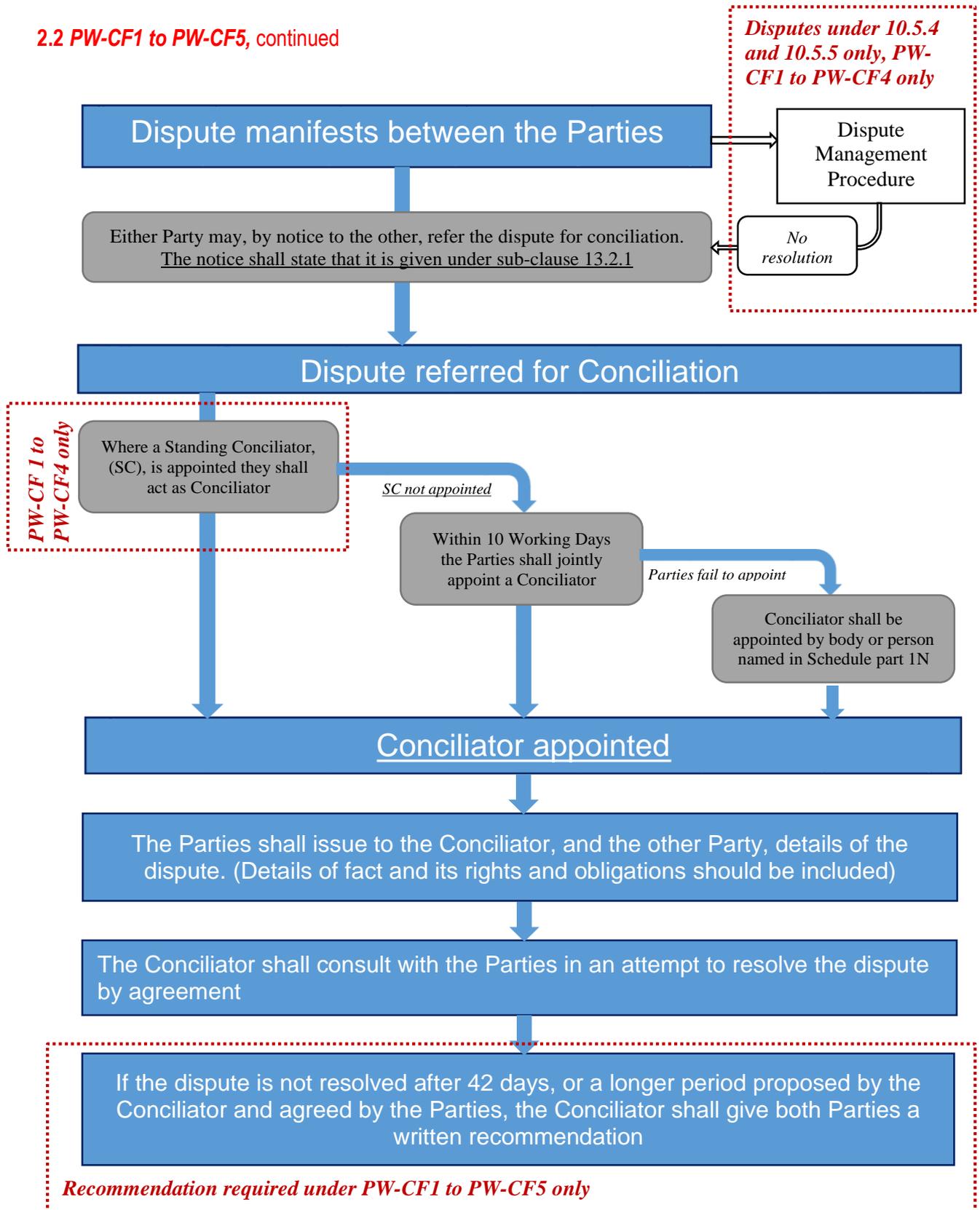
Part 2

Conciliation

Section 2.2

PW-CF1 to PW-CF5, *Continued*

2.2 PW-CF1 to PW-CF5, continued



Part 2

Section 2.3

Section 2.4

Section 2.5

Conciliation

PW-CF6 and PW-CF11

PW-CF7 and PW-CF8

PW-CF9

2.3 PW-CF6 and PW-CF11

Sub-clause 15.2 of the PW-CF6 and sub-clause 14.2 of PW-CF11 details the process and procedures of conciliation for use under these forms of Contract. The process may be commenced by either Party following referral of a dispute to conciliation. There is no requirement for the notice of referral to state that it is given under a particular sub-clause. Whilst the Schedule to the Contract does not require specific contact details of the person to whom notice of dispute should be given, nonetheless the conditions require that notice be given to the other Party.

The conciliation process under PW-CF6 & PW-CF11 does not require a recommendation to be issued. The process only requires that the Parties resolve the dispute through agreement where possible.

This is the fundamental difference between the conciliation process under PW-CF6 & PW-CF11 and under the main forms (PW-CF1 – PW-CF5 inclusive).

The appointment of the Conciliator should be effected through the use of Model Form 1.16 Appointment of Conciliator as available on the Capital Works Management Framework website:

<http://constructionprocurement.gov.ie>

2.4 PW-CF7 and PW-CF8

There is no provision for resolution of disputes via a conciliation process under PW-CF7 and PW-CF8. Disputes under these contracts will be decided by arbitration in the case of PW-CF7 and the courts in the case of PW-CF8.

2.5 PW-CF9

PW-CF9 is a Framework Agreement for construction work. It is a set of rules governing the award of contracts covered by the scope of the framework. The form of public works contract awarded under the framework contains the dispute resolution mechanisms and not the Framework Agreement.

Part 2

Section 2.6

Section 2.7

Conciliation

PW-CF10

Effect of Adjudication under the Construction Contracts Act 2013 on conciliation

2.6 PW-CF10

Schedule 11 Part 2 of PW-CF10 details the conciliation process for use under this form of Contract. The process may be commenced by either Party following referral of a dispute to conciliation.

The following points summarise the fundamental differences between the conciliation process under PW-CF10 and the process under PW-CF1 – PW-CF5 inclusive;

- **The Parties have 14 Working Days to jointly appoint a conciliator.**
- **The Parties must agree to the conciliator issuing a recommendation where the dispute cannot be resolved by agreement.**
- **The recommendation is not binding upon the Parties.**

The appointment of the Conciliator should be effected through the use of Model Form 1.16 *Appointment of Conciliator* as available on the Capital Works Management Framework website:

<http://constructionprocurement.gov.ie>

2.7 Effect of Adjudication under the Construction Contracts Act 2013 on conciliation

All contracts entered into on or after the 25th of July 2016 are subject to statutory adjudication under the Construction Contracts Act, 2013.

Adjudication will have the following impacts on conciliation:

1. Having commenced conciliation on a dispute, which is then referred to adjudication under the Construction Contracts Act 2013 [by either party] prior to the parties resolving the dispute through agreement or a conciliator's recommendation being issued, the conciliation must adjourn until the adjudicator reaches a decision. In the event that a decision is reached by the adjudicator, the conciliation shall be terminated. No further actions shall be taken by the parties under the conciliation and no conciliator's recommendation shall be issued. In the event that no decision is reached by the adjudicator, the parties shall re-commence the conciliation process commenced under the Contract.
 2. Where an adjudicator reaches a decision on a dispute referred under the Construction Contracts Act 2013, the same dispute shall not be referred to conciliation under the Contract.
-

2.8 The Standing Conciliator

For all contracts carried out using Public Works Contract Form PW-CF1 to PW-CF4 where the anticipated Contract Sum will be in excess of €10million, a Standing Conciliator must be appointed by the Parties, from the Starting Date until the Parties agree to terminate the Standing Conciliator's appointment.

For all contracts carried out using Public Works Contract Form PW-CF1 to PW-CF4 where the anticipated Contract Sum will be less than €10million, the Employer will have the option of requiring a Standing Conciliator to be appointed by the Parties, from the Starting Date until the Parties agree to terminate the Standing Conciliator's appointment.

Where a Standing Conciliator is appointed, they shall fulfil the role of the Conciliator in all cases, and the requirement to appoint a conciliator within 10 Working Days of a referral of a dispute to conciliation as set out in sub-clause 13.2 will no longer stand.

The intention behind the introduction of the Standing Conciliator is to encourage proper engagement between the Parties to assist the Parties in the avoidance of disputes, to assist the Parties in avoidance of costly and lengthy formal dispute resolution procedures, and to assist the Parties to establish agreement upon issues before they crystallise into a dispute. If a dispute arises, the Standing Conciliator will act as a conciliator as set out in 2.7.2 of this guidance.

To ensure the Standing Conciliator can fulfil such a role the Parties should ensure the following;

- the Standing Conciliator shall be issued with a complete set of the Contract Documents upon appointment of the Standing Conciliator.
- the Standing Conciliator shall attend site on regular basis to ensure they have adequate project oversight and to gain standing knowledge of the relationship between the Parties prior to the crystallisation of any disputes
- the Standing Conciliator shall be included on correspondence surrounding clause 4.9, 4.10 and 4.15 from each Party

The Parties may agree with the Standing Conciliator to have the Standing Conciliator included on any other correspondence between the Parties under the Contract, or circulated with any amendments to the Works Requirements, Contractor's Proposals, and or any documents included in the Contract Documents.

The Standing Conciliator shall regularly review all correspondence and documentation received from the Parties and confer with the parties where deemed necessary by the Standing Conciliator or requested to do so by the Parties. Section 2.7.4 of this guidance outlines the relationship of the Standing Conciliator and the Project Board.

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**2.8.1
Appointment of
the Standing
Conciliator**

Where a Standing Conciliator is appointed on contracts carried out using PW-CF1 to PW-CF4, the Standing Conciliator shall take the place of the conciliator under sub-clause 13.2 of the Contract.

In Schedule Part 1N of the Contract, the Employer shall confirm that a Standing Conciliator will be required for the Project. This will be mandatory on projects with an anticipated Contract Sum in excess of €10million and optional for projects with an anticipated Contract Sum of between €5million and €10million. Schedule Part 3C of the Contract contains a form field to be in filled with the details of the agreed Standing Conciliator who shall be appointed jointly by the Parties to the Contract prior to the Starting Date. This form field is not to be filled in until after agreement is reached on the appointment of the Standing Conciliator. Schedule Part 1N contains an additional form field to be in filled, prior to the Employer issuing tender documents to all tenderers, with the name of the person or body to appoint the Standing Conciliator where the Parties cannot agree.

Where the Parties cannot agree to the appointment of the Standing Conciliator before the Starting Date, the person or body named in Schedule Part 1N will appoint a Standing Conciliator for them.

**2.8.2 Standing
Conciliator fees**

A reserved sum shall be included in the Pricing Document, by the Employer, to cover the Contractor's share, (nominally 50%), of the fee for the Standing Conciliator in performance of their duties. Once the successful main contract tenderer is identified, agreement between the Parties shall be reached on the appointment of the Standing Conciliator prior to the issue of the Letter of Acceptance. At this point the Contractor's share of the fee agreed with the Standing Conciliator for performance of their duties, other than conciliating a dispute under clause 13.2, will be inserted in place of the Reserved Sum and the Contract Sum calculated accordingly. The rate against this item entry shall include ;

1. the fee charged by the Standing Conciliator in ensuring they establish and maintain a standing knowledge of the relationship between the Parties prior to the crystallisation of the dispute;
2. the fee charged by the Standing Conciliator in attending and /or chairing Project Board Meetings, this will be agreed by the Parties prior to the award of the Contract.
3. any other duties agreed by the Parties and charged by the Standing Conciliator in performing their duties.

The rate shall not include any fee charged by the Standing Conciliator in conciliating any dispute referred under clause 13.2. In this case the Standing Conciliator shall identify their fee for acting as a conciliator for the particular dispute referred under sub-clause 13.2 and the fee will be shared between the parties in the manner set out in the conditions, see sub-clause 13.2.

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2.8.2 Standing Conciliator fees, continued.

If the parties cannot agree the appointment of the Standing Conciliator in advance of the award of the contract, then the sum stated as the reserved sum shall stand as the Contractor's sole entitlement for their share of the fee for the Standing Conciliator's services. The reserved sum shall be included in the Contract Sum and shall not be adjustable via Change Order nor compensation event. If the Contractor's share of the fee sought by the Standing Conciliator, appointed by the nominated body in the Schedule Part 1N, exceeds the sum in the Contract Sum, then the Contractor will pay 50% of the excess fee without entitlement to recoup costs from the Employer.

2.8.3 Function of the Standing Conciliator

Where a dispute is referred to conciliation under sub-clause 13.2, the Standing Conciliator is to fulfil the role of conciliator under sub-clause 13.2 of the Contract. If the dispute is not resolved by agreement within 42 calendar days after the dispute is referred to conciliation under sub-clause 13.2, or a longer period proposed by the Standing Conciliator and agreed by the Parties, the Standing Conciliator shall give both Parties a written recommendation. The Standing Conciliator shall base the recommendation on the Parties' rights and obligations under the Contract.

Note: *The 42 calendar day period noted above commences on the date of referral of the dispute to conciliation only where a Standing Conciliator is appointed. Where the Standing Conciliator has not yet been appointed, then the 42 day calendar period shall commence from the date of appointment of the Standing Conciliator.*

In the situation where the Contract does not require the appointment of a Standing Conciliator then the 42 day calendar period shall commence from the date of appointment of a Conciliator.

2.8.4 Conciliation Process under the Standing Conciliator

The conciliation process under the Standing Conciliator is to run as per the process defined under sub-clause 13.2 of the Contract with the following exceptions;

- There is no requirement to agree an appointment of a conciliator following referral.
- The conciliation process should commence immediately following referral.
- The Parties may agree to have the Standing Conciliator hold regular interval meetings to hear disputes referred to conciliation in bundles. Caution should be exercised here by both Parties to ensure that the number of disputes heard at a single hearing are not so many that they cannot be adequately addressed by the Standing Conciliator. The Standing Conciliator should be requested to advise the Parties on this issue.

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**2.8.5
Relationship
between the
Standing
Conciliator and
the Project Board**

The relationship between the Project Board and the Standing Conciliator must be carefully managed by the Parties and the Standing Conciliator, to ensure the most effective resolution of disputes for the benefit of the project. The following is a list of the possible extents of the relationship;

- The Standing Conciliator may, with the agreement of both Parties, chair or be invited to attend the Project Board meetings.
 - The Standing Conciliator may, with the agreement of both Parties, either on his/her own initiative or at the request of either Party, informally assist the Parties in resolving any disputes.
 - The Standing Conciliator may, with the agreement of both Parties, offer views, either orally or written, and in any case without prejudice, of the likely outcomes of a dispute under consideration for referral to conciliation.
 - The Standing Conciliator may, with the agreement of both Parties, hold separate meetings with each Party to the Project Board.
-

2.9 The Neutral Advisor

PW-CF10 provides provision under Schedule 11 Part 1 for the appointment of a *Neutral Advisor*. The Employer may name in the schedule the Neutral Advisor or failing this the Parties should jointly appoint a Neutral Advisor within 28 days after the date of the Contract. Failing agreement on the appointment of the Neutral Advisor an appointing person or body is named in the Schedule.

The functions of the Neutral Advisor are;

- to facilitate co-operation between the Parties and with the Employer's Representative in ways agreed by the Parties and the neutral adviser;
 - to assist the Parties and the Employer's Representative in resolving disagreements in ways agreed by the Parties and the neutral adviser;
 - to act as conciliator for disputes under part 2 of Schedule 11 unless another is agreed
-

Part 3

Arbitration and the Courts

Section 3.1 Adjudication

Section 3.2 Arbitration

Section 3.3 The Courts

3.1 Adjudication

Adjudication is a formal process of Alternative Dispute Resolution, (ADR), which was introduced to the Irish Construction Industry on the 25th of July 2016 under the Construction Contracts Act 2013.

Either Party has the right to refer for Adjudication, in accordance with section 6 of the Act, any dispute relating to payment arising under the construction contract.

For more information on the process and the Construction Contracts Act 2013 please refer to:

1. <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2013/a3413.pdf>.
2. <http://www.irishstatutebook.ie/eli/2013/act/34/enacted/en/pdf>

3.2 Arbitration

Arbitration is a formal process of Alternative Dispute Resolution, (ADR), in widespread use in the Irish Construction Industry and is, in general, the ultimate stage for resolution of disputes under the Public Works Contracts. It should be noted that Arbitration is not a requirement under PW-CF6, PW-CF8 or PW-CF11.

Where a dispute under a Public Works Contract proceeds to Arbitration the Capital Works Management Framework Arbitration Rules *for Use with Public Works and Construction Services Contracts* – AR 1 shall be used.

Refer to <http://constructionprocurement.gov.ie/arbitration-rules/>.

3.3 The Courts

The Public Works forms of Contract have varying requirements with regards use of the Irish Courts:

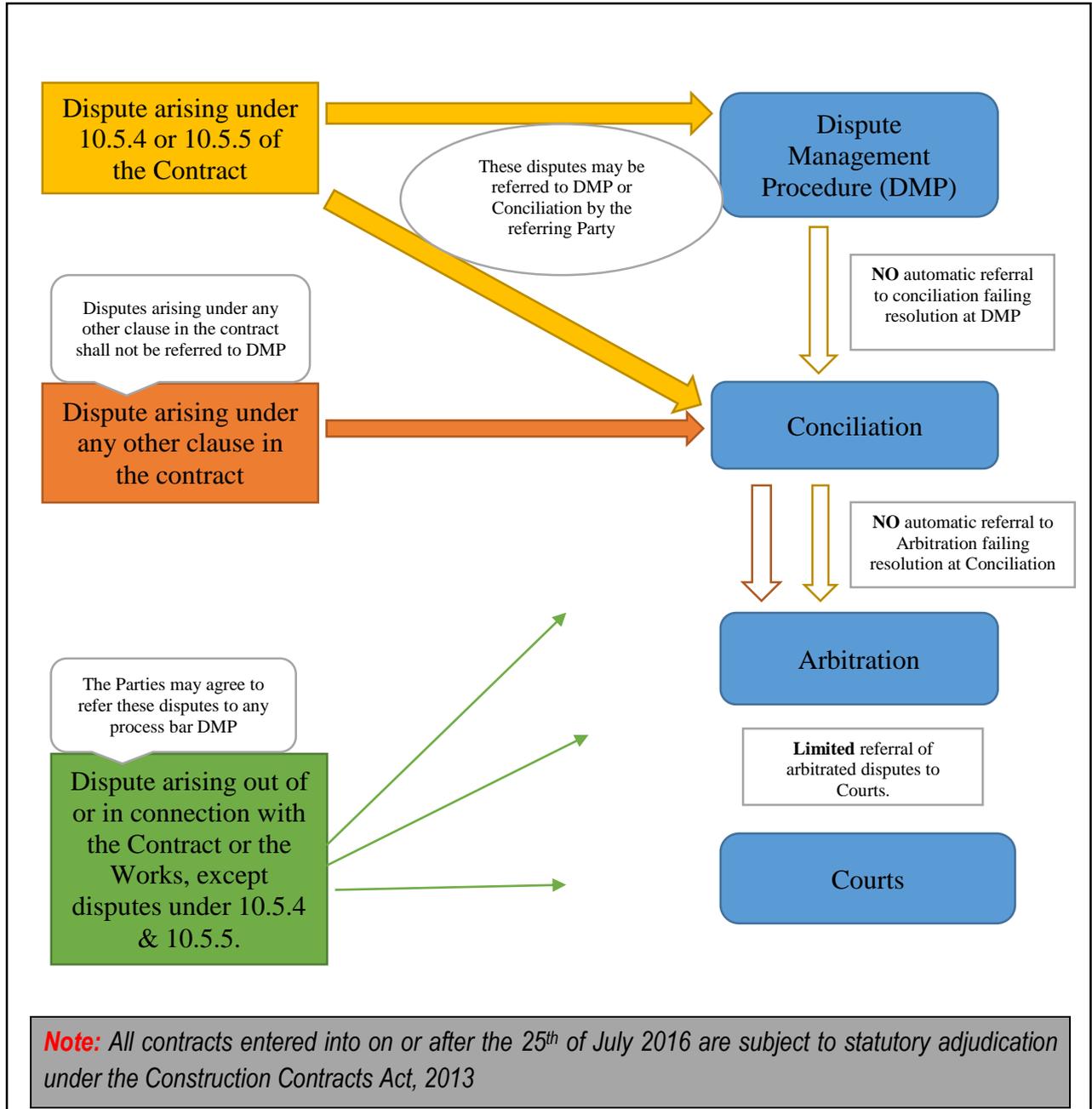
- PW-CF1 to PW-CF5 requires the Parties to submit to the jurisdiction of the Irish Courts for disputes arising out of, or in connection with the Contract, whereas disputes under the Contract shall be ultimately resolved at Arbitration
- PW-CF6, PW-CF8 and PW-CF11 requires the Parties to submit to the jurisdiction of the Irish Courts.
- PW-CF7 and PW-CF10 requires the Parties to submit to the jurisdiction of the Irish Courts but requires that disputes under the Contract shall be ultimately resolved at Arbitration

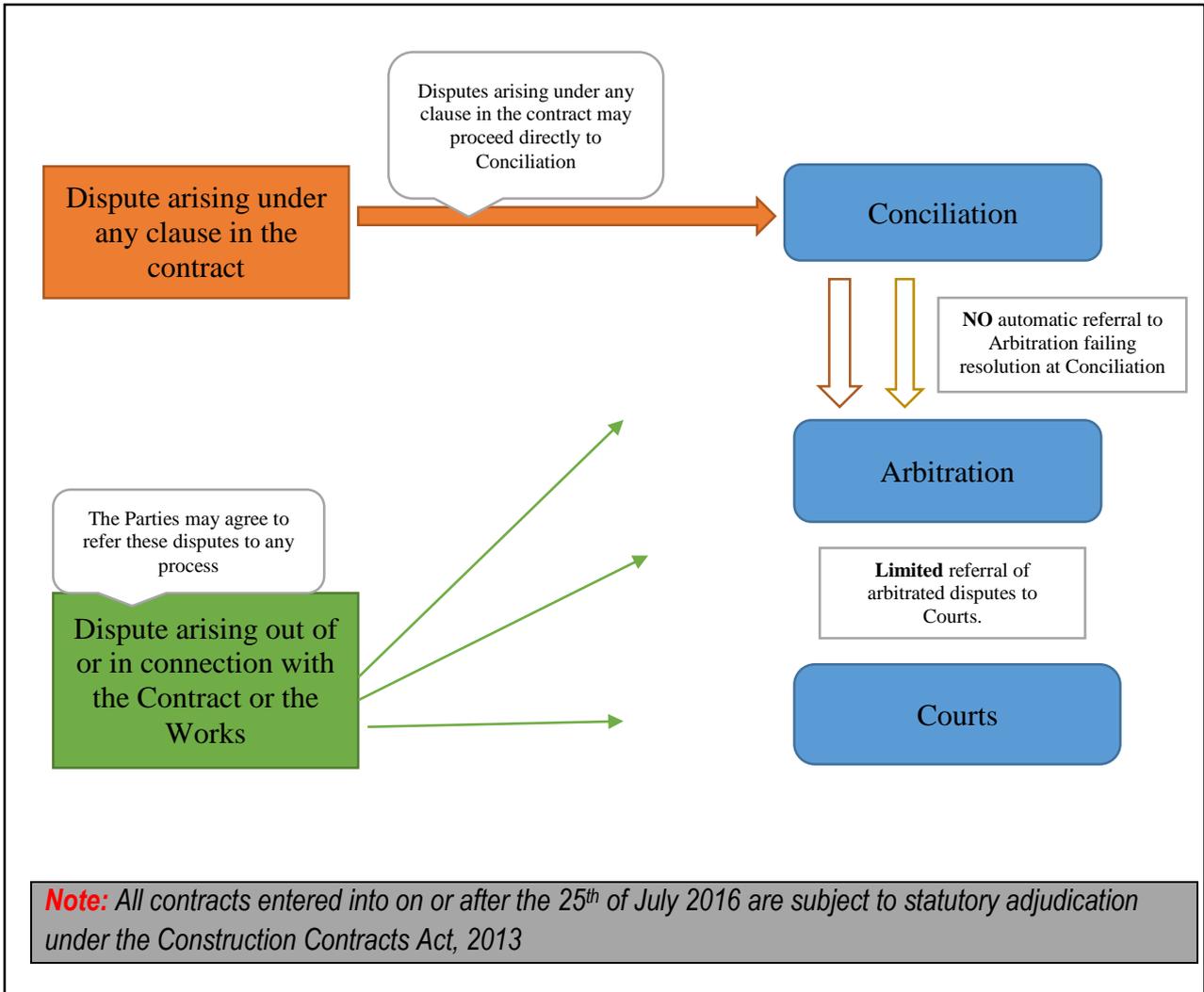
Part 4

Dispute Flow Diagrams for the Public Works Contracts

Section 4.1

PW-CF1 to PW-CF4



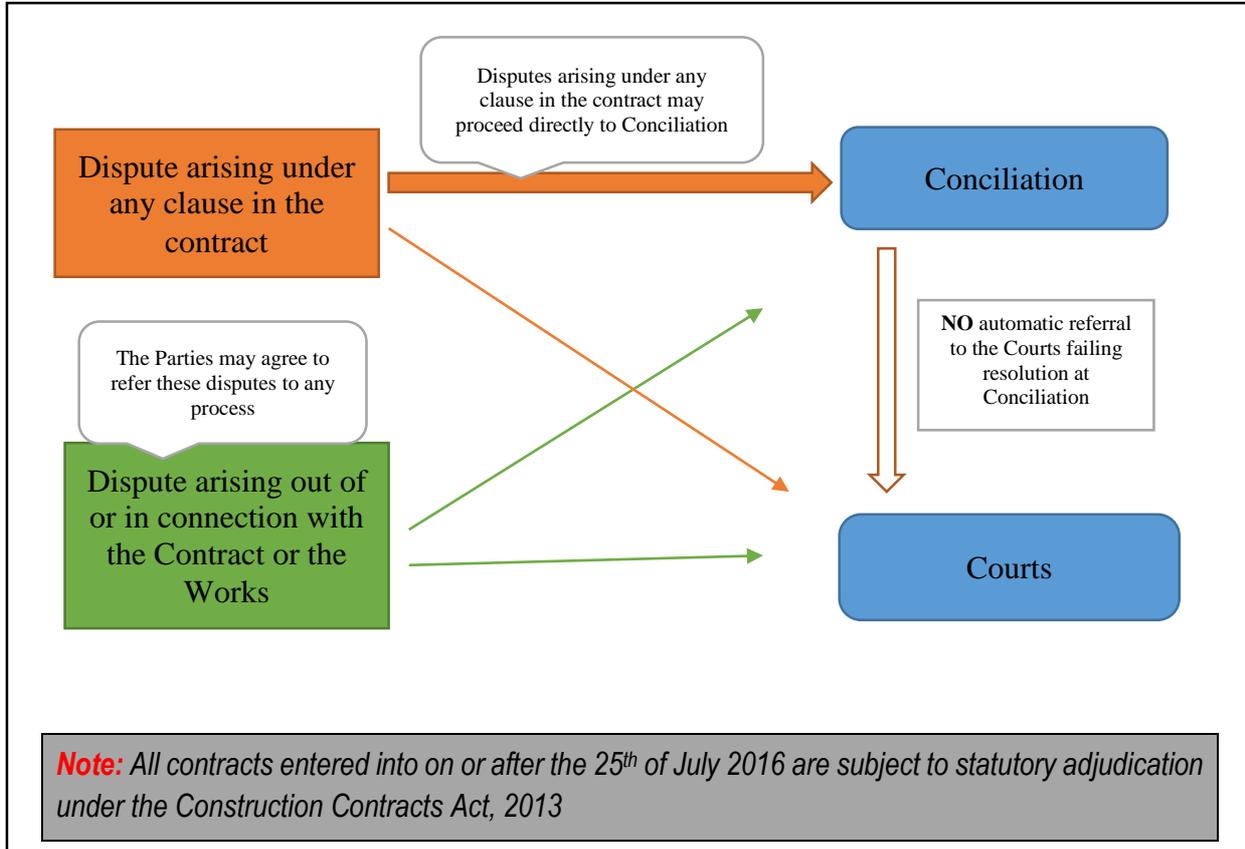


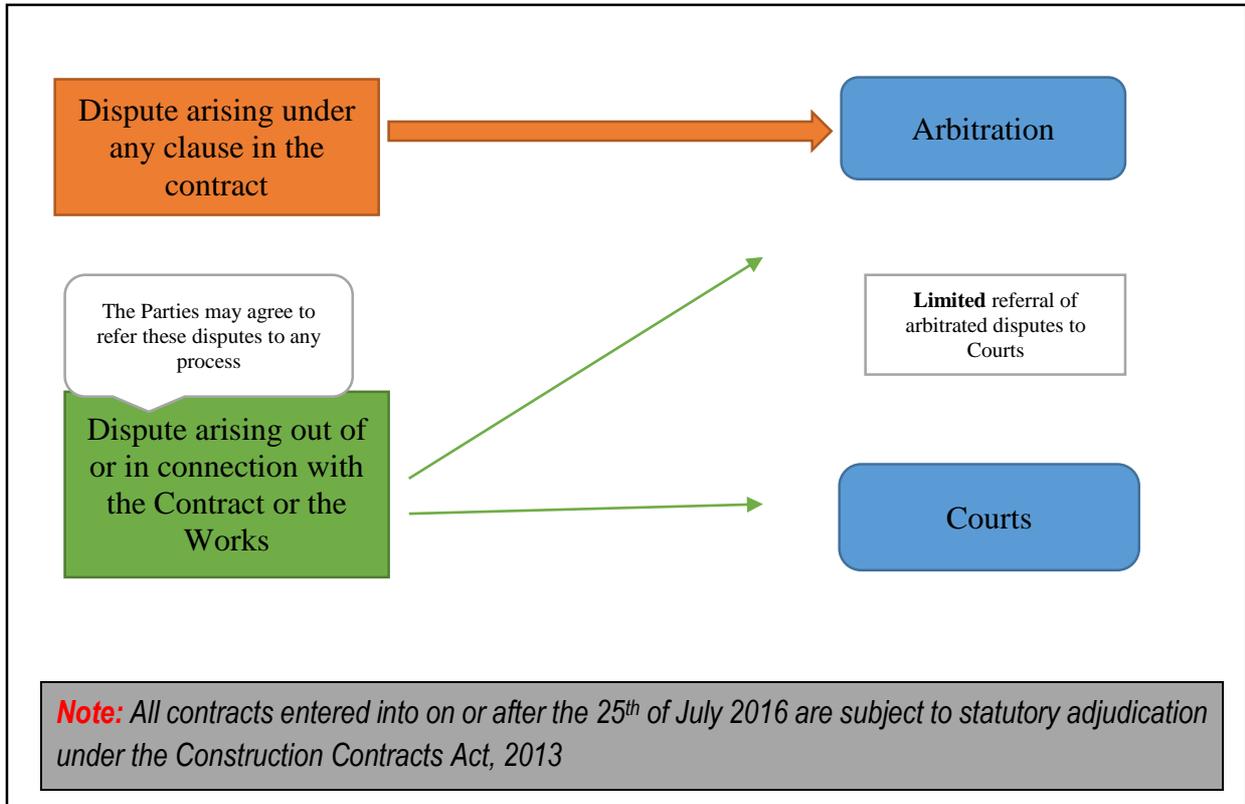
Part 4

Dispute Flow Diagrams for the Public Works Contracts

Section 4.3

PW-CF6 and PW-CF11



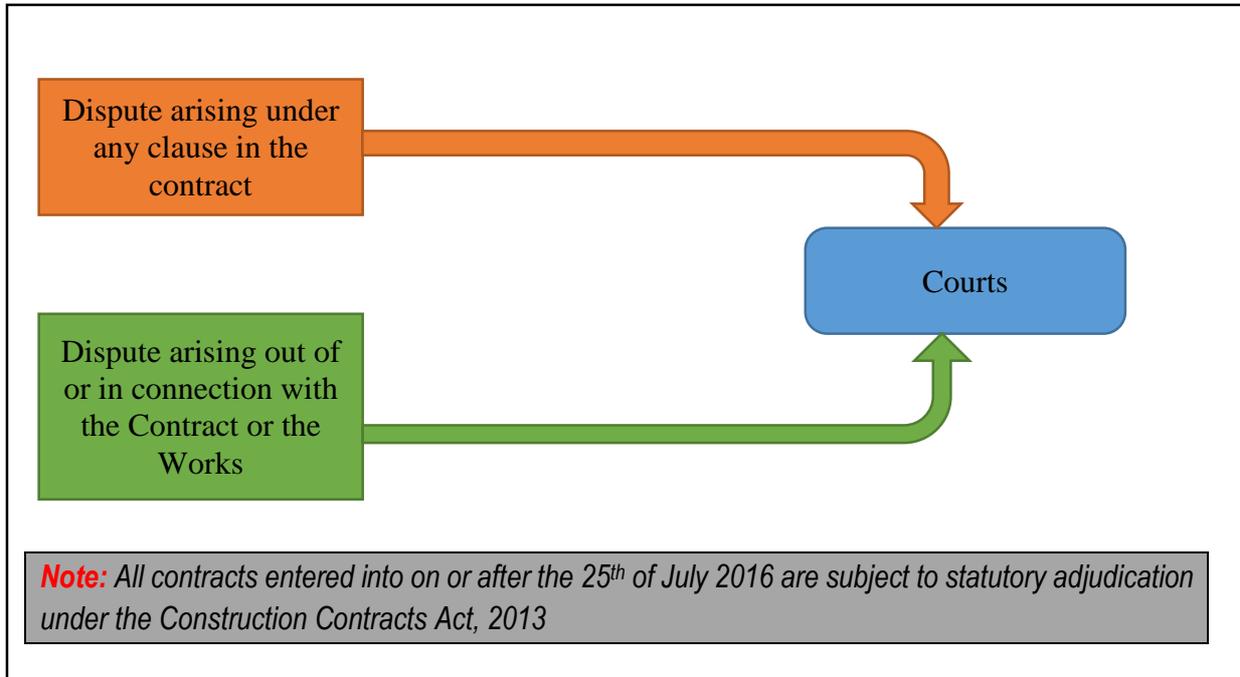


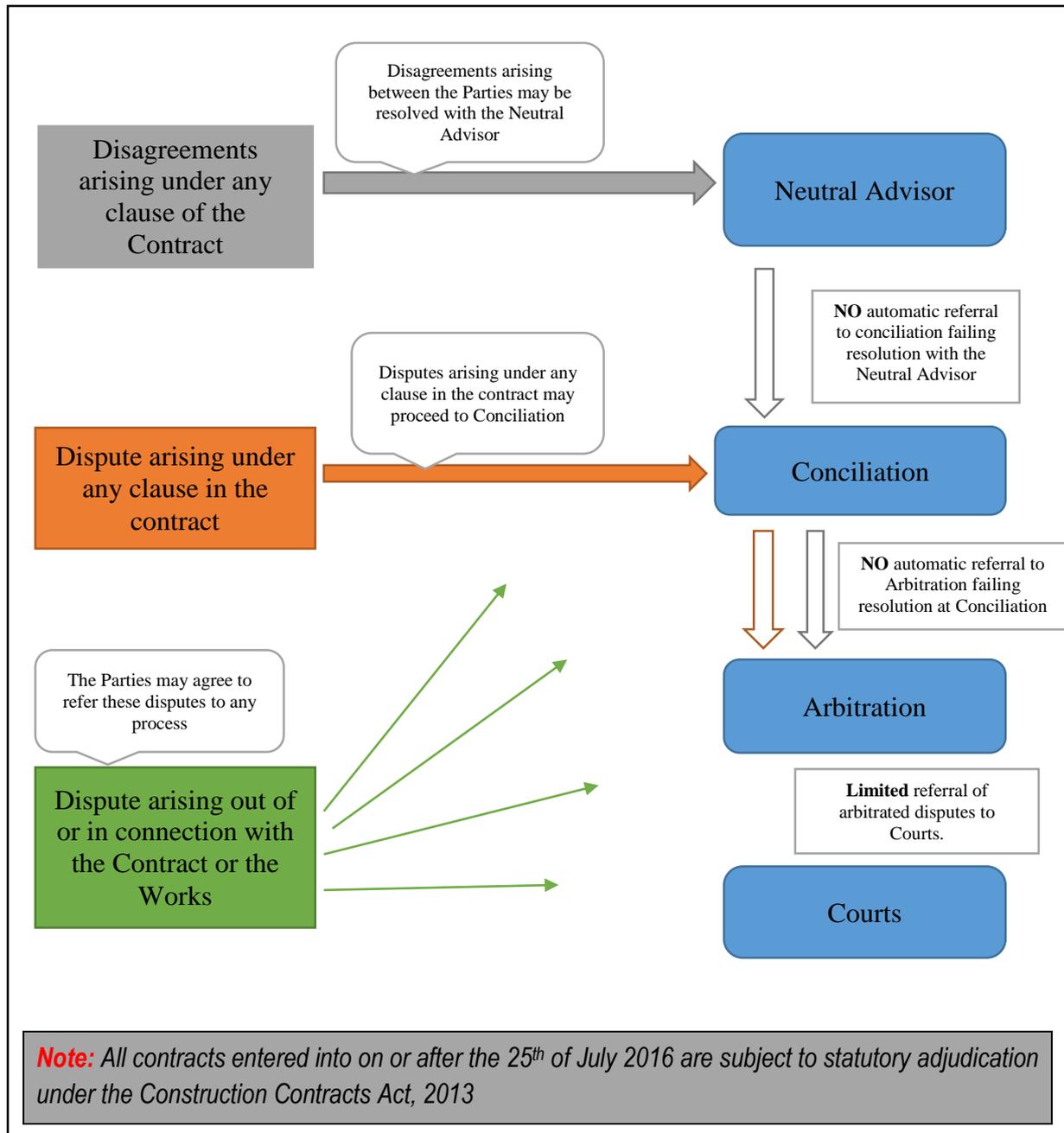
Part 4

Section 4.5

Dispute Flow Diagrams for the Public Works Contracts

PW-CF8





End