

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

A. ICT Mediation Rules

ICT Mediation Rules of Stichting Geschillenoplossing Automatisering

ICT mediation is eminently suitable for resolving business disputes within the field of information and communication technology (ICT). By 'ICT mediation' is understood a method to create, with the help of a specialized ICT lawyer and an ICT expert, an atmosphere allowing the parties themselves to resolve a business dispute between them in the above-mentioned field.

1. Object

The Board of Stichting Geschillenoplossing Automatisering, hereinafter called the 'Stichting', has laid down the following Rules (for mediation) aimed at mediating amicably in disputes relating to information and communication technology.

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. 'ICT expert' means a mediator specialized in the field of ICT;
- e. 'ICT lawyer' means a mediator specialized in legal issues in the field of ICT;
- f. 'Mediation Committee' means a Committee composed in accordance with these Rules;
- g. 'Mediator' means a mediator and chairman of the Mediation Committee;
- h. 'Co-mediator' means a mediator and secretary of the Mediation Committee.

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 the mediation, he, or his authorized representative, shall present an application for that purpose to the Bureau of the Stichting. This application must be made in writing or by sending it by e-mail to an e-mail address designated for that purpose by the Bureau.

3.2 The application shall in at least 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;
- A short description of the dispute;
- An accurate description of the claim.

- 3.3 Unless sent by e-mail to the Bureau, the application shall be made in quadruplicate and immediately after receipt a copy shall be sent on to the opposite party, accompanied by the ICT Mediation Rules.
- 3.4 Within seven calendar-days after the application has been sent on as referred to in Article 3.3, the opposite party shall inform the Stichting whether it wishes to participate in the ICT mediation proceedings. If the Stichting has received no written assent from the opposite party within seven calendar-days, the application for participation in the ICT mediation shall be deemed to have been rejected. Any assent on conditions laid down by the opposite party shall likewise be deemed to be a rejection of participation in the ICT mediation unless the applicant agrees to these conditions in writing.
- 3.5 The opposite party, which has declared itself willing to participate in the ICT mediation, may inform the Bureau of its views on the dispute in a written reply within fourteen days after the application was sent on as referred to in Article 3.3. If the opposite party has a counter-claim, it can be explained in the above-mentioned written reply. Immediately after receipt of the written reply the Bureau shall send a copy to the applicant.
- 3.6 In principle, the Stichting shall not consider any disputes in which the principal claim of the plaintiff does not exceed € 2,500.-. This limit does not apply to any counter-claim of the opposite party.

4. Notices

Any notice referred to in these Rules must be given in writing, if desired by an electronic means of communication if desired. Any notice given by e-mail to an e-mail address designated for that purpose by the Bureau shall be deemed to have been received only if the Bureau acknowledges its receipt to the sender by e-mail.

5. Mediation Committee

- 5.1 Unless otherwise agreed in writing by the parties, the Mediation Committee shall consist of four persons, namely the mediator (chairman), the co-mediator (secretary) and the authorized representatives and/or counsels of the two parties.
- 5.2 Within seven calendar-days of receipt of the confirmation from the opposite party, the applicant and the opposite party shall each appoint an authorized director to be a member of the Mediation Committee.
- 5.3 The mediators of the Mediation Committee shall be impartial and independent and have, or have had in the past, no close personal or business ties with either of the parties. They shall not have any direct or indirect interest in the outcome of the ICT mediation proceedings. The Board may at any time withdraw the appointment of the mediator and/or co-mediator of the Mediation Committee if they/he do(es) not comply with the provisions of this Article. In that case the Board shall as soon as possible, after consultation with the parties, appoint another mediator and/or co-mediator whose name(s) appear(s) on the list of ICT experts and ICT lawyers of the Stichting.
- 5.4 As soon as possible after receipt of the other party's confirmation referred to in Article 5.2, the Bureau shall send to each of the parties an identical list of names of persons

eligible for appointment as an independent mediator and co-mediator of the Mediation Committee. This list shall include at least three names of ICT lawyers and three names of ICT experts and shall be made up by the Bureau in consultation with a member of the Board. At the request of either of the parties, the Bureau shall send them a short personal profile, drawn up by it, of the persons named on the list.

- 5.5 Each party may cross off from the list of names the person the party has strong objections to and number the remaining names in order of its preference. Furthermore, the parties may express their preference for either an ICT lawyer or an ICT expert as chairman of the Committee. The parties must return to the Bureau, within fourteen calendar-days, the list thus rewritten.
- 5.6 After comparing the parties' preferences, the Bureau shall on behalf of the Board appoint, with due observance of the said preferences, a mediator as independent chairman and a co-mediator as secretary of the Mediation Committee .
- 5.7 In the event that the parties are not found to have an identical preference for an independent mediator and/or co-mediator of the Mediation Committee, or if the Bureau has not received the rewritten list of names within fourteen calendar-days, the Bureau itself may on behalf of the Board appoint an independent mediator and/or co-mediator from the list.
- 5.8 If a person is unwilling or unable to accept the invitation of the Bureau to act as an independent mediator and/or co-mediator or is found to be unable to act as an independent mediator for any other reasons, and if not enough persons acceptable to each of the parties remain on the lists returned, the Bureau shall on behalf of the Board directly appoint an other independent mediator and/or co-mediator.
- 5.9 After the appointment of the four members, the Bureau of the Stichting shall inform the parties that the composition of the Mediation Committee has been completed.

6. Venue

Unless the parties designate another venue by mutual agreement, the Bureau shall on behalf of the Board decide where the session will be held.

7. Proceedings

- 7.1 In the Mediation Committee the parties shall be represented by a director authorized to make a settlement.
- 7.2 After composition of the Mediation Committee the Bureau shall fix the time for the meeting of the Mediation Committee. The parties or their counsels may further explain their respective standpoints at the session of the Mediation Committee. If any documents are referred to, they shall be submitted to the other party and sent to the mediator and co-mediator through the Bureau, at least seven days before the hearing of the dispute.
- 7.3 The first session of the Mediation Committee must take place within thirty calendar-days of the beginning of the proceedings, unless some other term is fixed by the Bureau.

- 7.4 The mediator and co-mediator shall see to it that the parties are given sufficient opportunity to explain their standpoints verbally. The mediator and co-mediator may ask the parties for any further verbal or written information. The parties may have themselves assisted by counsel. The Committee may decide to seek the opinion of any expert third parties.
- 7.5 After the parties have made their presentations, the mediator and co-mediator shall mediate between the parties to effect a settlement. Any settlement so made shall mean the end of the proceedings. The parties shall then be bound by the contract of settlement. A copy of the signed contract of settlement shall be kept at the Bureau of the Stichting for ten years.
- 7.6 The chairman or secretary of the Mediation Committee shall see to it that the agreements made by the parties are laid down in a contract.
- 7.7 If the parties do not make a written amicable settlement within a period reasonably to be fixed and if necessary extended by the Mediation Committee or the mediators, the parties or either of them shall so inform the Bureau of the Stichting in writing. This information shall mean the end of the proceedings.
- 7.8 The proceedings can be conducted in Dutch or English. If the parties differ on this, the chairman of the Mediation Committee shall decide. On demand by either of the parties, any documents relating to the case shall, at the expense of the party asking for a translation, be translated by a sworn translator designated by the Bureau.
- 7.9 If the ICT mediation is broken off or ended, the Bureau shall inform the parties in writing.

8. Other Proceedings and Confidentiality

- 8.1 From the receipt of the application until the end of the proceedings the parties shall commence or prosecute no legal or arbitral proceedings, including any summary proceedings or summary arbitral proceedings, except where it is in their opinion absolutely necessary for the preservation of rights, such as expiry of terms or by reason of laying protective prejudgement measures.
- 8.2 The parties undertake not to invoke, in any legal or arbitral proceedings:
- a. Any views or suggestions given or made by either of the parties in the ICT mediation proceedings;
 - b. Any proposals made by the Mediation Committee and/or the mediators;
 - c. The fact that one of the parties has stated in the ICT mediation proceedings that it was willing to accept some particular proposal for settlement.
- 8.3 Unless otherwise agreed in writing, the parties shall give no information to any third parties about their case pending before the Mediation Committee. This requirement of confidentiality shall also apply to the mediators and to any third parties that may be involved in the work of the Mediation Committee.
- 8.4 Unless otherwise agreed between the parties, the mediators shall not act either as judge, arbitrator, attorney-at-law or adviser in any legal or arbitral proceedings relating to the dispute under consideration in the ICT mediation.

9. Costs in General

- 9.1 By 'costs of the ICT mediation' is understood the costs which in the opinion of the Bureau were necessarily entailed by the ICT mediation, as well as the administrative expenses, registration fee and the fees of the mediators and any third parties that may be involved in the work of the Mediation Committee.
- 9.2 Each party shall bear its own expenses, including those of the member of the Mediation Committee appointed by him.
- 9.3 The fees of the mediators and the other costs of the Mediation Committee proceedings, including the charges of any third parties that may be consulted, shall be borne by the parties in equal shares.

10. Administrative Expenses and Registration Fee

- 10.1 On the initiation of the ICT mediation proceedings, a fixed amount calculated in accordance with the provisions of the following paragraph shall be due by the applicant to the Stichting to cover administrative expenses, as well as a registration fee. The Bureau shall inform the applicant of this amount after receipt of the application referred to in Article 3.2.
- 10.2 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 determined 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 17.1. If the administrative expenses cannot be calculated on the basis of the Appendix, the Bureau shall decide in consultation with a member of the Board.
- 10.3 If a written assent concerning the participation in the ICT mediation in accordance with Article 3.4 hereof has been received from the opposite party, administrative expenses and a registration fee shall be due by the opposite party as well, calculated in accordance with Article 10.2. The bureau shall inform the opposite party of the amount of the administrative expenses and the registration fee within seven calendar-days following the receipt of the assent.
- 10.4 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 either party has failed to pay within fourteen calendar-days the administrative expense and registration fee due by the same, plus the value added tax due, such party shall be deemed to have withdrawn its claim or assent, as the case may be, referred to in Article 3.4 hereof.
- 10.5 The mediators and the Bureau may at any time suspend their work as long as either, or both, of the parties concerned has or have failed to pay the administrative expenses and registration fees due, plus value added tax.

11. Fees and Out-of-pocket Expenses of the Mediators

- 11.1 After consultation with a Board member, the fees and out-of-pocket expenses of the mediator and co-mediator shall be fixed by the Bureau in accordance with rates fixed

by the Board. In fixing such amounts the Bureau shall take into account the time spent on the case by the mediators.

- 11.2 The term 'out-of-pocket expenses' of the mediators shall include among other things any reasonable travelling and hotel expenses, cost of assistance, charges of experts, costs of meeting-rooms, postage, telephone and fax charges and cost of photocopies.

12. Advances

- 12.1 The Bureau may require of the applicant and the opposite party an advance from which the fees and out-of-pocket expenses of the mediators will be paid as far as possible. Any amounts to be charged by the Bureau shall always be increased by the value added tax in force.
- 12.2 The costs of experts and of other technical assistance shall likewise be paid from the advance if and insofar as such costs are incurred by the Stichting or the mediators.
- 12.3 At the request of the Bureau, the mediators shall consult with the Bureau about the amount of the work already done by them and the further work and costs expected by them, in order to fix the amount of the first or any supplementary advance.
- 12.4 The Bureau may at any time require the parties to supplement the advance.
- 12.5 The Bureau shall inform the mediators of the receipt of the advance. The mediators may not start their work before that.
- 12.6 The mediators and the Bureau may at any time suspend their work with regard to the ICT mediation as long as the party concerned has not paid the advance required of it. If after the second demand in writing by the Bureau either party has failed to pay the advance within fourteen calendar-days, such party shall be deemed to have withdrawn its claim or assent, as the case may be, referred to in Article 3.4 hereof.
- 12.7 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.
- 12.8 In case of withdrawal from the ICT mediation by either of the parties or by both, all expenses incurred by the Stichting and not secured by the advance shall be recovered by it:
- a. From the applicant if he withdraws from the ICT mediation;
 - b. From the defendant if he withdraws from the ICT mediation;
 - c. From the party that solely in the discretion of the Bureau is the more eligible one if both parties withdraw from the ICT mediation, or from both in accordance with a division to be determined entirely in the discretion of the Bureau.
- In these cases the Bureau may also decide to divide the costs between the parties in equal shares.

13. Binding Opinion

During the ICT mediation the parties may jointly request the mediator and co-mediator to give a binding opinion on the issues considered therein. The binding opinion shall

be given as much as possible with due observance of the applicable Rules for Binding Opinions of the Stichting.

14. Exclusion of Liability

Neither the Stichting nor the members of the Board in person, the staff of the Bureau and/or the mediator and/or the co-mediator shall be liable for any act or failure to act with regard to any ICT mediation governed by these Rules.

15. Unforeseen Matters

In all cases not provided for by these Rules, the Board of the Stichting shall decide. The Board may authorize a member of the Board of the Stichting to take such decisions. In the course of the proceedings the decisions shall be taken in consultation with the chairman of the ICT Mediation Committee.

16. Depositing or Filing of the Rules

16.1 The Bureau shall file a copy of these Rules at the Office of the Clerk of the District Court of The Hague.

16.2 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.

17. Amendments

17.1 The Board may at any time make amendments to these Rules.

17.2 The amended Rules shall take effect on the day after they have been filed in Court. The amended Rules shall not apply to any ICT mediations already pending 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.