

The Society for Computers & Law Adjudication Rules

Guidance Notes

Key features of the SCLA Rules may be summarised as follows:

An adjudication procedure for “technology” disputes – meaning any dispute arising from a contract for the provision of tech-related goods and services including software development contracts, outsourcing arrangements, systems integration contracts, IT consultancy contracts, software licensing agreements, blockchain/smart contracts and cloud computing contracts. This is not an exhaustive definition and is for guidance only.

There is no restriction on the size or scope of technology disputes that may be referred provided that the matter is capable of resolution within the timescales provided for in the Rules, in particular the maximum period of three calendar months for the Adjudicator to make his or her Decision.

A pre-selected panel of Adjudicators (set up and maintained by SCL) from which an Adjudicator may be chosen for individual adjudications. The panel approach should also save time at the appointment stage.

All adjudicators must satisfy the SCL Adjudication Eligibility and may be lawyers or non-legally qualified technology specialists.

The Adjudicator’s Decision will be provisionally binding meaning the parties may reopen the dispute in subsequent litigation or arbitration i.e. the consequences are the same as in statutory construction adjudication.

However, any subsequent proceedings must be commenced within six calendar months of the Effective Date of the Decision. And, in the meantime, the parties must comply with the adjudicator’s decision.

Thus, by way of example, where a Decision requires payment of money by one party to another, the payment must be made and cannot be recovered unless a court or arbitral body subsequently reverses the Decision.

Other features include an express requirement that Adjudicators conduct adjudications in a timely and cost-effective manner and avoid unnecessary expense.

For their part, parties are required to act in good faith and co-operate throughout the procedure. These are express obligations.

Mediation remains an option and may take place at any time if the parties agree: i.e. before, after or even during the procedure itself.

Application and registration fees are modest and reflect the fact that SCL will operate as an appointing body only.

Enforcement is provided for in Rule 39 and the successful party shall be entitled to enforce the Decision on an expedited basis that may be available under the procedures of the Technology & Construction Court or in any other suitable court.

Introduction

Rule 1

The SCLA Rules may be incorporated into contracts using one of the following SCL Model Adjudication Clauses:

Model A

"Any dispute arising under this agreement shall be referred to adjudication in accordance with the Society for Computers & Law Adjudication Rules (SCLA Rules) and no litigation or arbitration proceedings relating to that dispute may be commenced prior to the publication of the Adjudicator's Decision.

If either party wishes to commence litigation or arbitration proceedings after the Decision has been published it must do so within six calendar months of the Effective Date of the Adjudicator's Decision, otherwise the claim will be time-barred.

"

Model B

"Either party may refer any dispute arising under this agreement to adjudication in accordance with the Society for Computers & Law Adjudication Rules (SCLA Rules) and, if a dispute is so referred, no litigation or arbitration proceedings relating to that dispute may be commenced prior to the publication of the Adjudicator's Decision.

If either party wishes to commence litigation or arbitration proceedings after the Decision has been published it must do so within six calendar months of the Effective Date of the Adjudicator's Decision, otherwise the claim will be time-barred."

Model C

"The parties may agree to refer any dispute arising under this agreement to adjudication in accordance with the Society for Computers & Law Adjudication Rules (SCLA Rules), in which case no litigation or arbitration proceedings relating to that dispute may be commenced prior to the publication of the Adjudicator's Decision.

If either party wishes to commence litigation or arbitration proceedings after the Decision has been published it must do so within six calendar months of the Effective Date of the Adjudicator's Decision, otherwise the claim will be time-barred."

Incorporation of an SCL Model Adjudication Clause into contracts is not mandatory. Ad hoc referrals to the SCL Rules are also welcome.

Commencement

Rule 3.1

Evidence of agreement to adjudicate under the SCLA Rules may be in the form of the model clauses or other agreement between the parties.

Rule 3.4

An explanation of the technology or technical solution involved will assist the SCL Chairman in determining which Adjudicator to appoint from the SCL Adjudication Panel.

Rule 3.5

This rule enables parties to provide additional information that may assist the SCL Chairman in deciding who to appoint, including whether to appoint a lawyer or non-legally qualified technology specialist as Adjudicator.

Appointment

Rules 7-10

The procedure here provides for nomination of an Adjudicator by the SCL Chairman but also gives the parties the option of choosing a different Adjudicator (from the SCL Adjudication Panel) provided they do so with two Working Days of the nomination. If they do not, the Adjudicator nominated by the SCL Chairman's will be appointed.

Rules 11-13

Rules 11-13 cover the circumstances in which an Adjudicator may resign or have his or her appointment revoked. These rules also clarify that Adjudicators must be a "natural person" and not a firm or other entity.

Scope of the adjudication

Rule 15

The scope of the adjudication can be modified if the parties agree and the Adjudicator approves. The intention is to allow related matters to be included for convenience but not where the proposed changes materially alter the scope of the adjudication procedure such that it cannot be concluded within three months.

Purpose of the Adjudication

Rule 16

One of the aims of the procedure is to achieve speedy and cost-effective outcomes hence adjudicators are required to administer the procedure in a timely and cost-efficient manner and avoid unnecessary expense.

Good faith

Rule 17

Rule 17 requires the parties to act in good faith and co-operate throughout the procedure. This is an express obligation.

Statement of Case, Response and Reply

Rules 18-23

The parties are required to keep their pleadings short and to the point. Similarly, they must only submit supporting documentation that is key and directly relevant to the issues in the case.

Procedure and conduct

Rule 25

This is a non-exhaustive set of powers available to the Adjudicator which he or she may deploy on application by the parties or on his or her own initiative.

Rule 26

This rule empowers the Adjudicator to continue with the procedure and make a Decision even though one or both parties have failed to comply with his or her directions during the procedure and have caused delay or otherwise acted in an unreasonable manner so as to frustrate or hinder the timely conduct of the procedure.

The Decision

Rule 30

The three-calendar month period provided for is intended to operate as a back-stop. Adjudicators are encouraged to expedite the procedure wherever possible and deliver their Decision at the earliest opportunity.

Rule 34

Parties are free to litigate or arbitrate after the Decision has been published. In that sense the Decision is non-binding. However, any subsequent legal action must be commenced within the six-calendar month period prescribed by **Rule 36**; otherwise, the proceedings will be time-barred.

Enforcement

Rule 39

The SCL adjudication procedure is suitable for disputes in England and Wales. There is no restriction on use of the procedure for cross-border or international disputes, but parties should be aware that such Decisions may be harder to enforce unless it can be shown that the English courts have jurisdiction.

Decisions should be capable of summary enforcement except where the adjudicator has demonstrated bias or acted outside his or her terms of reference under the procedure.