

## Procedural regulations

### Ombudsman Service for Consumer Disputes relating to the Legal Profession (*Ombudsdienst Consumentengeschillen Advocatuur – OCA*)

Procedural regulations of the Ombudsman Service for Consumer Disputes relating to the Legal Profession (OCA) for disputes between a consumer and a lawyer (Article XVI, 25 of the Belgian Economic Law Code – Articles 5, 6 and 7 of the Royal Decree of 16 February 2015)

#### 1. Purpose of the procedural regulations

These regulations govern dispute resolution proceedings between a consumer and a lawyer relating to the performance of services by the lawyer.

#### 2. Online and offline proceedings

These procedural regulations govern both online and offline proceedings.

#### 3. Language of the application and for conducting the proceedings

The application may be submitted in Dutch, French or German. The ombudsman will inform the applicant whether an application submitted in another language needs to be translated into Dutch.

The proceedings may be conducted in Dutch, French or German. The ombudsman will advise whether it is possible to conduct the proceedings in another language.

#### 4. Applicable rules

The entity will be guided for the purpose of the extrajudicial dispute resolution by these regulations, the applicable statutory provisions and the ethical rules to which the lawyer is subject.

## 5. **Content of the application**

In order to be complete, the application must clearly state:

- the applicant's details and acceptance of these procedural regulations;
- the details of the other party;
- the subject-matter of the application;
- the attempt to contact the lawyer concerned with a view to a satisfactory solution of the identified problem and the absence of a satisfactory response from the lawyer within a reasonable period;
- the answer to the question of whether the dispute forms or already has formed part of legal proceedings.

## 6. **Confirmation of the date of receipt**

As soon as the OCA has received a complete application for extrajudicial dispute resolution, it will confirm the date thereof to the parties.

## 7. **Refusal to hear the application**

The application for the extrajudicial resolution of a consumer dispute may be refused only on one of the following grounds:

- the complaint was not submitted to the lawyer concerned beforehand;
- the application has been submitted anonymously or the other party is not identified or cannot be easily identified;
- the application has been submitted more than one year after the dispute was put to the lawyer concerned;
- the application is fictitious, insulting or defamatory;
- the application does not relate to a consumer dispute with a lawyer;
- the application relates to the resolution of a dispute that is or has been the subject of legal action;
- hearing the dispute would seriously compromise the effective functioning of the OCA.

## 8. **Financial value of the dispute**

No minimum value applies to the hearing of a dispute.



## 9. **Notice of the hearing of the application**

Within three weeks of the date of receipt of the complete application, the OCA will notify the parties of its decision whether or not to hear the application further. In case of refusal, the decision must be motivated.

If the OCA informs the parties that it will hear the application further, it will advise them via a durable medium of the consumer's right to withdraw at any stage of the proceedings. The OCA will also inform the parties of the non-binding nature of the dispute resolution, unless the parties reach an arrangement to the contrary.

If the OCA informs the parties that it will hear the application, it will advise them that they can arrange to be assisted by a third party and obtain independent advice at any time.

## 10. **Independence and impartiality**

- 10.1. Immediate notice must be given of any circumstance that is or can be of such a nature that it is considered to affect the independence and impartiality of the natural person within the OCA who is entrusted with hearing the consumer dispute or that can lead to a conflict of interests with one of the parties.
- 10.2. The duty to notify referred to under Article 10.1 applies throughout the entire extrajudicial dispute resolution proceedings.
- 10.3. If a circumstance as referred to under Article 10.1 arises, another natural person within the entity will be entrusted, if possible, with the extrajudicial resolution of the dispute. If that is not possible, the parties will be advised thereof and may object to the continuation of the proceedings by the natural person who finds himself/herself in that circumstance.
- 10.4. If the consumer requests on the basis of a circumstance referred to under Article 10.1 that a natural person other than the initially designated person be entrusted within the entity with the extrajudicial resolution of the dispute, the ombudsman must immediately instruct a person from a different judicial district.
- 10.5. The same applies to the ombudsman, who will be replaced, where appropriate, by one of his/her deputies.

## 11. **Period for settling the dispute**

The consumer dispute must be resolved within a period of 90 calendar days from receipt of the complete application. This period can be extended once by the same period under exceptional circumstances, on condition that the parties are informed of this before the expiry of the first period and that the extension is motivated by the complexity of the dispute.



## 12. Course of the proceedings

- 12.1. Each party has the opportunity to clearly state their position and to take note of the arguments and facts put forward by the other party.

The OCA guarantees the confidential nature of the statements made by the parties.

- 12.2. Notwithstanding the outcome, the OCA ensures that the parties can state their positions, take note of all documents, arguments and facts that are put forward by the other party, and respond to these documents, arguments and facts.

The lawyer cannot disclose information that is subject to professional privilege to the OCA other than with the consent of his/her client and with regard to that client.

- 12.3. The proceedings must always be conducted in an adversarial manner unless the parties expressly authorise the ombudsman to proceed differently, notwithstanding the ombudsman's option to make procedural proposals to the parties.

- 12.4. Both the consumer and the lawyer may withdraw from the proceedings at any stage, provided that they give the ombudsman and other party notice of their withdrawal. Once one of the parties has given notice of withdrawal, the proceedings brought before the OCA will end.

### 12.5.

- 12.5.1. The ombudsman must respond to a notice from one or both of the parties within five working days of receipt of that notice.

- 12.5.2. If a party does not respond to an invitation of the ombudsman or a question from the other party within five working days of the invitation or question, the ombudsman will decide whether to grant those involved any additional time. This may be granted only insofar as the 90-day calendar period is not compromised as a result.

- 12.5.3. Insofar as the ombudsman does not vary from this, a distinction is made between a first phase and second phase in the proceedings.

- 12.5.4. The first phase commences when the ombudsman notifies the parties of the decision to hear the application.

- 12.5.5. Simultaneously with that notice, the ombudsman also invites both parties to each respond by the same date to the other party's position. This response must be submitted with 15 working days of the date of the ombudsman's notice.

- 12.5.6. The ombudsman then grants each party a period of eight calendar days to reply to the response. The ombudsman may also ask the parties questions that he/she deems appropriate and stipulate the period within which the answers must be provided.



12.5.7. The ombudsman may then proceed to the second phase in which he/she (i) informs the parties of his/her findings, (ii) depending on his/her findings, may make a settlement proposal to the parties, specifying that neither of the parties is obliged to accept that proposal, and (iii) again depending on his/her findings, may invite the parties to a meeting, specifying that neither of the parties is obliged to accept that invitation. The ombudsman must give notice of the second phase no later than 60 calendar days after the notice of his/her decision to hear the case.

### 13. **Closure of the proceedings**

13.1. If the parties enter into an agreement, the ombudsman will take note of that agreement.

13.2. If no agreement is reached between the parties, the ombudsman may either propose a non-binding solution under the terms and conditions laid down in these regulations or end his/her involvement in a reasoned report that records the failed attempt at dispute resolution.

13.2.1. If the ombudsman proposes a solution, and in order to comply with the requirement of freedom of the parties, the OCA will notify the parties via a durable medium:

1. that they have a choice of whether or not to accept or follow the proposed or identified solution;
2. of the legal consequences for the parties of consenting to the proposed or identified solution;
3. that the proposed solution may differ from a court ruling;
4. that participating in extrajudicial consumer dispute resolution proceedings does not preclude them from instituting legal action.

13.2.2. The OCA will ensure, taking the maximum term of the proceedings into account, that the parties have a reasonable period in which to decide on the non-binding decision proposed by it.

13.3. Both when an agreement is reached between the parties and in the absence of such an agreement, the ombudsman will draw up a report that is sent in writing or via a durable medium to the parties within the legally prescribed period.

### 14. **Legal consequences of the outcome and enforceability**

If the parties reach an agreement or follow the ombudsman's suggestion, they are obliged to comply with it. If a party fails to comply, application needs to be made to the court for an order of enforcement.



15. **No-cost proceedings**

The proceedings organised by the OCA are free of charge, both for the consumer and the lawyer, on the understanding that both the consumer and the lawyer bear their own costs.

16. **Effect on prescription periods**

16.1. As soon as the OCA has received a complete application for extrajudicial dispute resolution, the prescription periods under general law are suspended.

16.2. The suspension lasts until the day on which the OCA notifies the parties:

1. of its refusal to hear the application, in accordance with Articles 7 and 9 above; or
2. of the result of the settlement, in accordance with Article 13.3 above.

17. **Effect on collection proceedings**

As soon as the lawyer is notified that the OCA has received a complete application for extrajudicial dispute resolution, the collection proceedings instituted by the lawyer pursuant to Article XVI, 27, §2 of the Belgian Economic Law Code and Article 7(9) of the Royal Decree of 16 February 2015, will be suspended until the day referred to in Article 16.2.

