

# OHADAC Rules for the Appointment of Arbitrators and Other Services

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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. The CARO Centre is also authorized to appoint “neutral third parties” at the request of the parties or another mediation and arbitration centre. These missions involve 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, arbitrators or experts, depending on the procedure chosen by the parties.
- The Secretariat of the CARO Centre comprises 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, comprising leading Caribbean personalities; internationally recognized specialists in alternative dispute resolution methods; and long-standing supporters of the OHADAC project.

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## Article 1: General provisions

1.1. The CARO Centre is authorized to intervene as an appointing authority and in this capacity to provide services relating to the appointment of an arbitrator, to rule on a request to remove an arbitrator and/or proceed with the replacement of an arbitrator, as provided for under Article 5 of the OHADAC Rules for the Appointment of Arbitrators and Other Services (the “Rules”). The CARO Centre may also provide certain administrative support services as defined in Article 6 hereof. These services may be provided in the context of the following arbitration proceedings:

- a) *Ad hoc* arbitration proceedings conducted on the basis of the provisions of the UNCITRAL Arbitration Rules (version 2010) (the “UNCITRAL Rules”);
- b) *Ad hoc* arbitration proceedings not covered by the UNCITRAL Rules; or
- c) Institutional arbitration proceedings that are not administered by the CARO Centre.

1.2. When appointing an arbitrator or arbitrators pursuant to the provisions hereof, the Secretary-General shall be responsible for conducting this appointment, in accordance with the provisions of Article 3(2) of the OHADAC Institutional Arbitration Rules.

1.3. If there is no pre-existing written agreement assigning jurisdiction to the CARO Centre to act as the appointing authority or to provide any other service, the agreement of the parties concerned, on the basis of the information contained in the file, is required before the procedure can commence, as provided for under Article 4(2) of these Rules.

1.4. In all scenarios, the CARO Centre shall remain free to refuse to act without having to provide reasons for its refusal.

## Article 2: Notifications and time-limits

2.1. Notifications of proceedings or documents by the parties may be made by any means providing evidence of their transmission and receipt, particularly by delivery with acknowledgement of receipt, registered mail, courier service, email or fax.

2.2. The Secretariat shall transmit notifications to the parties or their representatives at the last agreed address of the parties or, if none has been agreed, at the address communicated by the other party.

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2.3. If one of the parties has not designated or agreed an address for notification, such notifications shall be considered valid provided that:

- a) They were hand-delivered to the addressee with a receipt signed by the addressee;
- b) They were delivered to the place of business or residence of the addressee, or to his or her postal address; or
- c) If it is not possible to deliver the notification as outlined above, notification shall be delivered to the last known place of business, residence or domicile of the party in question.

2.4. Notification shall be presumed to have been made on the date of delivery or on the date of attempted delivery as per the preceding paragraphs. Communications by email shall be deemed to have been made on the date on which they are received on the server or at the recipient's email address.

2.5. With regard to the computation of time limits, these shall begin to run on the day following the day on which the notification is deemed to have been made under the terms of the above paragraph. Regarding official holidays:

- a) If the day after which notification is deemed to have been made is an official holiday or a bank holiday in the place of destination of the notification, or a non-working day, the time limit shall start to run from the next working day;
- b) Official holidays, bank holidays and non-working days in general that occur during the time limit are included when calculating the time limit; and,
- c) If the time limit expires on an official holiday, a bank holiday or a non-working day in the place of destination of the notification, this time limit is extended to the next working day in that location.

2.6. The CARO Centre shall communicate with the participants in the proceedings via electronic mail or, if the parties so wish or it is more appropriate given the circumstances, by regular post, fax or courier.

2.7. All documents forwarded by the parties to the CARO Centre by post or courier must be sent in as many copies as there are parties to the proceedings, plus one each for the arbitrator(s) to be appointed and for the CARO Centre.

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## Article 3: Filing a Request with the CARO Centre

3.1. The CARO Centre can be asked to appoint an arbitrator and/or to provide other administrative services within the context of arbitration proceedings as referred to in Article 1(1) hereof (the “Request”). This Request shall be sent in writing by one or more parties to the arbitration proceedings. The Request shall be sent to the Secretariat with proof of delivery, in as many copies as provided for under Article 2(7) hereof via the following means:

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

3.2. The party or parties making the Request to have an arbitrator appointed or for any other service shall include the following with the Request:

- a) The identity and contact details (name(s), address(es), email address(es), telephone number(s)) for all parties concerned by the arbitrator appointment procedure and, where applicable, all persons representing the parties;
- b) The identity and contact details (name(s), address(es), email address(es), telephone number(s)) of any arbitrator already appointed;
- c) The Request for Arbitration and the Answer exchanged between the parties at the commencement of the arbitration proceedings for *ad hoc* proceedings covered by the UNCITRAL Rules, as provided for under Articles 3 and 4 hereof;
- d) A precise description of the service(s) requested;
- e) Where applicable, a copy of the clause or document containing the agreement between the parties to have recourse to the OHADAC Centre as the appointing authority, or any other relevant agreement in relation to the service(s) requested;
- f) Any agreement relating to the seat of the arbitration proceedings, the language of the applicable proceedings and the applicable law or, failing this, any proposal(s) in this regard.
- g) The following information regarding the qualifications and skills of the arbitrator(s) whose appointment is requested:
  - (i) Reference to his or her area of specialization;

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- (ii) Any wishes relative to the arbitrator's skills and experience, including his or her academic studies, qualifications, language skills and professional experience; and
  - (iii) Any other information relating to the profile sought that could prove useful in the appointment process.
- h) Any relevant information relating to the conduct of the arbitration proceedings once the arbitrator has been nominated that could influence his or her appointment, in particular the time limits within which the arbitration proceedings should be completed; any planned travel; the parties' wishes as regards the holding of hearings and, where applicable, the potential location where these hearings will take place (unless these are to take place via video-conference); and
- i) Where there is a request to remove an arbitrator, the reasons supporting such a removal request.

**3.3.** The Request shall only be recorded if it is accompanied by payment of the registration fee, as defined using the schedule of costs in force appended hereto.

**3.4.** If there is a clause or written agreement designating the CARO Centre as the appointing authority, or any other agreement providing for its involvement in respect of the services provided for herein, the date on which these proceedings are initiated shall be deemed the date of receipt of the Request by the CARO Centre. This date shall be mentioned by the CARO Centre in its letter confirming receipt of the Request.

**3.5.** If there is no clause or written agreement designating the CARO Centre as the appointing authority, or any other agreement providing for its involvement in respect of the services provided for herein, the date on which these proceedings are initiated shall be deemed to be the date of the letter from the CARO Centre confirming agreement between all persons mentioned in the Request, following implementation of the procedure provided for in Articles 4(2) to 4(4) of these Rules.

## Article 4: Notification to parties of the filing of a Request

**4.1.** Where there is a clause assigning jurisdiction to the CARO Centre to act as the appointing authority or to provide any other service: where a Request is filed, the persons mentioned in the Request shall be informed by the CARO Centre that a Request has been filed within two (2) days following receipt of the Request. The CARO Centre shall use the contact details provided in the Request by the requesting party or any other correspondence from that party to the CARO Centre.

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4.2. Where there is no clause assigning jurisdiction to the CARO Centre to act as the appointing authority or to provide any other service: the CARO Centre shall inform all parties mentioned in the Request that a Request has been filed within two (2) days following receipt of the Request. The CARO Centre shall seek confirmation of the agreement of all persons mentioned in the Request within fifteen (15) days of receipt of this communication from the CARO Centre. This confirmation must be communicated in writing to the CARO Centre by regular post or electronic mail.

4.3. The CARO Centre may request a physical meeting, a video conference or a telephone meeting between the Secretariat, the requesting Party and the parties mentioned in the Request if it considers it desirable to clarify certain points relative to the agreement between the parties and to the conduct of the proceedings by the CARO Centre.

4.4. Failing agreement within fifteen (15) days as provided for under paragraph 2 of this article, the CARO Centre shall close the proceedings and the parties concerned shall remain free to file another request at a later date.

## Article 5: Services involving the appointment, removal and replacement of an arbitrator

5.1. Upon confirmation of the agreement of all parties concerned to have recourse to the CARO Centre as the appointing authority under the terms provided for in Article 4 hereof, the CARO Centre shall provide the following services, depending on the terms of the agreement between the parties:

- a) Appointment of a Sole Arbitrator;
- b) Appointment of Co-Arbitrators;
- c) Appointment of the President of the Arbitral Tribunal;
- d) Constitution of the Arbitral Tribunal;
- e) Decision on a removal request; or
- f) Appointment of a replacement arbitrator.

5.2. When appointing these arbitrators, the CARO Centre shall follow the appointment procedure provided for in Article 18 of the OHADAC Institutional Arbitration Rules, unless the parties agree otherwise. In relation to a request for removal and/or replacement, the CARO

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Centre shall implement the provisions of Article 20 and Article 21(4) of the OHADAC Institutional Arbitration Rules, unless the parties agree otherwise.

5.3. Where the CARO Centre is seized as the appointing authority in the context of an *ad hoc* arbitration proceeding subject to the UNCITRAL Rules, the CARO Centre shall, in accordance with the provisions of Article 6(7) of the UNCITRAL Rules, take account of all aspects relevant to ensuring the appointment of an independent and impartial arbitrator, and shall consider the appropriateness of appointing an arbitrator of a nationality other than that of the parties if the parties have different nationalities. Furthermore, in this regard, the CARO Centre shall make the appointments and/or proceed with the removal and/or replacement in accordance with the provisions of the UNCITRAL Rules, more specifically Articles 7, 8, 9(2) and 9(3), 10(3) as regards appointment requests, and Articles 13(4) and 14(2) as regards requests for removal and/or replacement. The CARO Centre shall also be authorized to constitute the Arbitral Tribunal if the parties have failed to reach agreement on this on the basis of Article 10 of the UNCITRAL Rules.

5.4. In all scenarios where the CARO Centre proceeds to appoint one or more arbitrator(s), the CARO Centre shall endeavour to comply with the terms laid down in the arbitration clause between the parties and shall endeavour to appoint an arbitrator whose qualifications, availability and skills meet the demands of the participants in the proceedings, as stated in the Request for Arbitration and the Answer and/or in any subsequent communication between the parties and the Secretariat. The CARO Centre shall also verify that the remuneration sought by the arbitrator is reasonable and proportionate to his or her mission and experience, and shall ensure that the arbitrator is available to complete his or her mission promptly.

5.5. In all scenarios where the CARO Centre rules on a request to remove and/or replace an arbitrator, the Secretariat shall seek observations in relation to this request from the parties and also from the other arbitrators, where applicable, within a certain period of time, prior to communicating the decision to the parties.

5.6. Where it is seized as arbitrator's appointing authority, the CARO Centre may also advise the Arbitral Tribunal in relation to the financial aspects of the arbitration, in order to determine the arbitration costs and advances which it will seek from the parties. In *ad hoc* arbitration proceedings covered by the UNCITRAL Rules, the CARO Centre shall act within the framework of Articles 41(3), 41(4) and 43(3) hereof.

5.7. Any document or information communicated to the arbitrator by the CARO Centre and/or the parties within the context of the appointment procedure shall be strictly confidential and must be treated as such by the arbitrator, whether or not s/he is confirmed.

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5.8. Once the arbitrator(s) has/have been appointed, the CARO Centre shall have no further involvement in the arbitration proceedings, unless there is a request to replace the arbitrator(s) under the terms provided for in this article. It will be up to the parties and the arbitrator(s) to agree on the terms of the arbitrator's mission and his or her remuneration.

## Article 6: Other services

The CARO Centre may also provide the following administrative services at the request of the parties:

- a) keeping the file records;
- b) handling the logistics of organizing meetings and hearings;
- c) holding an escrow account for funds to be used to remunerate the arbitrator(s), any secretaries to arbitral tribunals and experts; and/or
- d) any administrative service requested by the parties.

## Article 7: Independence and impartiality

7.1. Prior to being appointed, the CARO Centre shall ask the arbitrator to fill out a statement of independence and impartiality (the "Statement of independence and impartiality"), which shall be forwarded to the parties for their observations within a time limit set by the CARO Centre.

7.2. If, prior to accepting the appointment, there are any circumstances likely to cast doubts in the parties' minds as to the arbitrator's independence and/or impartiality, s/he must disclose these circumstances in the Statement of independence and impartiality. If one of the parties to the proceedings expresses reservations following such disclosures, the CARO Centre may not confirm the arbitrator and may propose another candidate to the interested parties.

## Article 8: Fees and expenses

8.1. The fees and expenses of the arbitrator appointment procedure include the registration fees and the appointment fees (the "Fees and Expenses"). They shall be fixed, as appropriate, according to the scale, appended hereto, in force on the date of referral to the CARO Centre by one or more parties (the "Schedule of Costs").

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8.2. The registration fees shall be paid when the Request or the Joint Request is filed, as stipulated in Article 3.3 of these Rules. These fees are not reimbursable, regardless of whether the arbitrator appointment proceeds or not.

8.3. The CARO Centre shall request payment of the Appointment fees as set out in the Schedule of Costs appended hereto when it proceeds with the service requested.

8.4. Failing payment of the Fees and Expenses further to payment requests from the CARO Centre, the CARO Centre shall not proceed with the service requested.

## Article 9: Non-liability clause

Neither the CARO Centre nor the arbitrator shall be liable to any person for any acts or omissions in relation to the arbitrator appointment procedure by the CARO Centre or any other service provided on the basis of these Rules, or in relation to the arbitration proceedings that may or should arise.

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