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Chambre Suisse des experts judiciaires techniques et scientifiques
Schweizerischen Kammer technischer und wissenschaftlicher Gerichtsexperten
Camera svizzera degli esperti giudiziari tecnici e scientifici
Swiss chamber of Technical and Scientific Forensic Experts

Swiss Experts Certification SA (SEC)
Certification de personnes selon ISO 17024
Personenzertifizierung nach ISO 17024
Certificazione delle persone secondo la norma ISO 17024
Certification of persons according to ISO 17024



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THE PRIVATE EXPERT OPINION

A private or party expert opinion is usually been sought if a party does not possess the required special expertise to assess an issue of fact. In this case, an expert can be mandated who – because of his or her education and/or expertise – is able to determine or asses a certain issue of fact.

In contrast to a court expertise, the private expert opinion is not ordered by the court, but by one or several parties. Furthermore, a difference between the private expert opinion and an arbitration opinion is the lacking binding effect of the expert's conclusion. If there are remaining conflicts between the parties, they have to be resolved by means of a court proceeding, by alternative dispute settlement mechanisms (mediation etc.) or through an amicable settlement.

By means of the private expert opinion, an expert is mandated to draft a report about an issue of fact. The private expert opinion does not constitute an enforceable judgment. The disputed matter of fact is neither assessed in a legally-binding way. Rather, the instructing party aims at obtaining an assessment regarding a technical, scientific or medical issue. The expert can be mandated either outside of, prior to or during court proceedings. It should be noted that a private expert opinion is always instructed by a party. If commissioned by the court, one refers to a court expertise.

EXPERTENSUCHE

Die Mitglieder der Schweizerischen Kammer technischer und wissenschaftlicher Gerichtsexperten und die zertifizierten Expertinnen und Experten finden Sie mittels Stichwortsuche im Internet:

RECHERCHE D'EXPERTS

Vous pouvez trouver les membres de la Chambre suisse des experts judiciaires techniques et scientifiques ainsi que les experts certifiés à l'aide de mots clés aux adresses internet suivantes:

RICERCA ESPERTI

Può avvenire con l'inserimento di parole chiavi nel sito internet:

SEARCH FOR EXPERTS

Experts for a particular task can be found on the internet with the aid of keywords:

www.swiss-experts.ch
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IMPRESSUM

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THE PRIVATE EXPERT OPINION

A THE PROCEEDINGS

If a party intends to obtain a private expert opinion, a contract has to be concluded with the expert of his or her choice. This expert opinion contract is not subject to a particular form. However, it is recommended to choose a written document, signed by both of the parties. As a rule, only issues of fact can be subject of a private expert opinion. However, it can happen that the expert is mandated to render a legal opinion. In practice, legal opinions are of special importance in connection with the determination of foreign law. To support its legal point of view, a party may order a private legal opinion as well.

Apart from that, the Swiss Code of Obligations (CO) applies between the expert and the principal. As a rule, the provisions governing agency (Art. 394 et seq. CO) shall be applicable. However, if there are technical issues to be assessed by the expert opinion and if its results can be verified and qualified as right or wrong (e.g. the expert opinion of an auditing firm or a geometer), the provisions governing the contract for work and services (Art. 363 et seq. CO) can apply.

The parties usually set a date for the submission of the expert opinion's report. Moreover, it is customary to offer the principal the opportunity to put additional questions to the expert in relation to the private expert opinion, if necessary against an additional compensation.

In contrast to a court expertise, the private expert opinion cannot be used as evidence in the context of future proceedings. According to the constant case law of the Swiss Federal Tribunal, the private expert opinion is only deemed as an allegation of a party. If the opposing party challenges the conclusion of the private expert opinion, the principal has to prove it. As a rule, a court expertise has to be ordered or requested, respectively, for this purpose. The rationale behind the Swiss Federal Tribunal's case law is that the expert which is ordered and paid by a sole party, does not meet the requirements of independence and impartiality. For this reason, the statements of a private expert, who is examined as a witness, are not deemed as suitable evidence. To mitigate the consequences of the abovementioned case law of the Swiss Federal Tribunal, the instructing party – under several (restrictive) requirements – can demand an expert opinion as an extrajudicial precautionary taking of evidence. Furthermore, a private expert opinion can serve to inform a court as regards the questions and the instruction of a court expert who is appointed at a later point in time.

The situation is different in the field of social security law, where a private expert opinion (e.g. a medical report submitted by a party) serves as evidence. Within the scope of the ongoing revision of the Code of Civil Procedure (CPC) it is recommended that the private expert opinion shall be qualified as evidence (physical records), based on the model of social security law. Both according to present law as well as to the preliminary draft, the court forms its opinion based on its free assessment of the evidence taken (Art. 157 CPC).

B THE COSTS

The expert and the principal are free to decide on the amount of the remuneration. There is no fee regulation. However, it is not uncommon that the customary rates of the concerned industry determine the scope or the amount of the compensation. In contrast to court expertise, the costs are not charged to the unsuccessful party. Irrespective of the outcome of the case, the costs are invoiced to the principal.

C THE PROS AND CONS

Most often, issues of fact (e.g. the value of an object or the consequences of an accident on a person's health) touch the core of the dispute between the parties. It is the private expert opinion's advantage to give the principal a first orientation on how to reply to a dispute relevant issue of fact. Depending on the conclusions of the expert, the principal can assess the prospects of success and risks related to carrying out a proceeding. In addition, the private expert opinion can also help to facilitate the conclusion of an extrajudicial settlement.

The main disadvantage lies in the fact that the private expert opinion does not serve as evidence but is merely seen as an allegation of a party. Consequently, the court is not bound to the conclusions of the expert from which it can deviate freely, which leads to a legal uncertainty. If the opposed party disputes the expert's conclusions, the court usually has to order a court expertise which generates further costs. The costs of the private expert opinion are charged to the principal, regardless of the outcome of the case.