

Procedural Regulations

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

Procedural Regulations for the Ombudsman Service for Consumer Disputes relating to the Legal Profession (referred to below as *OCA*) of 26/06/2019.

1. Applicable regulations

- Part 4 of Book XVI of the Belgian Economic Law Code.
- Royal Decree of 16 February 2015 clarifying the conditions that the qualified entity referred to in Book XVI of the Belgian Economic Law Code must meet.
- Book III to IIIbis of the second volume of the Belgian Judicial Code
- Code of Ethics for Lawyers

2. Purpose of the procedural regulations

These regulations govern the procedure for handling disputes that arise between a consumer and his/her lawyer registered with one or more of the bars that constitute the Flemish Bar Council, and between a consumer and his/her lawyer registered with the Bar Council at the Court of Cassation on the Dutch-language register, in relation to the services performed by the lawyer.

No minimum value applies to the hearing of a dispute.

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, German or English. The OCA will inform the applicant whether an application submitted in another language needs to be translated to Dutch, French, German or English. In that case, the applicant is responsible for the translation and bears the related costs.

If the application is submitted in Dutch, French, German or English, the proceedings will be conducted in the language of the application. The OCA will advise whether it is possible to conduct the proceedings in another language.

4. Submission and content of the application

The application must be submitted in writing (online using the complaints form, or by letter, fax or e-mail).

The application may be submitted by the applicant personally, by a lawyer or, on presentation of a power of attorney, by another representative.

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

- the applicant's details (identity and address) and his/her acceptance of these procedural regulations;
- the other party's details;
- the subject of the application;
- the attempt to contact and the time of contact with the other party for the purpose of satisfactorily resolving the identified problem and the absence of a satisfactory response from the other party within a reasonable period;
- the answer to the question of whether the dispute is or has already been the subject of legal proceedings or of a complaint to the OCA, the Chairman or any other body.

The application must be described clearly and completely. The applicant must enclose any useful documents or send them later by post, fax or e-mail.

By submitting the application, the applicant gives consent for his/her identity and the subject of the application to be disclosed to the other party.

5. Confirmation of the date of receipt of the application

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

6. Refusal to hear the application

The OCA may refuse the application for the extrajudicial resolution of a consumer dispute only on one of these grounds:

- the complaint concerned was not submitted to the lawyer concerned beforehand;
- the application is submitted anonymously or the other party is not identified or cannot be easily identified;
- the application is submitted more than one year after the dispute was put to the lawyer concerned;
- the application is fictional, 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 operations of the OCA.



7. Notice of the hearing of the application

Within three weeks of the date of receipt of the full application, the OCA will notify the parties of its decision whether or not to hear the application further. A refusal can be based only on the reasons listed in Article 6. A decision to refuse 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 their right to withdraw at any stage of the proceedings. The OCA also informs the parties of the non-binding nature of the dispute resolution, unless the parties reach an arrangement. The OCA informs the parties that they may be assisted or represented by a third party or seek independent advice at any time.

8. Independence and impartiality

- 8.1. Immediate notice must be given to the OCA and/or the parties involved of any circumstance that is or can be regarded of such a nature as to affect the independence and impartiality of the natural person within the OCA who is entrusted with handling the consumer dispute or that could lead to a conflict of interests with one of the parties.
- 8.2. The duty to notify referred to under Article 8.1 applies during the entire extrajudicial dispute resolution procedure.
- 8.3. If a circumstance as referred to under Article 8.1 arises, another natural person within the OCA will be entrusted, if possible, with the extrajudicial resolution of the dispute. If that is not possible, the parties will be advised and may object to the continuation of the proceedings by the natural person in that circumstance.
- 8.4. If a party requests on the basis of a circumstance referred to under Article 8.1 that a natural person other than the initially designated person within the OCA be entrusted with the extrajudicial resolution of the dispute, the OCA must immediately instruct a person from a different judicial district.
- 8.5. The same applies to the ombudsman, who will be replaced, where applicable, by one of his/her deputies.

9. Period for settling the dispute

The consumer dispute must be resolved within a period of 90 calendar days from receipt of the full application. This period can be extended once only 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.

10. Course of the proceedings

- 10.1. The OCA guarantees the confidentiality of the information provided by the parties. This information may be used only for the purpose of the extrajudicial dispute resolution, with the exception of processing for the annual report.



The ombudsman and the natural person within the OCA entrusted with handling the consumer dispute are bound by professional privilege.

- 10.2. The OCA will ensure that the parties have a reasonable period to state their positions, to take note of all documents, arguments and facts that are put forward by the other party, and to respond to these documents, arguments and facts.

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

- 10.3. 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.

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

10.5.

- 10.5.1. The ombudsman must respond to a notice from one or both parties within eight calendar days of receipt of that notice.

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

- 10.5.3. Insofar as the ombudsman does not vary from this, a distinction is made between a first phase and second phase in the proceedings. However, the ombudsman may decide to skip the first phase and move on immediately to the second phase.

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

- 10.5.5. 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 within 21 calendar days of the date of the ombudsman's notice and be accompanied by useful documents.

- 10.5.6. The ombudsman grants each party a period of eight calendar days to reply to the response, accompanied by useful documents. The ombudsman may also ask the parties questions he/she deems appropriate and stipulate the period within which the answers must be provided.

- 10.5.7. 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 party is obliged to accept that proposal, and (iii) again depending on his/her findings, may invite the parties to a meeting,



specifying that neither party 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.

11. Closure of the proceedings

- 11.1. If the parties enter into an agreement, the ombudsman will record that agreement.
- 11.2. If no agreement is reached between the parties, the ombudsman may either propose a non-binding solution under the terms laid down in these regulations or end his/her involvement with a written notice that records the absence of an agreement between the parties involved.
 - 11.2.1. If the ombudsman proposes a solution, the OCA will, in order to comply with the requirement of freedom of the parties, notify them via a durable medium:
 - a. that they have a choice whether or not to accept or follow the proposed or identified solution;
 - b. of the legal consequences for the parties of consenting to the proposed or identified solution;
 - c. that the proposed solution may differ from a court ruling;
 - d. that participating in extrajudicial consumer dispute resolution proceedings does not preclude them from instituting legal action.
 - 11.2.2. The OCA will ensure, taking the maximum length of the proceedings into account, that the parties have a reasonable period in which to decide on the non-binding decision proposed by the OCA.
- 11.3. Both when an agreement is reached between the parties and in the absence of an agreement, the OCA shares the outcome of the proceedings, with reasons, in writing or via a durable medium with the parties within the legally prescribed period.

12. Legal consequences of the outcome and enforceability

If the parties reach an agreement or follow the ombudsman's suggestion, they must comply with it. If they do not comply with it, the court can be approached to obtain enforcement.

13. 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.

14. Effect on prescription periods

- 14.1. As soon as the OCA has received a complete application for extrajudicial dispute resolution, the prescription periods under general law are suspended.
- 14.2. The suspension lasts until the day on which the OCA notifies the parties:
 - a. of its refusal to hear the application, in accordance with Article 7 above; or
 - b. of the result of the settlement, in accordance with Article 11.3 above.



15. 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 will be suspended until the day referred to in Article 14.2.

16. Entry into force

These procedural regulations enter into force on 01/10/2019 and apply immediately to consumer disputes for which the OCA receives a complete request for extrajudicial dispute resolution on or after that date.

