

THE DANISH INSTITUTE OF ARBITRATION

Rules regarding Legal/Technical Opinions in IT cases

Article 1

Par. 1: The present Rules regarding legal/technical opinions in IT cases shall apply when the parties, either in relation to already existing or future disputes regarding a particular legal matter, have agreed to settle the legal or technical question pursuant to Rules.

Par. 2: An opinion may concern either a legal question, a technical question or a combination of such questions in relation to an IT contract or another form of legal matter between two or more parties which mainly concerns the use of IT.

Request for an Opinion

Article 2

Par. 1: A request for an opinion shall be submitted to the Danish Institute of Arbitration (hereinafter referred to as "the Institute") by a party or jointly by the parties.

Par. 2: The request for an opinion shall contain:

1. The full names and addresses of the parties.
2. Each party's telephone number and e-mail address.
3. The names and addresses of the parties' attorneys or any other advisors if applicable.
4. A joint statement of the facts comprising the questions to which the parties seek an opinion, and the parties' allegations as well as relevant exhibits, or, in the alternative, a position paper from each of the parties comprising similar information.
5. A jointly agreed set of questions, which are subject of the expert's opinion.
6. Any name(s) of expert(s) which is/are suggested for appointment.
7. Any possible dates for a meeting if the parties request a meeting to be held with the appointed expert(s).
8. A statement as to whether the parties request a joint opinion if several experts are appointed.

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Par. 3: The joint statement of facts mentioned in par. 2 (4), shall contain no more than 20 pages (not including the list of exhibits). In the event the parties submit position papers, such papers shall contain no more than 10 pages each (not including the list of exhibits).

Par. 4: Documents referred to in the request for an opinion, including the agreement to request the opinion, shall be enclosed in the form of original documents or copies thereof.

Par. 5: In the event the request for an opinion does not comply with par. 2-4, the Institute may ask the parties for compliance, and/or terminate the case without prejudice to the possibility of submitting a new request for an opinion regarding the same question(s) at a later stage.

Par. 6: The request for an opinion shall be accompanied by the payment to the Institute of a registration fee of DKK 7,500. The fee is non-refundable. If the amount is not received at the latest at the same time as the request for an opinion, the Institute shall fix a deadline for payment. Failure to effect payment of the amount by such deadline may cause the Institute to terminate the case, without prejudice to the possibility of submitting a new request for an opinion regarding the same question(s) at a later stage.

Par. 7: The Institute shall immediately inform the parties of its receipt of the request and the date it was received.

Par. 8: If the request for an opinion is received from one of the parties without showing that the other party by prior or subsequent agreement has given its consent to commencement of the proceedings, the Institute shall inform the other party of the request and at the same time ask for confirmation that the proceedings may be commenced. If the other party, no later than three days from receipt of said information, has not informed the Institute in writing via e-mail that the request for an opinion is accepted pursuant to the Rules, the Institute may terminate the case, without prejudice to the possibility of submitting a new request for an opinion regarding the same question(s) at a later stage.

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Appointment of the Expert

Article 3

Par. 1: Anyone appointed as an expert pursuant to the Rules shall be qualified, available, impartial and independent.

Par. 2: The Institute keeps a list managed by the Association of Danish IT Attorneys comprising certified legal experts. The list is available through the Institute. The parties may propose one or more candidates from said list or may leave it to the Institute to propose a suitable expert. Legal experts are certified by the certification committee of the Association of Danish IT Attorneys and may also comprise other legal advisers than certified IT Attorneys to the extent that the Association's certification committee deems that the person in question possesses similar qualifications and experience.

Par. 3: The appointment of technical experts shall take place in pursuance with the Institute's "Rules of the Proposal of an Expert" with the modifications following from the present Rules. No separate fee shall accompany to the appointment of technical experts pursuant to the "Rules of the Proposal of an Expert", if the appointment takes place pursuant to the present Rules regarding Legal/Technical Opinion in IT Cases. The parties may propose one or more candidates.

Par. 4: Regardless of whether the parties have proposed an expert, the Institute shall ensure that the expert fulfils the requirements in par. (1) regarding availability, independence and impartiality pursuant to the Rules.

Par. 5: If the parties have not proposed an expert, the Institute shall when making the appointment duly take into consideration the qualifications that the parties have agreed that the expert shall possess, any geographic considerations and any other possible circumstances which may ensure the appointment of an independent and impartial expert pursuant to the Rules. Before being appointed, an expert shall sign a declaration regarding the expert's independence and impartiality, and shall disclose any circumstances which may give rise to reasonable doubts as to the expert's impartiality or independence. The Institute shall forward the declaration to the parties.

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Par. 6: An appointed expert shall immediately inform the parties and the institute about any circumstances which may cause reasonable doubts as to the expert's independence and impartiality.

Par. 7: The Chairman's Committee of the Institute shall decide whether a proposed or appointed person shall be deemed impartial and independent, or whether the appointment shall be revoked due to such grounds. In the event that one or both members of the Chairman's Committee have a conflict of interest or is/are otherwise prevented from carrying out this function, another or two other members respectively from the Institute's Board shall make the decision.

Par. 8: The Institute shall appoint the expert no later than three working days after the Institute's receipt of a request provided that the request complies with the Rules.

Par. 9: In the event the parties have objections to the appointed expert's impartiality and independence, such objections shall be submitted no later than two working days after to the Institute's notice to the parties of the appointment.

Article 4

Par. 1: If, after having been appointed, an expert dies, wishes to resign, or has his/her appointment revoked by the Institute, the Institute shall appoint a new expert.

Par. 2: The appointment pursuant to par. 1 above shall be made according with the same rules as those that applied to the appointment of the expert being replaced, etc.

Deposit of Financial Security

Article 5

Par. 1: In addition to the registration fee mentioned in Article 2 (6), the parties shall within a deadline fixed by the Institute pay an amount in cash as security for the estimated costs of the case, cf. Article 9.

Par. 2: In the event the costs in relation to the opinion prove to exceed the amount originally estimated, and if the parties agree, the deposit shall be increased and the additional amount shall be paid before the proceedings continue.

Par. 3: Failure to pay the deposit demanded by the Institute before the deadline fixed may cause the Institute to terminate the case, without prejudice to the possibility of

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submitting a new request for an opinion regarding the same question(s) at a later stage.

Article 6

The appointed expert(s) shall keep the Institute informed of developments in the case for the purpose of ensuring that the amount paid as security is adequate at any point in time.

Conduct of the Proceedings

Article 7

Par. 1: When the expert(s) has/have been appointed, the Institute shall inform the parties that expert(s) has/have been appointed as well as state the names of such expert(s), address(es), telephone numbers and email address(es), and shall forward the documents of the case together with a copy of existing correspondence to the appointed expert(s).

Par. 2: The case shall be governed in accordance with the Rules. If an issue is not covered by the Rules, it shall be decided as agreed between the parties or, in the absence of such agreement, in accordance with such rules as the expert may determine.

Par. 3: The expert shall be fair and impartial and shall ensure that parties are treated with equality.

Article 8

Within five working days after the receipt of the case, the appointed expert(s) may request additional documents etc. or ask questions to the parties in writing in order to clarify facts of the case. In this connection, the expert(s) shall fully respect the framework of the case in the form of the jointly drafted set of questions; however, the expert may within this framework ask questions and request information in order to render an opinion on an adequate basis.

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Article 9

Par. 1: Within five working days after receipt of the case, the appointed expert(s) shall quote a fixed price for the opinion, which shall be forwarded directly to the parties with a copy to the Institute. In the event both legal and technical experts have been appointed, separate fixed prices regarding the respective opinions shall be quoted. The expert may at his own discretion choose to specify the price of the opinion to the individual questions in the joint set of the questions, if relevant.

Par. 2: If the parties cannot accept the price of the opinion, any of the parties may withdraw the request. Withdrawal shall take place no later than two working days after the parties have received information about the price. In the event only one of the parties finds the price of the opinion unacceptable, such party shall pay the total fee pursuant to Article 2 (6), alone. In the event of a withdrawal, the appointed expert(s) shall only be entitled to payment for already executed work within the framework of the fee to the extent that the Institute finds this reasonable.

Par. 3: Upon agreement between the parties, the parties may after receipt of the fixed price choose to limit the questions and request a new fixed price, which shall be quoted within five working days. The request regarding limitation shall be submitted no later than two working days after receipt of the original fixed price. In the event of a request for limitation of the questions, a reduced deposit shall be paid within a deadline set by the Institute pursuant to Article 5.

Par. 4: If an expert finds that the opinion entails significantly more work than originally anticipated upon quote of the fixed price, and if this is due to circumstances which the expert in question reasonably could not have foreseen upon quote of the fixed price, the expert may request that the fixed price is increased. If one or more of the parties cannot accept the increase, the Institute shall render a decision regarding the increase and the amount hereof.

Article 10

Par. 1: If the expert(s) ask(s) questions or request(s) to receive additional documents etc., the parties shall provide replies in this regard or the documents etc. no later than five working days after receipt of such questions or requests. If the parties do not reply to the questions or provide the documents etc. within this deadline, the expert(s) may decide the matter on the evidence before him/her.

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Par. 2: The expert(s) may request the parties to participate in a meeting or an inspection if said meeting or inspection can be held in due time to comply with the deadline for the opinion pursuant to Article 11 (1). The appointed expert(s) shall set the agenda for the meeting upon consultation with the parties.

Par. 3: If the parties in the request for an opinion have stated that they request a meeting with the expert(s), such meeting shall be held at a time set by the parties, provided that the expert agrees hereto. The appointed expert(s) shall set the agenda for the meeting upon consultation with the parties.

The Expert Opinion

Article 11

Par. 1: The expert's(s') opinion shall, unless otherwise agreed with the parties, be made and sent to the parties no later than twenty working days after the Institute has received the request, provided that the Institute has been able to appoint an expert within three working days, and that the proceedings have otherwise been conducted pursuant to the Rules. If the Institute has not appointed the expert within the three working days, or if the proceedings otherwise have been delayed, the deadline for submission of the opinion shall be extended by the number of days delaying the proceedings.

Par. 2: The expert shall on the basis of the request and the forwarded statement of the facts reply to the questions carefully, properly and to the best of the expert's ability and knowledge. The reply shall be provided within the framework of the joint set of questions. Legal questions shall be decided in accordance with Danish law, unless otherwise agreed, or follows from the legal matter which the questions concern. In the event the legal matter is subject to foreign law, the parties shall jointly or separately account for the relevant rules of law in relation to the submission of the request. The parties may expressly authorise the expert(s) to answer a question as amiable compositeur or ex aequo bono.

Par. 3: Unless otherwise agreed in the request or in the joint set of questions, the technical questions shall be replied to in accordance with agreed and otherwise relevant technical rules, standards and norms.

Par. 4: In the event that several experts are appointed, the experts shall act as a panel of experts and shall coordinate their opinions or shall submit a joint opinion, if so

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requested by the parties. In the event that both legal and technical experts are appointed, the legal expert shall be responsible for said coordination.

Par. 5: In cases with several experts in which a joint opinion is submitted, it shall be sufficient that a majority of the appointed experts have signed the opinion, if it appears from the opinion why it is not signed by all experts involved.

Par. 6: An expert, who is in the minority regarding the reasoning and/or the result of a joint opinion, shall be entitled to have his/her vote included in the opinion.

Article 12

Par. 1: Before the rendering of the opinion, the expert shall if possible forward a draft for review by the Institute.

Par. 2: Upon prior discussion with the expert, the Institute may implement modifications as to the form of the opinion and without affecting the expert's jurisdiction draw the expert's attention to other procedural issues. The Institute's review of the opinion shall not change the fact that only the expert is responsible for the contents subject to the reservations following from the Rules.

Article 13

Par. 1: The opinion shall be dated, written and signed by the expert(s).

Par. 2: The opinion shall also contain the joint set of questions and shall state the factual and legal circumstances, which the expert(s) has relied on when deciding the case and replying to the questions. Moreover, the opinion may contain the parties' allegations and statement of the facts as represented in the joint request or the position documents; see Article 2 (2) (4), unless otherwise agreed between the expert and the parties.

Article 14

Par. 1: The opinion shall not be binding on the parties, unless otherwise agreed between the parties.

Par. 2: The parties shall pay their own costs and shall equally pay the costs to the appointed expert(s).

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Confidentiality, etc.

Article 15

Par. 1: The expert(s), the parties and the Institute shall treat all matters relating to the opinion and the dispute as confidential, unless otherwise agreed, or if disclosure is necessary for the execution or the enforcement of a settlement on the basis of the opinion, or if disclosure is necessary to comply with provisions laid down by legislation or other public regulations to which a party is subject.

Par. 2: Unless the parties have agreed otherwise, the parties shall undertake not to rely upon the opinion nor use it as evidence in a subsequent lawsuit or arbitration case. However, a party may submit the opinion in a case concerning the enforcement of a claim regarding the other party's payment of costs.

Par. 3: The expert shall not be appointed as arbitrator or shall not in other ways participate in a possible future lawsuit or arbitration case regarding the case, unless the parties have agreed otherwise.

Liability

Article 16

Neither the expert, the Institute, the Institute's Board, the Board of Representatives or members of the Institute's staff shall be liable for any act or omission in connection with a request for an opinion, the expert's processing of the case or the contents of an opinion, except to the extent such limitation is prohibited by law.

Commencement, etc.

Article 17

These Rules shall enter into force on 1 September 2013.

As adopted by the Supervisory Board of the Association of Danish IT Attorneys, the Service Committee of Dansk IT (the Danish IT Society), the Legal Committee of IT-B Branchen (the Danish IT Industry Association) and the Board of the Danish Institute of Arbitration.