

The Second Edition of the SCL Delay and Disruption Protocol

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The Society of Construction Law ('SCL') has just published the Second Edition of its Delay and Disruption Protocol.

Background

The SCL Delay and Disruption Protocol was first published in 2002. Its stated objective was:

"...to provide useful guidance on some of the common issues that arise on construction contracts, where one party wishes to recover from the other an extension of time and/or compensation for the additional time spent and the resources used to complete the project..."

The Protocol is widely used as "guidance" in construction projects around the world, and is often cited as being supportive of a particular method of delay analysis.

A review of certain aspects of the First Edition was prompted in 2013, following a number of industry reviews reflecting on how the Protocol had fared against its objective after a decade of use. Over this period there had been significant developments in the law, technology, and the industry which ultimately led to the publication of the Second Edition.

What's New?

The focus of the Second Edition is on eight particular issues, rather than a comprehensive review and re-write of the First Edition. These issues are the following:

- Preference for a programming methodology – whereas the First Edition expressed a preference for "time impact analysis" in certain circumstances, the Second Edition no longer contains preferences but instead sets out guidance on the issues to be taken into account when choosing a form of delay analysis;
- Types and descriptions of delay methodologies – the Second Edition contains an overview of the main types of delay analysis currently in use in the industry;
- Judicial references to the First Edition – this is not contained in the Second Edition, however there is a non-exhaustive list of cases available on the SCL website;
- Record keeping – the Second Edition contains further guidance on best practice for record keeping that is intended to be relevant to all projects, large and small;
- Global claims and concurrent delay – guidance on these subjects has been updated in line with legal developments and industry practice;

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- Approach to claims – the Second Edition has promoted to a new ‘Core Principle’ the submission and assessment of extension of time claims during the course of a project;
 - Model contract clauses – those contained in the First Edition have been deleted; and
 - Disruption – the Second Edition contains more guidance on disruption, together with descriptions and explanations of the methodologies that might be used for such claims.

An English Protocol?

The First Edition was produced by a sub-committee of UK SCL members, based on the law of England and Wales and aimed at the UK construction industry. One factor which influenced the decision to produce a Second Edition was evidence that the Protocol was being referenced more widely in international projects. While “internationalising” the Protocol was considered by the drafting sub-committee, the decision was for the Second Edition to remain based on the English law position.

In fact, what is now happening is that other Societies of Construction Law are developing their own supplements to adapt the Protocol to local conditions. Earlier this year the Malaysian SCL published its own supplement to the First Edition of the Protocol, and other countries may well take similar steps.

Comment

Overall, the Second Edition of the Protocol is essentially an update of the First, with changes made to reflect industry practices and English case law. Given these incremental changes, it can be expected that the Protocol will continue to be widely cited, both in England and internationally.

The major change reflected in the Second Edition is to take a pluralistic approach to delay analysis, recognising that there are a variety of ways of analysing delay on construction and engineering projects. No single method of delay analysis takes precedence over another. The critical matter is producing a clear explanation for why a project is delayed. Providing such an explanation represents a combination of project data, analytical tools and sound analysis and judgment. The benefit of the Second Edition of the Protocol is that it lays out the tools that can be used in analysing delay, building on the guidance that was offered with the First Edition.

The Second Edition of the Protocol is available on the SCL website, [here](#).

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