

# OHADAC Rules for the Appointment of Experts

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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 parties, of a court or of another arbitration and mediation 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 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; internationally recognized specialists in alternative dispute resolution methods; and long-standing supporters of the OHADAC project.

## Article 1: General provisions

1.1. The OHADAC Rules for the Appointment of Experts (the “Rules”) organize the appointment of one or more expert(s) at the request of parties already involved in facilitation, mediation or arbitration proceedings, whether administered by the CARO Centre or another institution, or in *ad hoc* proceedings. The CARO Centre may also be asked to appoint an expert in the absence of any proceedings by parties involved in a joint project that are seeking expert advice on a complex issue. Finally, the CARO Centre may be asked to appoint an expert by a court or another arbitration and mediation centre.

1.2. Regardless of the configuration, the CARO Centre must be satisfied that all concerned parties, determined on the basis of the information contained in the file, consent to the appointment before acceding to the request to appoint an expert.

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

1.4. 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 procedure, plus one each for the expert to be appointed and for the CARO Centre.

## Article 2: Filing a request for the appointment of an expert with the CARO Centre

2.1. The CARO Centre can be asked in writing to appoint an expert by one of the parties to ongoing proceedings; by one of the entities involved in a joint project; or by a court or another arbitration and mediation centre (the “Request”). The CARO Centre may also be asked to appoint an expert by all parties concerned in any of these scenarios. In this case, the request to have an expert appointed shall be submitted jointly to the CARO Centre, and shall also be in writing (“Joint Request”).

2.2. The Request or Joint Request shall be sent to the CARO Centre via the following means:

- electronic mail;
- regular post; or

- courrier.

2.3. The party or parties seeking to have an expert appointed shall include the following with the Request or Joint Request:

- a) The identity and contact details (name(s), address(es), e-mail address(es), telephone number(s)) for all parties concerned by the expert nomination and, where applicable, all persons representing the parties;
- b) A summary description of the circumstances of the appointment request, whether the request relates to ongoing proceedings or another context, and clarifying in particular, where applicable, the subject-matter of the proceedings and the amounts at stake; the links between the parties concerned by the appointment request and the objectives pursued; the area(s) of activity of the parties concerned by the request to have an expert appointed;
- c) The following information regarding the qualifications and skills of the expert to be appointed:
  - (i) reference to the expert's area of specialization;
  - (ii) any wishes relative to the expert'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.
- d) A description of the mission to be entrusted to the expert, along with any relevant information relating to the conduct of the expert appointment procedure by the expert, once appointed, that could influence his or her appointment, in particular the time limits for completing the expert appointment procedure, any planned travel or site visit(s), etc; and,
- e) Any agreement relating to the language of the expert appointment procedure or, failing this, any proposal in this regard.

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

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

2.5. In the case of a Joint Request, the date on which the expert appointment procedure is initiated shall be deemed to be the date on which the Joint Request is received by the CARO Centre. This date shall be mentioned by the CARO Centre in its letter confirming receipt of the Request.

2.6. In the case of a Request, if there is no written clause binding the participants to this procedure providing for the jurisdiction of the CARO Centre for the appointment of an expert, the date on which the expert appointment procedure is initiated shall be deemed to be the date of the letter from the CARO Centre confirming agreement between all concerned parties, determined on the basis of the information contained in the file, and following implementation of the procedure provided for in Articles 3(2) and 3(3) of these Rules.

## Article 3: Notification to parties of the filing of a Request

3.1. Where a Request is filed, all parties concerned shall be informed by the CARO Centre that a request to appoint an expert has been filed within two (2) days following receipt of the Request. The CARO Centre shall use, where applicable, the contact details provided in the Request by the requesting party or any other correspondence from that party to the CARO Centre.

3.2. The CARO Centre shall request confirmation of the agreement of all concerned parties within fifteen (15) days of receipt of this communication from the CARO Centre. This agreement may be communicated to the CARO Centre by any means. The CARO Centre may verify that such an agreement is in place, including by requesting a physical meeting, a video conference or a telephone meeting between the Secretariat, the requesting party and the concerned party or parties.

3.3. The CARO Centre may also request a meeting if it considers that all parties concerned by the expert appointment are not in agreement on the expert's essential qualifications, on the arrangements for conducting the procedure or on any other matter relevant to the requested appointment of the expert.

3.4. Where the CARO Centre considers that all participants have reached agreement on requesting the appointment of an expert and that they have agreed on the expert's essential qualifications and the outlines of his or her mission, it shall proceed to appoint the expert under the terms provided for under Article 4 of these Rules. If the parties do not come to an agreement on the above within fifteen (15) days of the date they received the Request or any other reasonable deadline set by the parties, the CARO Centre shall inform the parties

in writing that of the termination of the procedure and the parties shall remain free to file another appointment request at a later date.

**3.5.** The time limits stipulated in this article shall begin to run on the day following the day on which the communication is received. Regarding official holidays:

a) 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, 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 communication, this time limit is extended to the next working day in that location.

## Article 4: Expert appointment

**4.1.** Upon confirmation of the agreement of all parties concerned to have recourse to an expert under the terms provided for in Articles 3(2) and 3(3) of these Rules, the CARO Centre shall proceed to appoint the expert.

**4.2.** The CARO Centre shall endeavour to appoint an expert whose qualifications, availability and skills meet the demands of parties to the procedure, as stated in the Request, the Joint Request and/or any other subsequent communication between the parties and the Secretariat or in any dispute resolution clause binding the parties, and for which the remuneration sought shall be reasonable and proportionate to his or her mission and experience, and the mediator shall be available to complete his or her mission promptly.

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

**4.4.** Any document or information communicated to the expert 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 expert, whether or not s/he is confirmed.

**4.5.** Once the expert has been appointed, the CARO Centre shall have no further involvement in the expert appointment proceedings, unless there is a request to replace the

expert under the terms provided for in Article 6 of these Rules. It will be up to the parties and the expert to agree on the terms of the expert's mission and his or her remuneration.

## Article 5: Independence and impartiality

5.1. 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 observations within a time limit set by the CARO Centre.

5.2. If, prior to accepting the appointment, there are any circumstance(s) likely to cast doubts in the parties' minds as to his or her independence and/or impartiality, the expert must disclose these circumstances in the Statement of independence and impartiality. If one of the interested parties expresses reservations following such disclosures, the CARO Centre cannot confirm the expert and shall propose another candidate to the interested parties.

## Article 6: Replacement of the expert

6.1. Where an expert can no longer adequately or no longer wishes to perform his or her mission, the parties may ask the CARO Centre to appoint another expert.

6.2. If one or more parties to the procedure indicates in writing to the CARO Centre that the expert is not complying with the provisions of these Rules; is not performing his or her mission promptly; lacks impartiality or independence and/or for any other reason, the CARO Centre may appoint another expert after inviting the parties and the expert to submit their observations, 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 five (5) days of receipt of the latest observations sought following this request. If all parties to the expert appointment procedure request a replacement the CARO Centre shall replace the expert.

## Article 7: Fees and expenses

7.1. The fees and expenses of the expert 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 party or parties (the "Schedule of costs").

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7.2. The registration fees shall be paid when the Request or the Joint Request is filed, as stipulated in Article 2(4) of these Rules. These fees are not reimbursable, regardless of whether an expert is appointed or not.

7.3. The CARO Centre shall request payment of the Appointment Fees as set out in the Schedule of costs appended hereto when the expert is appointed.

7.4. Failing payment of the Fees and Expenses of the expert appointment procedure further to payment requests from the CARO Centre, the CARO Centre shall not proceed with the requested appointment.

## Article 8: 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 expert appointment procedure or in relation to the expertise that may or should arise.