



***CLAIMS CLASS***

## **MODULE 10**

### **Claims, Disputes and Arbitration**

#### **VIDEO 1**

#### **Contractor's Claims, Dispute Adjudication, Arbitration**

# Clause 20 – Claims, Disputes and Arbitration

## 20.1 Contractor's Claims

- If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, he shall give notice not later than 28-days after the Contractor became aware, or should have become aware, of the event
- If the Contractor fails to give notice within such period of 28-days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim
- The Contractor shall also submit any other notices which are required by the Contract
- The Contractor shall keep contemporary records to substantiate any claim

# Clause 20 – Claims, Disputes and Arbitration

## 20.1 Contractor's Claims

- The Engineer may monitor the record-keeping and/or instruct the Contractor to keep further contemporary records
- Within 42-days after the Contractor became aware of the event, the Contractor shall submit a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed
- If the event or circumstance giving rise to the claim has a continuing effect:
  - The claim shall be considered as interim
  - The Contractor shall send further interim claims at monthly intervals
  - The Contractor shall send a final claim within 28-days from the time that the final effects may be ascertained

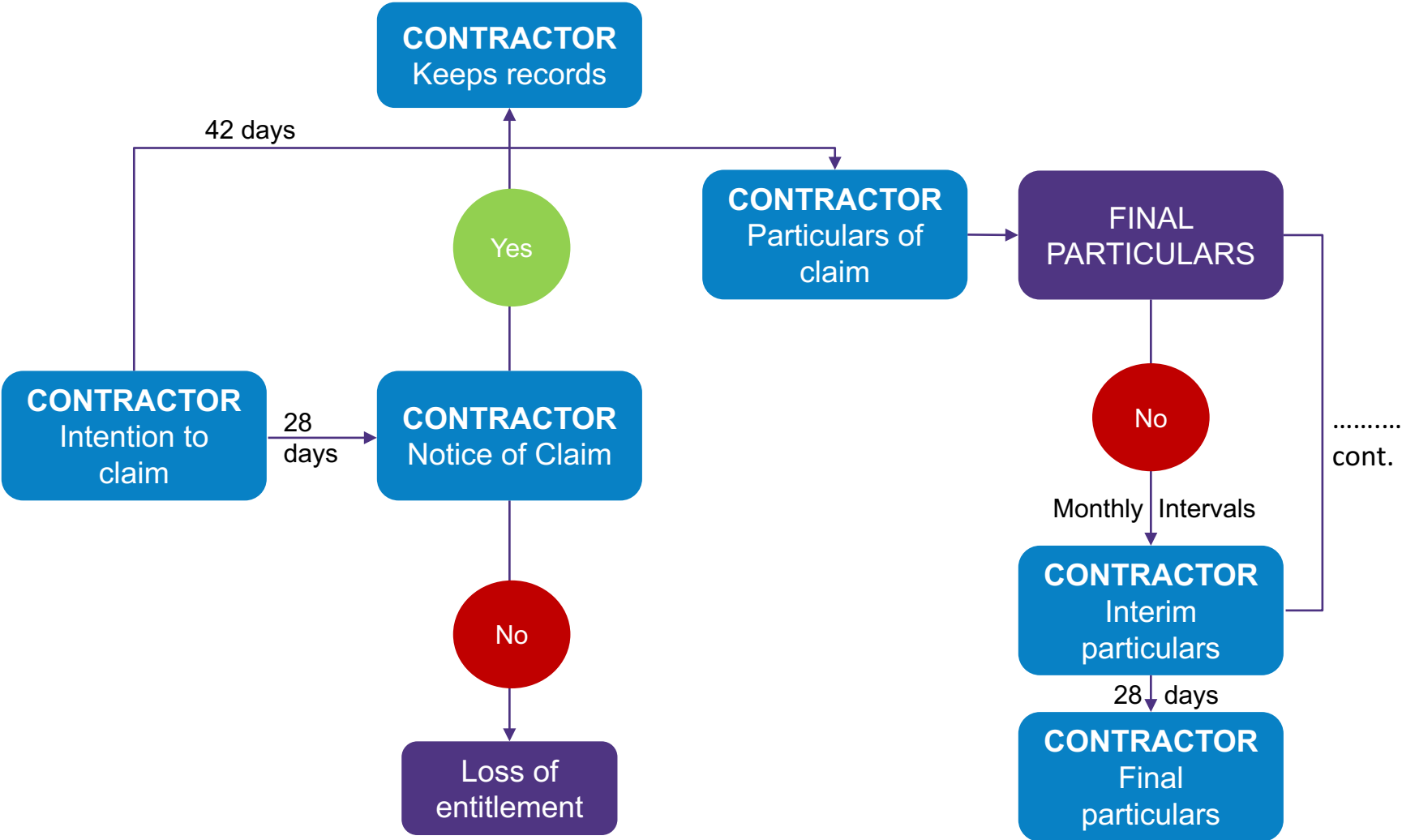
# Clause 20 – Claims, Disputes and Arbitration

## 20.1 Contractor's Claims

- Within 42-days after receiving a claim or any further particulars supporting a previous claim, the Engineer shall respond with approval, or with disapproval and detailed comments
- The Engineer may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within 42-days
- Each Payment Certificate shall include amounts that have been reasonably substantiated as being due
- The Engineer shall agree or determine the matters
- If the Contractor fails to comply with this or another Sub-Clause in relation to any claim, any award shall take account of the extent to which the failure has prevented proper investigation. This provision does not apply if the Contractor has failed to provide notices

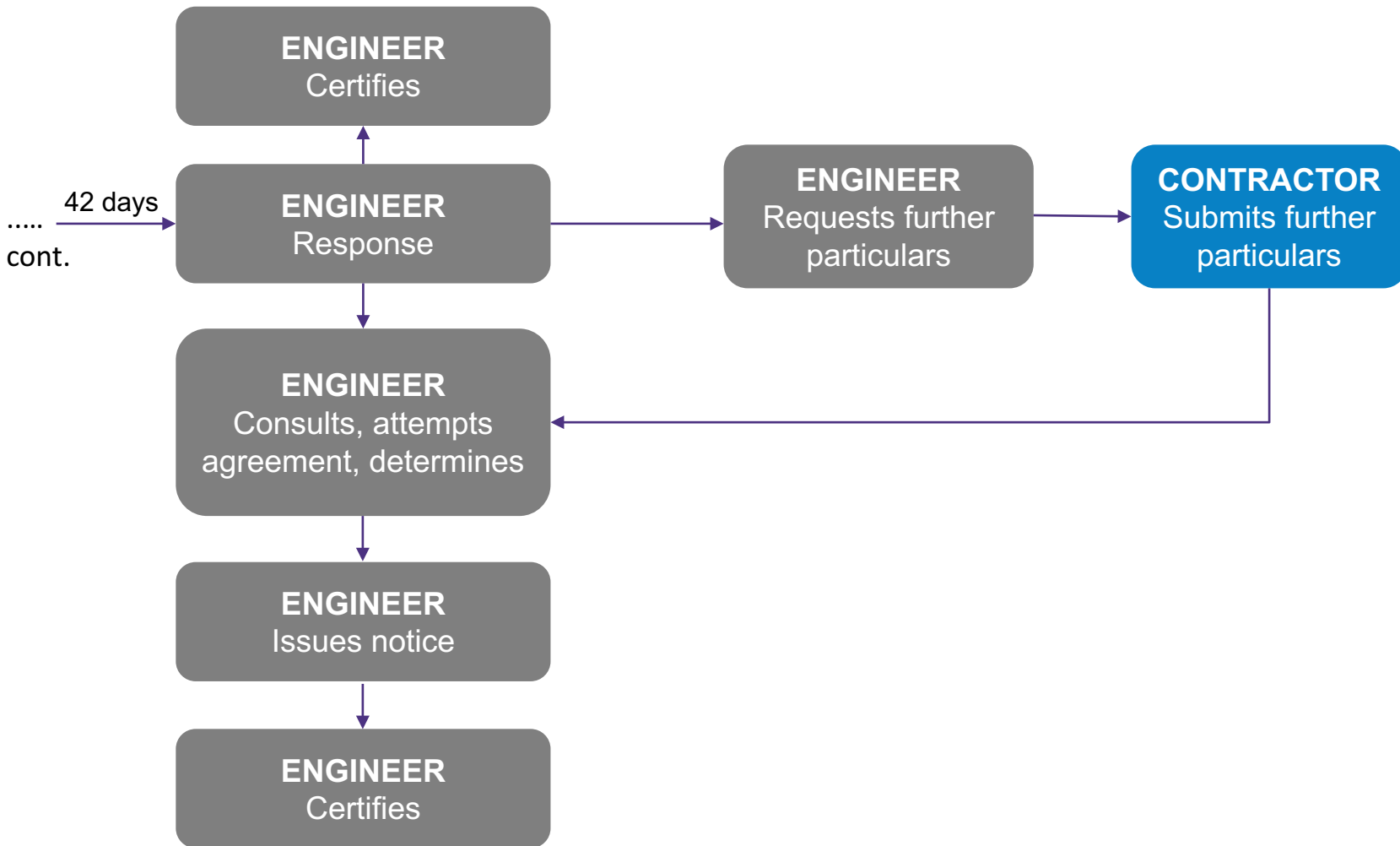
# Clause 20 – Claims, Disputes and Arbitration

## Process for Contractor's Claims (1)



# Clause 20 – Claims, Disputes and Arbitration

## Process for Contractor's Claims (2)



# Clause 20 – Claims, Disputes and Arbitration

## 20.2 Appointment of the Dispute Adjudication Board

- Disputes shall be adjudicated by a Dispute Adjudication Board (DAB)
- The Parties shall appoint a DAB by the date stated in the Appendix to Tender
- The DAB shall comprise either one or three suitably qualified persons as stated in the Appendix to Tender. If the number is not stated, the DAB shall comprise three persons
- If the DAB comprises three persons, each Party shall nominate one member for the approval of the other Party. The Parties shall consult both these members and shall agree upon the third member, who shall be appointed to act as chairman

# Clause 20 – Claims, Disputes and Arbitration

## 20.2 Appointment of the Dispute Adjudication Board

- If a list of potential members is included in the Contract, the members shall be selected from those on the list
- The agreement between the Parties and the individual members shall incorporate the General Conditions of Dispute Adjudication Agreement
- The remuneration of each member shall be mutually agreed upon by the Parties
- Each Party shall be responsible for paying one half of the remuneration
- If at any time the Parties agree, they may jointly refer a matter to the DAB
- Neither Party shall consult the DAB on any matter without the agreement of the other Party



# Clause 20 – Claims, Disputes and Arbitration

## 20.3 Failure to Agree Dispute Adjudication Board

- If any of the following conditions apply:
  - The Parties fail to agree upon the appointment of a member of the DAB by the date stated in the Appendix to Tender
  - Either Party fails to nominate a member
  - The Parties fail to agree upon the appointment of a replacement person
- The appointing entity named in the Appendix to Tender shall, upon request, appoint this member of the DAB

# Clause 20 – Claims, Disputes and Arbitration

## 20.4 Obtaining Dispute Adjudication Board's Decision

- If a dispute arises between the Parties either Party may refer the dispute to the DAB
- Both Parties shall make available information, access and appropriate facilities, as the DAB may require
- Within 84-days after receiving the reference, the DAB shall give its decision, which shall be reasoned
- The decision shall be binding for both Parties

# Clause 20 – Claims, Disputes and Arbitration

## 20.4 Obtaining Dispute Adjudication Board's Decision

- If either Party is dissatisfied with the decision, then either Party may give notice within 28-days
- If the DAB fails to give its decision within the period of 84-days (or as otherwise approved), either Party may, within 28-days, give notice of dissatisfaction, setting out the reason(s) for dissatisfaction.
- Neither Party shall be entitled to commence arbitration unless a notice of dissatisfaction has been given
- If the DAB has given its decision and no notice of dissatisfaction has been given within 28-days, the decision shall become final and binding

# Clause 20 – Claims, Disputes and Arbitration

## 20.5 Amicable Settlement

- Where notice of dissatisfaction has been given of a DAB decision, both Parties shall attempt to settle the dispute amicably before the commencement of arbitration
- Arbitration may be commenced 56-days after the notice of dissatisfaction was given

# Clause 20 – Claims, Disputes and Arbitration

## 20.6 Arbitration

- Any dispute in respect of a DAB's decision that has not become final and binding shall be settled by international arbitration
- The dispute shall be settled under the Rules of Arbitration of the International Chamber of Commerce
- The dispute shall be settled by three arbitrators
- The arbitrators shall have power to open up, review and revise any certificate, determination, instruction, opinion or valuation of the Engineer, and any decision of the DAB

# Clause 20 – Claims, Disputes and Arbitration

## 20.6 Arbitration

- The Engineer may be called as a witness and to give evidence
- Neither Party shall be limited in the proceedings before the arbitrators to the evidence previously put before the DAB
- Any decision of the DAB shall be admissible in evidence
- The obligations of the Parties, the Engineer and the DAB shall not be altered by reason of any arbitration being conducted

# Clause 20 – Claims, Disputes and Arbitration

## 20.7 Failure to Comply with the Dispute Adjudication Board's Decision

- In the event that:
  - Neither Party has given notice of dissatisfaction
  - The DAB's decision has become final and binding
  - A Party fails to comply with this decision
- The other Party may refer the failure to arbitration

# Clause 20 – Claims, Disputes and Arbitration

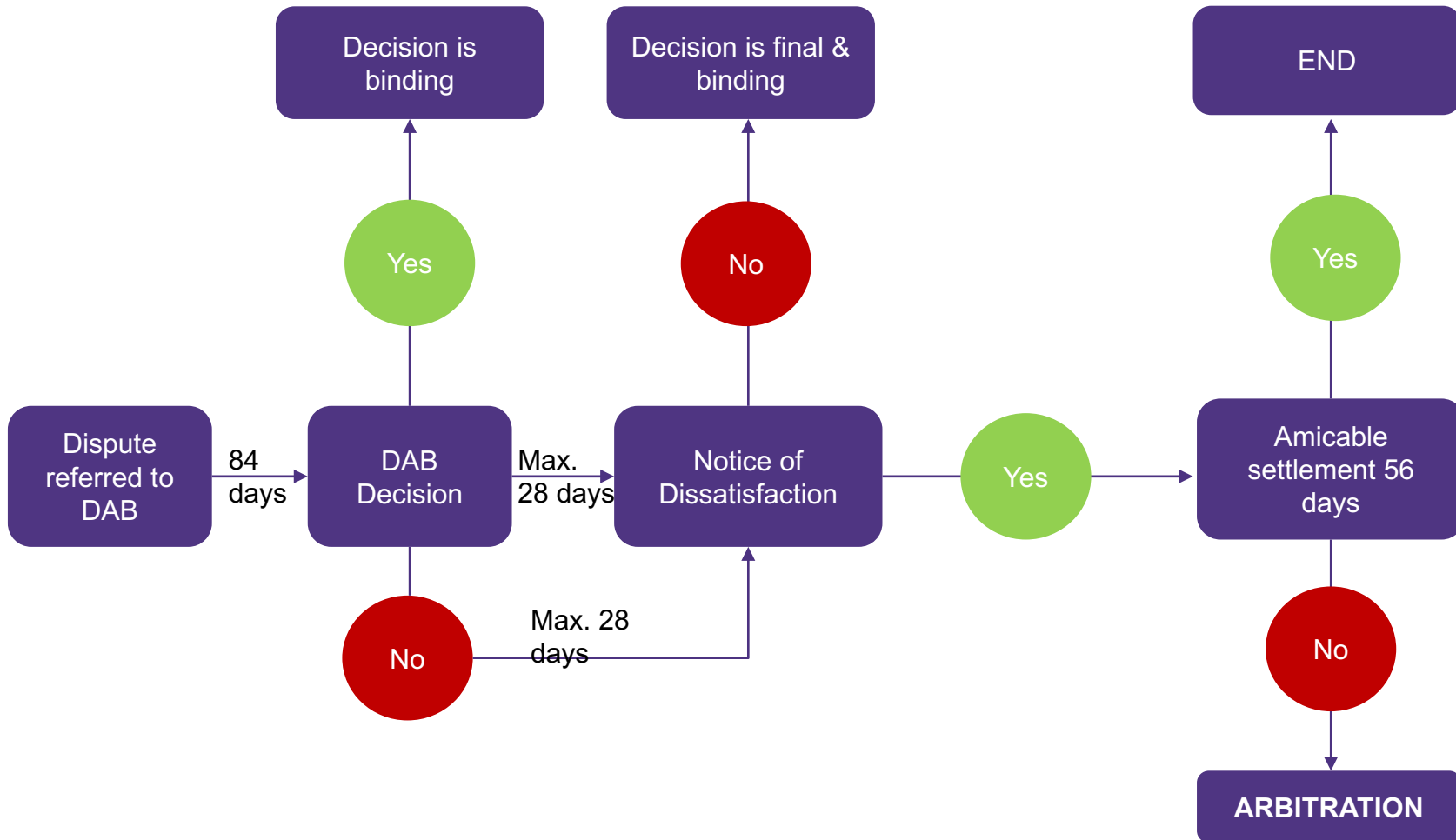
## 20.8 Expiry of Dispute Adjudication Board's Appointment

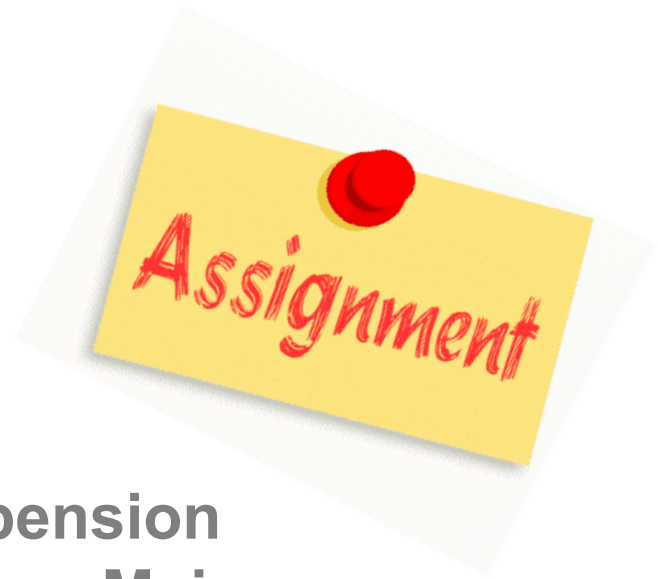
- If a dispute arises and there is no DAB in place, the dispute may be referred directly to arbitration



# Clause 20 – Claims, Disputes and Arbitration

## Dispute and Arbitration Process





# Assignment 6

Module 8 - Termination and Suspension

Module 9 - Risk, Liability and Force Majeure

Module 10 - Claims, Disputes and Arbitration

Refer to the case studies for this Module and answer the questions.

***Refer to the Student Guidebook for details on how to submit your assignment for grading.***

# **Congratulations!**

**You've reached the end of the  
course.**