

OHADAC Expertise Rules

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Presentation of the role of the CARO Centre and its bodies

- The OHADAC Regional Centre for Arbitration (“CARO Centre”) is authorized to manage procedures as part of the implementation of alternative dispute resolution methods such as arbitration, mediation or facilitation. This mission involves drafting and regularly updating rules of procedure; monitoring procedures; appointing and potentially replacing “neutral third parties” acting as arbitrators, mediators and facilitators; and setting and managing the costs of procedures.
- The CARO Centre is led by a Secretary-General, who is in charge of ensuring that the CARO Centre performs its missions properly; and of developing the activities of the CARO Centre in the Caribbean region and beyond. The Secretary-General is also in charge of nominating and appointing “neutral third parties” to act as facilitators, mediators or arbitrators, depending on the procedure chosen by the parties.
- The Secretariat of the CARO Centre is made up of specialized lawyers and support staff. It reports directly to the Secretary-General of the institution. It is responsible for day-to-day management of ongoing procedures entrusted to the CARO Centre.
- The CARO Centre is placed under the authority of its Board of Directors, made up of leading Caribbean personalities; specialists in internationally recognized alternative dispute resolution methods; and long-standing supporters of the OHADAC project.

Article 1: General provisions

1.1. The OHADAC Expertise Rules (the “Rules”) organize expertise proceedings referred at the request of parties to the CARO Centre for the purposes of requesting the involvement of a “neutral third party” as an expert. This expert is tasked with producing a report (the “expert report”) which involves performing a technical examination of one or more question(s) referred to them at the end of an expertise procedure in which each party is afforded an opportunity to express their point of view. Expert determination allows the parties to access technical information, the nature of which can be legal, fiscal, scientific, accounting or otherwise.

1.2. When a request for expertise is referred to the CARO Centre under the OHADAC Expertise Rules, its bodies are competent to manage the expertise procedure.

1.3. The CARO Centre shall communicate with the parties to the expertise procedure via electronic mail or, if the parties so wish or it is more appropriate given the circumstances, by regular post, fax or courier.

1.4. While the parties are free to modify the provisions of these Rules, the CARO Centre reserves the right to refuse to administer the expertise procedure if such modifications are likely to distort the terms thereof.

Article 2: Communication between the CARO Centre and the parties

2.1. The CARO Centre shall communicate with the parties to the expertise procedure via electronic mail or, if the parties so wish or it is more appropriate given the circumstances, by regular post, fax or courier.

2.2. The time limits granted to parties by the CARO Centre on the basis of these Rules may be extended for a reasonable period by the CARO Centre if the circumstances so warrant, in which case the CARO Centre does not have to provide reasons for its decision.

2.3. If the CARO Centre grants the parties a time limit as part of its administration of the expertise procedure, this time limit shall start to run the day after receipt of this communication. Regarding official holidays:

- If the day after which communication is deemed to have been received is an official holiday

or a bank holiday in the place of destination of the communication, the time limit shall start to run from the next working day;

- Official holidays, bank holidays and non-working days in general that occur during the time limit are included when calculating the time limit;
- If the time limit expires on an official holiday, a bank holiday or a non-working day in the place of destination of the communication, this time limit is extended to the next working day in that location.

Article 3: Recourse to an expertise procedure subject to the OHADAC Expertise Rules

3.1. Any party to a contract containing a Clause providing for recourse to expertise services referring to these Rules (the “Clause”) may initiate an OHADAC expertise procedure by applying to the CARO Centre as set out in Article 4. The expertise procedure will be conducted on the basis of these Rules.

3.2. If there is no Clause, parties that have forged any type of legal relationship may also initiate expertise proceedings by filing a Request with the CARO Centre. In this case, the agreement of all parties mentioned in the Request is required before the procedure can commence, as provided for under Article 6.2 of these Rules.

3.3. Expertise proceedings may be requested as part of facilitation, mediation or arbitration proceedings before the CARO Centre or any other mediation and arbitration centre, or as part of ongoing legal proceedings. This request may also be submitted outside the confines of any ongoing proceedings. Where expertise is requested as part of ongoing proceedings, the neutral third party already appointed to those proceedings – whether a mediator, facilitator or arbitrator – shall adjust the schedule to the expertise procedure and *vice versa*.

3.4. Expertise may also be initiated on the proposal of the CARO Centre further to a Request for Arbitration filed with the CARO Centre and after the meeting provided for in Article 3(4) of the OHADAC Institutional Arbitration Rules. In this case, the provisions of Article 4(6) of these Rules shall apply.

Article 4: Initiating an expertise procedure: filing a Request for Expertise (“Request”)

4.1. The Request shall be sent to the CARO Centre via the following means:

- electronic mail; or
- regular post; or
- courier.

4.2. The party or parties seeking to initiate an expertise procedure shall include the following with their Request:

- a) The identity and contact details (name(s), address(es), email address(es), telephone number(s)) of all parties concerned by the expert determination and, where applicable, all persons representing the parties;
- b) A summary description of the circumstances of the request and reference to any ongoing proceedings such as legal proceedings; *ad hoc* arbitration proceedings; arbitration, facilitation or mediation proceedings before the CARO Centre or another mediation and arbitration centre;
- c) A description of the technical question(s) submitted to the expert;
- d) A description of the expert’s expected area of specialization, along with any wish of the parties concerned relating to the expert's profile, his or her qualifications, languages spoken, experience in certain sectors of activity, *etc*, and specific reference where appropriate to any undesired attributes of the expert;
- e) Any joint designation of one or more expert(s) or, failing this, any agreement on the points cited in paragraph (d) of this article;
- f) Any relevant information relating to how the expert should conduct the expertise procedure and in particular the time period within which the procedure should be conducted;
- g) Reference to any expertise clause or written agreement of the parties concerned to engage in an OHADAC expertise procedure, including a copy of the clause or agreement where appropriate.

This information shall be sent to the CARO Centre via email, regular post or courier.

4.3. The Request will only be recorded if it is accompanied by payment of the registration fee, as defined using the scale in force appended hereto.

4.4. Where there is a Clause in the contract binding the parties, the commencement date of the expertise procedure is the date on which the CARO Centre receives the Request. This date shall be mentioned by the CARO Centre in its letter confirming receipt of the Request.

4.5. Where there is no Clause, the date on which the expertise procedure is initiated shall be the date of the letter from the CARO Centre noting that the parties have agreed to avail of expert determination. This agreement shall be recorded by the CARO Centre following implementation of the procedure under Article 6(2) hereof.

4.6. If the procedure is initiated by the CARO Centre, following the meeting provided for in Article 3(4) of the OHADAC Institutional Arbitration Rules, the Request for Arbitration shall be deemed the Request for the purposes of this article and the Response shall be deemed the responding observations provided for in Article 6 of these Rules. The CARO Centre may then directly appoint an expert as laid down in Article 8 of these Rules. The costs of the expertise procedure shall be offset against any costs already paid to initiate the arbitration proceedings.

Article 5: Notification to parties of the filing of a Request for Expertise

5.1. The party or parties mentioned in the Request shall be informed by the CARO Centre of the filing of a Request for Expertise within two (2) days following receipt of the Request.

5.2. The CARO Centre shall use the contact details provided in the Request by the party initiating the expertise procedure or in any other correspondence from that party to the CARO Centre.

Article 6: Observations in response by the parties mentioned in the Request

6.1. Where there is an Expertise Clause whereby the two parties have agreed to use this procedure, or where the expertise is ordered by a judge or an arbitrator:

The party or parties mentioned in the Request shall have fifteen (15) days to submit their observations in response to the Request for Expertise. In its observations, each party shall indicate its position on the issue(s) identified in the Request.

6.2. Where there is no Expertise Clause, and the expertise is not ordered by a judge or an arbitrator:

Upon receipt of the Request for Expertise, the CARO Centre shall inform all parties mentioned in the Request of the proposal to settle the current dispute via an OHADAC expertise procedure. The CARO Centre may assist them to arrive at an agreement on recourse to the expertise procedure under the auspices of these Rules, including calling a meeting, which can be face-to-face, via video-conference or by telephone between the Secretariat of the CARO Centre, the party initiating the expertise procedure and the party or parties mentioned in the Request. This agreement shall then be forwarded in writing to the CARO Centre by regular post or electronic mail.

If the parties agree to submit their dispute to an expertise procedure within fifteen (15) days of the date the Request is received or any other reasonable deadline set by the parties, the expertise procedure will commence. The party or parties mentioned in the Request shall then have another fifteen (15) days from the date of receipt of the letter of confirmation issued by the CARO Centre to submit their observations on the Request, in order to clarify their position on the issue(s) identified in the Request. If the parties do not come to an agreement within fifteen (15) days of the date the Request is received or any other reasonable deadline set by the parties, the expertise procedure cannot commence and the parties remain free to file another Request for Expertise at a later date.

Article 7: Organizational meeting for procedures initiated by the CARO Centre

7.1. Before appointing an expert, the Secretariat may call a meeting between the parties to organize the procedure. This meeting may be face-to-face, via video-conference or by telephone. The meeting will aim to encourage communication between the parties; and to ensure that their wishes and specific requirements are both understood and taken into consideration when appointing an expert and more generally in the management of the procedure.

7.2. During this meeting, the Secretariat may also suggest that the parties engage in another dispute resolution procedure such as facilitation or arbitration if it believes that this dispute resolution method would be more appropriate than an expertise procedure given the

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circumstances and in particular in view of the parties' specific requirements and objectives. This type of procedure shall be set up by the CARO Centre if both parties expressly agree to it in writing.

Article 8: Appointment of the expert

8.1. Within three (3) days of receipt of the observations in response to the Request, the CARO Centre shall acknowledge receipt and appoint an expert, unless a meeting to organize the procedure as provided for in Article 7 hereof is held. In this case, the CARO Centre shall appoint an expert within three (3) days after the meeting, unless the parties decide to use an alternative dispute resolution procedure suggested by the CARO Centre, such as facilitation or arbitration.

8.2. If the parties have agreed on the choice of expert, the Centre shall confirm this appointment.

8.3. Failing agreement between the parties, the Centre shall appoint an expert, taking into account criteria such as the expert's experience; fields of specialization; availability to conduct the expertise procedure within the time limits set out herein; the language of the expertise procedure or, if this has not yet been decided, the language(s) suggested by the parties; and any other circumstances likely to influence the proper conduct of his/her mission.

8.4. If the parties so wish or alternatively on the proposal of the CARO Centre and with the written agreement of all parties, the CARO Centre may appoint several experts if the circumstances, particularly the complexity of issues raised, so warrant.

Article 9: Independence and impartiality

9.1. The expert must meet the requirements of independence and impartiality. Prior to being appointed, the CARO Centre shall ask the expert to fill out a statement of independence and impartiality (the "Statement of Independence and Impartiality"), which shall be forwarded to the parties for their comments.

9.2. If, prior to accepting the expert's appointment, there are any circumstances likely to cast doubts in the parties' minds as to the expert's independence and/or impartiality, or that are liable to delay the early progress of the expertise procedure as provided for herein, the expert must disclose these circumstances in the statement of independence and impartiality. These circumstances may include for example:

- any personal or business relationship with one of the parties;
- any direct or indirect financial or other interest in the outcome of the expertise procedure; or
- the fact that the expert, or a member of his or her governing structure, has acted in any capacity other than expert for one of the parties (such as counsel, adviser, arbitrator, mediator or other).

9.3. This obligation shall apply throughout the procedure in the event that new circumstances arise that could affect the independence and/or impartiality of the expert.

9.4. Upon receipt of this information in the statement of independence and impartiality and/or any other subsequent communication from the expert, the CARO Centre shall immediately forward it to the parties, inviting them to comment.

If the parties expressly agree that the expert can start or continue his or her mission despite the circumstances, the expert shall be appointed or confirmed by the CARO Centre or, alternatively, if the procedure is already ongoing, the expert shall continue to conduct the expertise procedure if s/he is certain that s/he can do so with complete independence and impartiality.

If both parties do not expressly agree, the CARO Centre may, if the expert has not yet been confirmed or appointed, refuse to confirm or appoint him or her. If the expert has already been confirmed or appointed and such circumstances come to light during the procedure, the CARO Centre may replace the expert and appoint a new one, in accordance with Article 10 of these Rules.

Article 10: Replacement of the expert

10.1. When an expert can no longer or no longer wishes to perform his or her mission as covered by these Rules, the CARO Centre shall appoint another expert.

10.2. If the expert does not comply with the provisions of these Rules regarding the conduct of the expertise procedure, particularly those relating to the time limits of the expertise procedure, the CARO Centre may appoint another expert after inviting the parties to submit their observations, unless all the parties object.

10.3. Any party to the expertise procedure can ask the CARO Centre to replace the expert, giving reasons for its request. Replacement is at the discretion of the CARO Centre, which

shall decide after seeking input from the other parties to the procedure, as well as the expert, and potentially after hearing the parties at a meeting, which can take place face-to-face, via video-conference or by telephone without the expert being present. The CARO Centre shall forward its decision within three (3) days of receipt of the latest observations sought by the CARO Centre following this request. The CARO Centre does not have to provide reasons for its decision. If all parties to the procedure request a replacement the CARO Centre shall replace the expert.

Article 11: Steps and Time Limits of the Expertise Procedure

11.1. Once appointed by the CARO Centre, the expert shall contact the parties within two (2) days in order to agree the date of an initial meeting to examine with them the specific contours of the issue(s) submitted to him/her for analysis; the stages of the procedure; the time limit within which the expert must submit his/her report and the language of the procedure unless this has already been agreed by the parties. This meeting may be held face-to-face or remotely, via video-conference or by any other means that is appropriate and effective in terms of time and costs.

11.2. Within seven (7) days following the holding of this initial meeting, the expert shall draw up a roadmap (the “Roadmap”) specifically identifying the parties as laid down in Article 4.2(a); describing the specific contours of his/her mission and specifying the date on which the expert report must be provided to the parties. In this roadmap, the expert shall also determine the language of the expertise procedure, failing any prior agreement between the parties in this regard, and shall also determine the location(s) of the expert meetings, the arrangements for these meetings and their frequency. The expert shall attach to the Roadmap a precise schedule for the procedure and shall specify the time limit for forwarding the expert report to the parties. In this context, the expert is encouraged to prescribe any measure(s) aimed at improving the effectiveness of the procedure in terms of time limits and costs by any appropriate technological means.

11.3. If several experts are appointed, the mission of each one, their objectives and the duration of their involvement shall be specified.

11.4. This Roadmap shall be sent to the parties and the CARO Centre within the time limit stated in the second paragraph of this article. The expert must respect the terms of the Roadmap throughout the expertise procedure unless the parties expressly agree to deviate from it. In this case, the amendments to the Roadmap must be set down in writing.

11.5. The expertise procedure must be completed within the time limits stipulated by the parties and the expert in the Roadmap or any subsequent amendments thereto, under the terms provided for the preceding paragraph. The CARO Centre may extend this time limit for a period of one month on two (2) occasions if it considers that the circumstances so warrant.

11.6. Upon the expiry of the time limit provided for in the Roadmap or any subsequent written amendment thereto under the terms provided for in Article 4, unless an additional time limit has been granted by the CARO Centre; or, alternatively, upon the expiry of the additional time limit granted by the CARO Centre on the basis of the above paragraph, the CARO Centre may close the file.

11.7. These documents shall be forwarded to the parties and to the CARO Centre, which shall manage the execution thereof. The expert may not modify this document during the procedure without the agreement of the parties, as stipulated in paragraph 4 of this article.

Article 12: Role of the expert

12.1. The expert is appointed for his/her technical expertise in relation to one or more issue(s) of critical importance for the parties involved. When implementing the expertise procedure, the expert must be respectful of the parties' interests; s/he must give the parties equal opportunity to put forward their arguments and to make free and informed choices throughout the process.

12.2. The expert shall decide how best to execute his or her mission and shall define this mission taking into account the circumstances surrounding the referral and the wishes of the parties, in accordance with the principles laid down in Article 9 and the time limits provided for under Article 11 of these Rules in relation to the stages and time limits of the expertise procedure. In particular, the expert shall choose the language of the expertise, as well as the location(s) of, arrangements for and frequency of meetings. S/he shall communicate these arrangements to the parties in writing prior to holding expert meetings and shall also communicate in writing any change to the organization of the expertise procedure.

12.3. Failure by a party to take part in the procedure shall not prevent the expert from fulfilling his/her mission diligently, in accordance with the provisions of these Rules.

Article 13: Expert Report

13.1. The expert report (the “Expert Report”) shall contain a technical analysis by the expert on the issue(s) referred by the parties to the procedure. The conclusions of this report shall not be binding on the parties unless they agree otherwise in the Clause or in another written agreement between them.

13.2. The CARO Centre shall review the draft Expert Report before forwarding it to the parties. It may make editing suggestions to the expert. Once the report is approved by the CARO Centre, the expert shall sign and forward to the CARO Centre as many copies as there are parties, plus one copy for the Centre.

13.3. The CARO Centre shall then forward the Expert Report to the parties.

Article 14: Fees and expenses

14.1. The fees and expenses of the expertise procedure (the “Fees and Expenses”) shall include the administrative costs incurred by the CARO Centre to administer expertise procedures, as well as the costs of the expert(s), comprising of the fees of the expert(s) and any disbursements relating to expert meetings (“expert remuneration”).

14.2. The Fees and Expenses are set, as appropriate, according to the scale appended hereto (the “Schedule of costs”) in force on the date of referral to the Centre. The Fees and Expenses may be readjusted if necessary by the CARO Centre throughout the procedure, and in particular once the Roadmap has been drafted, in order to reflect the reality of the work done by the expert and the procedures performed by the CARO Centre, which depend on the complexity of the expertise procedure.

14.3. Unless otherwise agreed by the parties, the Fees and Expenses shall be split equally between the parties. One party to the expertise procedure may decide to take on the share of fees and expenses of another party.

14.4. All other expenses incurred by the parties (specifically counsel) shall remain payable by them, unless otherwise agreed by the parties.

14.5. The registration fees are paid when the Request is filed, as stipulated in Article 4.3 of these Rules, unless a party asks the CARO Centre to administer the expertise procedure once the expert has been appointed based on the Expert Appointment Rules.

14.6. Once the Request has been referred to the CARO Centre, it shall issue an initial call for funding to the parties to cover the costs until the expert is appointed. The CARO Centre shall issue a second call for funding when the expert is appointed, and a third call for funding once the expert has drawn up the Roadmap.

14.7. In the event of non-payment of the Fees and Expenses further to calls for funding by the CARO Centre, the CARO Centre may suspend and then terminate the expertise procedure.

14.8. The CARO Centre shall determine the total cost at the end of the expertise procedure. The CARO Centre may make reimbursements if the total cost is lower than the fees and expenses already paid by the parties or may request payment of the Fees and Expenses if the total cost is higher than the fees and expenses already paid by the parties. This could happen for example if the parties reach agreement quicker than anticipated or alternatively if they decide not to continue with the expertise procedure according to the terms initially agreed.

Article 15: Confidentiality

15.1. Procedural meetings are private and confidential and shall only remain accessible to the parties and their representatives. Other persons may only participate in these sessions subject to the parties' authorization and the expert's agreement.

15.2. Both the parties opting for recourse to an expertise procedure and the expert appointed undertake to keep confidential everything that is said, written or done within the framework of this procedure.

15.3. Nevertheless, the Expert Report may be produced in any legal, arbitration, mediation or other proceedings to which the parties to the expertise procedure are party. This is the case in particular where the expertise procedure is requested within the framework of ongoing legal or arbitration proceedings. The expert may be called on to testify in this regard.

Article 16: End of the Expertise Procedure

The CARO Centre shall terminate the expertise procedure in any one of the following scenarios:

- (i) If the parties fail to pay the Fees and Expenses of the expertise procedure as provided for under Article 14.7 of these Rules;

- (ii) Upon the expiry of the time limit provided for in the Roadmap or in any other subsequent agreement between the parties, unless the circumstances warrant an extension under the terms provided for in Article 11.5 of these Rules;
- (iii) Once the Expert Report is forwarded by the CARO Centre to the parties;
- (iv) If one or other party informs the expert in writing that it no longer intends to continue with the expertise procedure and/or that it is terminating this procedure, unless the parties still involved in the process signal their intention to continue to the CARO Centre in writing and the expert and the CARO Centre agree.

Article 17: Non-liability clause

Neither the CARO Centre nor the expert shall be liable to any person for any acts or omissions in relation to the OHADAC expertise procedure.