

Rules for Expert's Reports

Rules for Expert's Report of 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 Foundation.

2. Definitions

In these Rules the terms below have the following meanings:

1. 'Foundation': Stichting Geschillenoplossing Automatisering (Foundation for the Settlement of Automation Disputes), with its office in Rijswijk;
2. 'Board': the Board of the Foundation;
3. 'Bureau': the Bureau of the Foundation as provided for by the latter's articles;
4. 'expert': an expert appointed in accordance with these Rules;
5. 'secretary': the secretary of the Board or his deputy.

Wherever in these Rules words import the male gender, they will 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 must submit a written application to the Bureau of the Foundation.
- 3.2 The application will in at least state:
 - a. name, address, place of business, telephone number, fax number and email address of the applicant;
 - b. name, address, place of business, telephone number, fax number and email address of the opposite party;
 - c. an accurate description of the dispute, problem or points at issue
 - d. a copy of the agreement or clause designating the Foundation, or a certified copy of the judgment/award.
- 3.3 The application must be made either in writing or by sending it by email to an email address designated for that purpose by the Bureau. Any written application will be made in quadruplicate and sent on to the other party immediately on receipt.
- 3.4 The opposite party will inform the Foundation in writing within fourteen calendar days whether it wishes to participate in the Expert's Report proceedings. If the Foundation has received no written assent from the other party within fourteen calendar days, the application for participation in Expert's Report proceedings will be deemed to have been rejected and no investigation by an expert will 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 direct personal or business interest in the outcome of the case. During the Expert's Report proceedings the expert will 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 latter. 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 will send each of the parties an identical list of names of persons eligible for appointment as an expert. This list will be compiled by the Bureau in consultation with the secretary and contain at least three names. At the request of either of the parties the Bureau will send the parties a short personal profile drawn up by it of the persons named on the list.

6.2 Each party may cross 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 this rewritten list to the Bureau within fourteen calendar days.

6.3 After comparing the parties' preferences, the Bureau will 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 will directly appoint some other expert.

7. Appointment of the Expert

7.1 The Board will 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 compelling reasons, in which case the secretary will notify the parties of the extension and its reason.

7.2 The appointment of the expert will be confirmed by the Bureau in a letter of appointment addressed to that expert.

The expert will accept his assignment in writing by signing and returning a copy of the appointment letter to the secretary.

- 7.3 Immediately after the expert has been appointed, the Bureau will give the parties written notice of the appointment, stating the expert's name, address, telephone number, fax number and email address.

8. Exchange of Documents

All documents exchanged in the proceedings will be handed to the expert by the interested party to enable the expert to obtain as complete a picture as possible of the case submitted to him. The basis of the investigation will 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 will 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 The 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 will start his investigation by having a discussion with the parties and, if the parties have enlisted their assistance, their lawyers, in order to obtain an oral 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 comments and requests. The written report must show whether this requirement has been complied with. The substance of the comments and requests will be stated in the written report. If either party sends any written remarks to the expert, it will give a copy thereof to the other forthwith.
- 9.4 The parties are obliged to cooperate in an investigation by the expert. If such obligation is not sufficiently complied with, the expert will state it in his report and may draw any conclusion from this as he sees fit.
- 9.5 The expert will 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 will 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 will 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 will the expert have any oral or written contact with either of the parties without informing the other party in advance in writing and giving it the opportunity to make an objection. The expert, provided that such objection is sufficiently well reasoned, will in principle accept it. If he sets aside the objection, his report will state his reasons for doing so.

- 9.8 A written account of all contacts with the parties will be rendered as soon as possible thereafter, giving the substance of the matters discussed. This account will be sent to the parties as soon as possible. The said account will be appended to the report.
- 9.9 Before sending it to the parties for their comments on the facts contained therein as referred to below, the expert will submit to the secretary of the Foundation for procedural checking the draft of the written report containing his findings or, failing the secretary, to another Board member to be designated by the Board of the Foundation.
- 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 will send the parties a draft of the written report with his findings to obtain their comments on the facts contained therein.
- 9.11 The report will be signed by the expert. If the signature of one or more experts is lacking, the report will state the reason if possible. If none of the experts is able to sign, the report will be signed by the secretary of the Foundation.
- 9.12 The Bureau of the Foundation will send the report to the client(s).
- 10. Several Experts**
If several experts have been appointed, a joint written report will be made unless it is impossible in view of the nature of the report.
- 11. Support**
The investigation will be made by the expert himself. If for any specific aspects the expert wishes to be assisted by one or more other experts, the expert will inform the parties in advance. In his report, the expert must state the names of the assisting persons he made use of and the nature of the work done by them.
- 12. Start of the Investigation**
The expert will start his investigation after the Foundation has received the advance or upon notification of the Foundation by the judicial body that the advance has been paid into the account of the Foundation or the judicial body. The secretary will inform the expert in writing immediately after receipt of the advance or the notification referred to above.
- 13. Professional Liability**
The experts of the Foundation will be insured against professional liability through the Foundation in accordance with the policy terms then applicable only if:
1. the Expert's Report is presented through the Foundation;
 2. the invoice sent by the Foundation 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 The costs of the Expert's Report include the costs which 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 assigned secretary, will 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, will be due to the Foundation by each of the parties to cover administrative expenses, as well as a registration fee. The Bureau will inform the parties of this amount after receipt of the application referred to in Article 3.2.
- 15.2 The administrative expenses will be calculated on the basis of the scale fixed by the Board, contained in the Appendix to these Rules. The registration fee will likewise be fixed in accordance with the relevant provisions of the Appendix to these Rules. The scale of administrative expenses and the registration fee may be changed by the Board in the interim in accordance with Article 22. If the administrative expenses cannot be calculated on the basis of the Appendix, the Bureau will decide. The amounts given in the Appendix to these Rules will be exclusive of turnover tax.
- 15.3 The Bureau will be responsible for the collection of the administrative expenses and registration fee due, plus the turnover 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 it owes, plus the turnover tax due, such party will 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 counterclaim as long as the party concerned has failed to pay the administrative expenses and registration fee due, plus turnover tax.

16. Fee and Disbursements of the Expert

- 16.1 The fee and disbursements of the expert will be fixed by the Bureau after consultation with the expert concerned. In fixing the fee, the Bureau will take into account the time spent on the case by the expert, its financial importance and its complexity.
- 16.2 The disbursements of the expert will include any reasonable travel and accommodation expenses, costs of assistance, costs of the procedural checking referred to in Article 9.2, costs of meeting-rooms, postage, telephone and fax charges and cost of photocopies.

17. Advances

- 17.1 The Bureau is entitled to demand an advance from the applicant from which the fees and disbursements of the expert will be paid as far as possible. Unless expressly stated otherwise in the request by the Bureau for payment of an advance, the amount stated therein in respect of the advance will always be exclusive of turnover tax. If a demand is made on one or more parties to pay an advance, such advance must be paid plus turnover tax payable thereon.
- 17.2 The costs of experts and of other technical assistance will likewise be paid out of the advance if and insofar as such costs are incurred by the Foundation or the expert.
- 17.3 At the request of the Bureau the expert will 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 will inform the expert of the advance.
- 17.6 The expert and the Bureau may suspend their work at any time 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 it within fourteen calendar days, it will be deemed to have withdrawn its application.
- 17.7 The Foundation will not be liable to pay any costs not secured by an advance. No interest will accrue on the amount of the advance paid.
- 17.8 If the application is withdrawn, the Foundation will on such withdrawal recover from the applicant all expenses incurred by it and not secured by the advance.

18. Exclusion of Liability

Neither the Foundation nor the members of the Board in person, the staff of the Bureau and/or any expert(s) will be liable for any act or omission with regard to any Expert's Report and the work of the expert connected with it to which these Rules apply.

19. Unforeseen Matters

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

20. Depositing or Filing of the Rules

- 20.1 The Bureau will file a copy of these Rules at the Registry of the District Court of The Hague.

20.2 Whenever these Rules are amended, the Bureau will file a copy of the amended Rules with the Registry of the said District Court. The Bureau will ensure that every copy of the Rules will state the date on which the text laid down therein was filed with the Registry of the said District Court.

21. Amendments

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

21.2 The amended Rules will take effect on the day after they were filed with the Registry of the Court.

The amended Rules will 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 17 December 2002 and filed with the Registry of the District Court of The Hague on 18 March 2003 under number 29/2003