

The UK Jurisdiction Taskforce (UKJT) of Lawtech UK
Public Consultation on the Digital Dispute Resolution Rules

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Foreword

In November 2018, the UK Jurisdiction Taskforce published its Legal Statement on the Status of Cryptoassets and Smart Contracts. The Legal Statement expressed the view that cryptoassets were property and smart contracts were contracts under English law, and has been very well received in many jurisdictions.

The UK Jurisdiction Taskforce is now consulting publicly on a set of Digital Dispute Resolution Rules which can be incorporated into on-chain digital relationships and smart contracts. They are ground-breaking in that they provide for:

- Arbitral or expert dispute resolution in very short periods

- Arbitrators to implement decisions directly on-chain using a private key •

Optional anonymity of the parties.

With the benefit of input received through this consultation, it is hoped to publish the Digital Dispute Resolution Rules for use by commercial parties in Spring 2021.

I am extremely grateful to the sub-committee, which has worked so hard to prepare this draft (David Quest QC, Lawrence Akka QC, Dorothy Livingston, Anne Rose, David McIlwaine, Richard Hay and Rory Conway).

Sir Geoffrey Vos, Master of the Rolls

The UKJT comprises:-

Sir Geoffrey Vos (Chancellor of the High Court and Chair of the UKJT) Sir Nicholas

Green (Chair of the Law Commission of England and Wales, as an observer) Richard

Hay (Linklaters LLP)

Lawrence Akka QC (20 Essex Street)

Peter Hunn (Accord Project)

Matthew Smith (Innovation Hub of the Financial Conduct Authority as an

observer) Mary Kyle (City of London Corporation)

Sir Antony Zacaroli (Justice of the High Court)

Background

Following the publication last year of the Legal Statement on Cryptoassets and Smart Contracts, the UKJT intends to consult on a possible new arbitration procedure aimed at facilitating the rapid, informal and cost-effective resolution of disputes arising out of novel digital technologies, particularly digital assets, smart contracts, blockchain and fintech. A key objective is to allow those involved to take full advantage of the flexibility offered by UK arbitration to tailor dispute resolution procedures to the distinctive features of such technologies, and to ensure that disputes will be resolved quickly by arbitrators with appropriate expertise.

A first draft of the proposed rules is included below at Annex A. The final version will take into account the results of the consultation.

The draft rules provide for arbitration pursuant to the English Arbitration Act 1996, which gives parties and arbitrators a great deal of autonomy in how their disputes should be resolved. To take effect, they must be agreed to by the parties, either before a dispute has

arisen (by appropriate incorporation into their legal relationship) or afterwards by agreement. An option is also provided for what is known as expert determination, should the parties choose it. The drafting objectives were as follows:

- The rules should be as brief and simple as possible, setting out only what is reasonably necessary. They should be sufficiently flexible to accommodate a wide range of technological disputes, including both “traditional” disputes arising out of conventional written contracts and “novel” disputes arising out of the use of digital assets and smart contracts, where the parties might be unknown to each other and might have transacted anonymously on a blockchain. The intention is that any further guidance as to how to use the process effectively may be provided in the form of informal, non-binding, explanatory notes, and by third party commentators.
- Arbitrators should be given maximum discretion in setting a procedure appropriate to the particular dispute, with no preconceptions about (and no need for) for any particular procedural steps, such as those involved in more formal court proceedings. As far as practicable, for example, evidence and argument should be received electronically.
- By default, disputes should be resolved on a timetable very much shorter than those contemplated in court rules or existing institutional arbitration rules. To that end, a claimant may, when starting a claim, put forward the entire case, including evidence and argument at the outset; respondents must put in some form of response (not necessarily a substantive one) within a matter of days; and a decision is generally expected within one month. It will be open to parties to request a longer timetable, which may well be required in a complex dispute, but that will be a matter for the arbitrator. The general aim is that the arbitrator will take control of the case at a very early stage and, in consultation with the parties, fashion a procedure appropriate to the case.
- The rules should recognise and give legal effect to automatic dispute resolution processes built into digital asset systems (sometimes called “on chain” resolution), for example where a participant can trigger a decision or vote the outcome of which is then automatically reflected within the system.
- Where a digital asset system provides for it, arbitrators should be able to implement decisions directly on a blockchain or within the system, using any private key or control mechanism made available to them.

- Dispute resolution under the rules should in principle be available to, and binding on, all parties interested in a digital asset into which the rules are incorporated, and the rules are intended to cast that net as widely as feasible. We recognise, however, that there may be issues as to whether and how the process becomes legally binding on those who have not explicitly adopted the rules, and that those may need to be worked out in individual cases.
- In an appropriate case, it may be possible for the parties to remain anonymous to each other (but they must disclose their identities to the arbitrators).
- The efficacy of the process is dependent on the availability of high quality and experienced arbitrators (legally and/or technologically). We propose that the appointment of arbitrators will be managed by a designated body, possibly the Society for Computers & Law, who will maintain a list of suitable persons prepared in principle to be appointed at short notice. The appointment body will have its own rules (to be drafted) and will exercise discretion itself in making a suitable appointment, having regard to any preferences expressed by the parties and the nature of the dispute.

Consultation questions

Against that background, we invite comments on the following questions:

- Is there a need for or advantage in a new arbitral process aimed at facilitating the rapid, informal and cost-effective resolution of disputes arising out of novel digital technologies?
- Does the process as described in the draft Rules meet that need?
- And if not, why?

Annex A

[DRAFT] UKJT Digital Dispute Resolution Rules

1. **Statement of purpose.** The purpose of these rules is to facilitate the rapid and cost effective resolution of commercial disputes, particularly those involving novel digital technology such as cryptoassets, cryptocurrency, smart contracts, distributed ledger technology, and fintech applications.
2. **Definitions.** In these rules:
 - a. a *digital asset* includes a cryptoasset, digital token, smart contract or other digital or coded representation of an asset or transaction; and a *digital asset system* means the digital environment or platform in which a digital asset exists;
 - b. an *interested party* means a party to a contract into which these rules are incorporated including, in relation to a digital asset, a person who has digitally signed that asset or who claims to own or control it through possession or knowledge of a digital key;
 - c. an *automatic dispute resolution process* means a process associated with a digital asset that is intended to resolve a dispute between interested parties by the automatic selection of a person or panel or artificial intelligence agent whose vote or decision is implemented directly within the digital asset system (including by operating, modifying, cancelling, creating or transferring digital assets);
 - d. *identity details* for an individual means evidence as to his or her identity and residence and for a company means evidence as to its identity, place of incorporation and principal place of business;
 - e. the *appointment body* means the Society for Computers and Law;
 - f. the *tribunal* means the arbitrator or expert (or panel of arbitrators or experts) appointed by the appointment body to resolve the dispute.
3. **Incorporation.** These rules may be incorporated into a contract, digital asset or digital asset system by including the text (which may be in electronic or encoded form) “Any

dispute shall be resolved in accordance with UKJT Digital Dispute Resolution Rules”
and, optionally, by specifying:

- a. any preferences as to the number, identity or qualifications of any persons to be appointed as arbitrators or experts;
- b. any preferences as to the procedure to be adopted for the resolution of a dispute, including as to form, timing of award, recoverable costs and anonymity;
- c. whether any dispute not subject to automatic dispute resolution should be resolved by arbitration or (in some or all respects) by expert determination.

4. Automatic dispute resolution. The outcome of any automatic dispute resolution process shall be legally binding on interested parties.

5. Submission to arbitration or expert determination. If not resolved by an automatic dispute resolution process, any dispute between interested parties arising out of the relevant contract or digital asset shall be submitted to arbitration or, if so specified, expert determination in accordance with these rules.

6. Commencement of proceedings. An interested party (a *claimant*) may commence proceedings by giving a notice of claim to each other interested party (a *respondent*) and to the appointment body. The notice shall include the following information:

- a. the claimant’s identity details;
- b. electronic contact details for the claimant and each respondent;
- c. brief details of the claim, including a statement of the remedy sought;
- d. details of any preferences specified in accordance with paragraph [3] above or subsequently agreed between the interested parties;
- e. the claimant’s proposals for paying or securing the fees of the appointment body and the tribunal;

and may also include any other material relevant to the claim, including supporting documents, supporting digital material, witness statements and arguments, and any

proposals as to the procedure to be adopted.

7. **Initial response.** Within three days of receipt of a notice of claim, each respondent shall send an initial response to the claimant, each other respondent and the appointment body. The initial response shall include the respondent's identity details and electronic contact details and may also (but need not) include comments on the claim, the respondent's proposals for the procedure, and any other material relevant to the claim.
8. **Appointment of tribunal.** The appointment body shall appoint a tribunal as soon as practicable after receipt of the initial responses and shall notify the parties of the identity of the arbitrators or experts and their electronic contact details. The appointment body shall have regard to any preferences specified or agreed as to the number, identity or qualifications of arbitrators or experts but shall not be bound by them.
9. **Procedure.** The tribunal shall have absolute discretion as to what procedure is adopted thereafter, but in exercising its discretion shall act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting their case and dealing with that of their opponent. Having regard to available technologies, the tribunal shall adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.
10. **Evidence and submissions.** Having consulted the parties, the tribunal shall have absolute discretion as to what evidence and argument it receives and in what form but shall as far as practicable permit parties to submit evidence and argument electronically. No party shall have the right to an oral hearing, and the tribunal may if it considers it appropriate determine the dispute on the basis of written submissions only.
11. **Power in relation to digital assets.** The tribunal shall have the power at any time to operate, modify, sign or cancel any digital asset relevant to the dispute using any digital signature, cryptographic key, password or other digital access or control mechanism available to it. The tribunal shall also have the power to direct any interested party to do any of those things.

12. **Time for and form of decision.** The tribunal shall use its best endeavours to determine the dispute within any time period specified or agreed by the parties or, if none is specified or agreed, within 30 days from its appointment. Any award or decision of the tribunal must be in writing (which includes in electronic form) and must be signed by the tribunal (which includes, if the tribunal thinks it appropriate, by digital signature or cryptographic key).

13. **Optional anonymity.** The claimant and each respondent must provide details and evidence of their identity to the reasonable satisfaction of the tribunal. If the incorporating text allows for anonymous dispute resolution, or the parties agree, then a claimant or respondent may provide identity details confidentially to the tribunal alone and in that case the tribunal shall not disclose them unless disclosure is necessary for the fair resolution of the dispute, for the enforcement of any order or award, for the protection of the tribunal's own interests, or if required by any law or regulation or court order.

14. **Consolidation.** Arbitral tribunals appointed in different arbitrations under these rules may, if each tribunal concurs, order that the arbitrations be consolidated and that a consolidated tribunal (composed of some or all of the members of the different tribunals) be appointed to hear them.

15. The juridical seat of any arbitration shall be England and Wales. The law applicable to these rules is the law of England and Wales, and unless the parties agree otherwise, disputes shall be resolved in accordance with the law of England and Wales. The decision of the tribunal is final. There is no right to appeal on a point of law, and there is no other right of appeal or challenge except as permitted under the Arbitration Act 1996.