

C. Rules for Expert's Reports

Stichting Geschillenoplossing Automatisering (SGOA) (Foundation for the Settlement of Automation Disputes)

1. Object

1.1 The Board of Stichting Geschillenoplossing Automatisering has laid down the following Rules for making expert's reports or rendering expert's accounts in or for the prevention of disputes relating to information and communication technology.

1.2 In these Rules, 'Expert's Report/Account' means a report on an investigation concerning a particular subject in the field of information and communication technology by an expert appointed by the Board at the request of both parties or a judicial body, or of an Arbitration Board, Mediation Committee or Binding Adviser working under the Rules of the Stichting.

2. Definitions

In these Rules:

- a. 'Stichting' means Stichting Geschillenoplossing Automatisering (Foundation for the Settlement of Automation Disputes), having its office in Rijswijk;
- b. 'Board' means the Board of the Stichting;
- c. 'Bureau' means the Bureau of the Stichting as provided for by the latter's Articles of Association ;
- d. 'Expert' means an expert appointed in accordance with these Rules;
- e. 'Secretary' means the secretary of the Board or his deputy.

Wherever in these Rules words are importing the male gender, they shall include the female gender where necessary.

3. Application

3.1 If any interested party wishes to make use of an Expert's Report, such party shall make a written application to the Bureau of the Stichting.

3.2 The application shall in any case state:

- Name, address, place of business, telephone number, fax number and e-mail address of the applicant;
- Name, address, place of business, telephone number, fax number and e-mail address of the opposite party;
- An accurate description of the dispute, problem or points at issue;
- A copy of the agreement or clause designating the Stichting, or a certified copy of the judgment/award.

3.3 The application must be made either in writing or by sending it by e-mail to an e-mail address designated for that purpose by the Bureau. Any written application shall be made in quadruplicate and sent on to the other party immediately on receipt.

- 3.4 The opposite party shall inform the Stichting in writing within fourteen calendar-days whether it wishes to participate in the Expert's Report proceedings. If the Stichting has received no written assent from the other party within fourteen calendar-days, the application for participation in Expert's Report proceedings shall be deemed to have been rejected and no investigation by an expert shall take place.

4. Notices

Any notice referred to in these Rules must be given in writing, by an electronic means of communication if desired.

5. Expert

The expert should be impartial and independent. He must not have or have had any close personal or business ties with either of the parties. He should not have any personal or business interest in the outcome of the case. During the Expert Report proceedings the expert shall not be permitted to have any contact with either party about any matters concerning the proceedings otherwise than in the presence of the other party, unless he has obtained the consent of the same. The Board may at any time withdraw the appointment of an expert if he does not comply with the provisions of this Article.

6. List Procedure

- 6.1 As soon as possible after receipt of the confirmation from the opposite party referred to in Article 3.4, the Bureau shall send each of the parties an identical list of names of persons eligible for appointment as an expert. This list shall be made up by the Bureau in consultation with the secretary and contain at least three names. At the request of either of the parties the Bureau shall send the parties a short personal profile, drawn up by it, of the persons named on the list.
- 6.2 Each party may strike off from the list of names the person such party has strong objections to and number the remaining names in order of its preference. The parties must return to the Bureau, within fourteen calendar-days, the list thus rewritten.
- 6.3 After comparing the parties' preferences, the Bureau shall appoint under Article 7 one of the persons to be the expert, with due observance of the said preferences.
- 6.4 In the event that the parties are not found to have any identical preference for an expert or if the Bureau has not received the rewritten list of names within fourteen calendar-days, the Board itself may appoint an expert from the list.
- 6.5 If a person is unwilling or unable to accept the invitation of the Bureau to act as an expert or is found to be unable to act as an expert for any other reasons, and if not enough persons acceptable to each of the parties remain on the lists returned, the Board shall directly appoint some other expert.

7. Appointment of the Expert

- 7.1 The Board shall appoint the expert within fourteen calendar-days following acceptance of participation in the Expert's Report proceedings.

This term may be extended by the Board for weighty reasons, in which case the secretary shall notify the parties of the extension and its reason.

- 7.2 The appointment of the expert shall be confirmed by the Bureau in a letter of appointment addressed to that expert.
The expert shall accept his engagement in writing by signing and returning a copy of the appointment letter to the secretary.
- 7.3 Immediately after appointment of the expert, the Bureau shall give the parties written notice thereof, stating the expert's name, address, telephone number, fax number and e-mail address.

8. Exchange of Documents

All documents exchanged in the proceedings shall be handed to the expert by the interested party to enable the expert to get as complete a picture as possible of the case submitted to him. The basis of the investigation shall be formed by the questions asked by the Court in its judgment or the Arbitration Board in its award, or formulated by the Mediation Committee or binding adviser or, in case of an independent request by the parties, by the parties themselves.

The expert shall satisfy himself that all such documents as are in his possession and will be received by him in the course of the investigation are known to all parties.

9. Duties of the Expert

- 9.1 Any expert who has accepted his appointment must perform his task impartially and to the best of his knowledge and ability.
- 9.2 After studying the documents received, the expert shall start his investigation by having a talk with the parties and, if the parties have enlisted their assistance, their attorneys-at-law, in order to get a verbal explanation of the documents, ask questions, if any, and consult on the further method of conducting the investigation.
- 9.3 In his investigation the expert must give the parties the opportunity to make remarks and requests. The written report must show whether this requirement has been complied with. The substance of the remarks and requests shall be stated in the written report. If either party sends any written remarks to the expert, it shall forthwith give a copy thereof to the other.
- 9.4 The parties are under the obligation to co-operate in an investigation by the expert. If such obligation is not sufficiently complied with, the expert shall mention it in his report and may draw therefrom any conclusion he thinks fit.
- 9.5 The expert shall give a well reasoned answer to the questions asked and not be content with a simple 'yes' or 'no'.
- 9.6 If necessary, the expert shall visit, inspect or test the object to which the investigation relates, satisfying himself of its authenticity and stating in his report how its authenticity was ascertained. The expert shall inform the parties of his intended visit

well in advance and enable them to be present, unless the nature of the investigation prevents it.

- 9.7 In no event shall the expert have any verbal or written contact with either of the parties without informing the other party in advance in writing and giving it the opportunity to make objection. The expert, provided that such objection is sufficiently well reasoned, shall in principle accept it. If he ignores the objection, his report shall state his reasons for doing so.
- 9.8 A written account of all contacts with the parties shall be rendered as soon as possible after that, giving the substance of the matters discussed. This account shall be sent to the parties as soon as possible. The said account shall be appended to the report.
- 9.9 Before sending it to the parties for their comment on the facts contained therein as referred to below, the expert shall submit to the secretary of the Stichting, for procedural checking, the draft of the written report containing his findings or, failing the secretary, to some other Board member to be designated by the Board of the Stichting.
- 9.10 Before making his definitive report to the parties and/or filing it with or sending it to the judicial body, Mediation Committee or Binding Adviser, the expert shall send the parties a draft of the written report with his findings to get their comment on the facts therein contained.
- 9.11 The report shall be signed by the expert. If the signature of one or more experts is lacking, the report shall state the cause if possible. If none of the experts is able to sign, the report shall be signed by the secretary of the Stichting.
- 9.12 The Bureau of the Stichting shall send the report to the client(s).

10. Several Experts

If several experts have been appointed, a joint written report shall be made unless it is impossible in view of the nature of the report.

11. Support

The investigation shall be made by the expert himself. If for any specific aspects the expert wishes to have himself assisted by one or more other experts, the expert shall inform the parties in advance. In his report, the expert must state the names of assisting persons he made use of and the nature of the work done by them.

12. Start of the Investigation

The expert shall start his investigation after the Stichting has received the advance or upon notification of the Stichting by the judicial body that the advance has been paid into the account of the Stichting or the judicial body. The secretary shall inform the expert in writing immediately after receipt of the advance or the notification referred to above.

13. Professional Liability

The experts of the Stichting shall be insured against professional liability through the Stichting in accordance with the policy terms then applicable only if:

1. The Expert's Report is presented through the Stichting;
2. The invoice sent by the Stichting has been paid to the same by the parties before the work is begun;
3. The experts act in accordance with these Rules.

14. Costs in General

14.1 By 'costs of the Expert's Report' is understood the costs that in the opinion of the Bureau were necessarily entailed by the Expert's Report, as well as the administrative expenses, registration fee and the fee of the Expert and fees of any third parties that may be involved in his work.

14.2 The fee of the expert and the other costs of the Expert's Report proceedings, including the costs of any third parties that may be consulted and those of the attached, secretary shall be borne by the applicant.

15. Administrative Expenses and Registration Fee

15.1 For the Expert's Report proceedings a fixed amount, calculated in accordance with the provisions of the following paragraph, shall be due to the Stichting by each of the parties to cover administrative expenses, as well as a registration fee. The Bureau shall inform the parties of this amount after receipt of the application referred to in Article 3.2.

15.2 The administrative expenses shall be calculated on the basis of the scale fixed by the Board, contained in the Appendix hereto. The registration fee shall likewise be fixed in accordance with the relevant provisions of the Appendix hereto. The scale of administrative expenses and the registration fee may between times be changed by the Board in accordance with Article 22. If the administrative expenses cannot be calculated on the basis of the Appendix, the Bureau shall decide.
The amounts given in the Appendix hereto shall be exclusive of value added tax.

15.3 The Bureau shall see to the collection of the administrative expenses and registration fee due, plus the value added tax due. If after the second demand in writing by the Bureau any party has failed to pay within fourteen calendar-days the administrative expenses and registration fee due by it, plus the value added tax due, such party shall be deemed to have withdrawn its application for the Expert's Report or assent to the Expert's Report proceedings, as the case may be.

15.4 The expert and the Bureau may at any time suspend their work with regard to the claim or counter-claim as long as the party concerned has failed to pay the administrative expenses and registration fee due, plus value added tax.

16. Fee and Out-of-pocket Expenses of the Expert

16.1 The fee and out-of-pocket expenses of the expert shall be fixed by the Bureau after consultation with the expert concerned. In fixing the fee, the Bureau shall take into

account the time spent on the case by the expert, its financial importance and its complexity.

- 16.2 The out-of-pocket expenses of the expert shall include, among other things, any reasonable travelling and hotel expenses, cost of assistance, costs of the procedural checking referred to in Article 9.2, costs of meeting-rooms, postage, telephone and telefax charges and cost of photocopies.

17. Advances

- 17.1 The Bureau may require of the applicant an advance from which to pay the fees and out-of-pocket expenses of the expert as far as possible.
Unless expressly otherwise stated in the request by the Bureau for payment of an advance, the amount stated therein in respect of the advance shall always be exclusive of value added tax. If a demand is made on one or more parties to pay an advance, such advance must be paid plus its value added tax.
- 17.2 The costs of experts and of other technical assistance shall likewise be paid out of the advance if and insofar as such costs are incurred by the Stichting or the expert.
- 17.3 At the request of the Bureau the expert shall consult with the Bureau about the amount of the work and costs expected by the expert, in order to fix the amount of the advance.
- 17.4 The Bureau may at any time demand supplementation of the advance.
- 17.5 The Bureau shall inform the expert of the advance.
- 17.6 The expert and the Bureau may at any time suspend their work with regard to the application as long as the applicant has not paid the advance required of it. If after the second demand in writing by the Bureau the applicant has failed to pay the advance required of him within fourteen calendar-days, he shall be deemed to have withdrawn his application.
- 17.7 The Stichting shall not be liable to pay any costs not secured by an advance. No interest shall be allowed on the amount of the advance paid.
- 17.8 In case of withdrawal of the application, the Stichting shall on such withdrawal recover from the applicant all expenses incurred by it and not secured by the advance.

18. Exclusion of Liability

Neither the Stichting nor the members of the Board in person, the staff of the Bureau and/or any expert(s) shall be liable for any act or failure to act with regard to any Expert's Report and the work of the expert connected with it, governed by these Rules.

19. Unforeseen Matters

In all cases not provided for by these Rules, the Board of the Stichting shall decide. The Board may authorize the secretary of the Stichting to take such decisions. During the work of the expert the decisions shall be taken in consultation with the same.

20. Depositing or Filing of the Rules

- 20.1 The Bureau shall file a copy of these Rules at the Office of the Clerk of the District Court of The Hague.
- 20.2 Whenever these Rules are amended, the Bureau shall file a copy of the amended Rules with the Clerk of the said District Court. The Bureau shall see to it that every copy of the Rules shall state the date on which the text laid down therein was filed with the Clerk of the said District Court.

21. Amendments

- 21.1 The Board may at any time make amendments to these Rules.
- 21.2 The amended Rules shall take effect on the day after they were filed in Court. The amended Rules shall not apply to any work of experts already in progress on the day on which the amended Rules took effect.

These Rules were laid down by the Board of Stichting Geschillenoplossing Automatisering in The Hague on December 17, 2002 and filed with the Clerk of the District Court of The Hague on March 18, 2003 under number 29/2003.