

OHADAC Rules for the Appointment of Mediators

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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, a court 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, made up of 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 OHADAC Rules for the Appointment of Mediators (the “Rules”) govern the appointment of one or more mediators referred by parties wishing to have their dispute(s) settled amicably via the intervention of a neutral third party who will help them to find a solution to their issue(s).

1.2. Regardless of the configuration, the CARO Centre shall verify the consent of all parties involved based on the information contained in the file before it can accede to the request to appoint the mediator(s).

1.3. Cases may also be referred to the CARO Centre by another mediation and arbitration centre, or by a judge as part of court-ordered mediation in accordance with the relevant provisions of the French Code of Civil Procedure or any other legislation. The CARO Centre may adapt some provisions of these Rules if these prove incompatible with such legislations and it may also adjust the rates set out in the Schedule of Costs appended hereto.

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

1.5. 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 mediator to be appointed and for the CARO Centre.

Article 2: Filing a request with the CARO Centre for the appointment of a mediator

2.1. The CARO Centre can be asked in writing to appoint a mediator (the “Request”) by one or more persons involved in a dispute; or by a court or another mediation and arbitration centre. The Request shall be sent to the CARO Centre via the following means:

- a) electronic mail;
- b) regular post; or
- c) courier.

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2.2. The party or parties seeking to have a mediator appointed shall include the following with their Request or Joint Request:

- a) The identity and contact details (name(s), address(es), email address(es), telephone number(s)) of all parties concerned by the mediator appointment procedure and, where applicable, all persons representing the parties;
- b) A summary description of the dispute between the parties to the mediator appointment procedure;
- c) The following information regarding the qualifications and skills of the mediator to be appointed:
 - (i) reference to the mediator's area of specialization;
 - (ii) any wishes relative to the mediator's skills and experience, including his or her academic studies, qualifications, language skills and professional experience; or
 - (iii) any other information relating to the profile sought that could prove useful in the appointment process;
- d) Any relevant information relating to the conduct of the mediation procedure once the mediator has been nominated that could influence his or her appointment, in particular the time limits within which mediation should be completed; any planned travel; potentially the location where the mediation meetings will take place (unless these take place via video-conference);
- e) Any agreement relating to the language of the mediation procedure or, failing this, any proposal in this regard; and
- f) A copy of the clause or document containing the agreement between the parties to ask the CARO Centre to appoint a mediator.

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

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

2.4. If there is a clause or agreement assigning jurisdiction to the CARO Centre to proceed with appointing the mediator, the date on which the mediator appointment procedure is initiated shall be deemed to be 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.

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2.5. If there is no clause or agreement assigning jurisdiction to the CARO Centre to proceed with appointing the mediator, the date on which the mediator appointment procedure is initiated shall be deemed to be the date of the letter from the CARO Centre confirming agreement between all persons concerned by the procedure, according to the information contained in the file. This agreement shall be recorded by the CARO Centre following implementation of the procedure under Articles 3(2) to 3(4) hereof.

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

3.1. Where there is a clause assigning jurisdiction to the CARO Centre to proceed with the appointment of the mediator: where a Request is filed, the parties mentioned in the Request shall be informed that a request for appointment of a mediator by the CARO Centre 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.

3.2. Where there is no clause assigning jurisdiction to the CARO Centre to proceed with the appointment of the mediator: the CARO Centre shall inform all parties concerned of the filing of a Request within two (2) days following receipt of the Request. The CARO Centre shall seek confirmation of the agreement of all persons concerned within fifteen (15) days of receipt of this correspondence 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 party(ies) concerned.

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

3.4. Where the CARO Centre considers that all parties have reached agreement on requesting the appointment of a mediator and that they have agreed on his or her essential qualifications and the outlines of his or her mission, it shall proceed to appoint the mediator 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 the Request is received or any other reasonable deadline set by the parties, the mediator shall not be appointed and the CARO Centre shall advise the parties in writing that the mediator appointment procedure has been terminated and that the parties remain free to file another appointment request at a later date.

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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: Appointment of a mediator

4.1. Upon confirmation of the agreement of all parties concerned to have recourse to a mediator under the terms provided for in Article 3(2) and 3(3), the CARO Centre shall proceed to appoint the mediator.

4.2. The CARO Centre shall endeavour to appoint a mediator whose qualifications, availability and skills meet the demands of the parties, 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 mediators if the circumstances, particularly the complexity of the issues raised, so warrant.

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

4.5. Once the mediator has been appointed, the CARO Centre shall have no further involvement in the mediator appointment procedure, unless there is a request to replace the mediator under the terms provided for in Article 6 of these Rules. It will be up to the parties and the mediator to agree on the terms of the mediator's mission and his or her remuneration.

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Article 5: Independence and impartiality

5.1. Prior to being appointed, the CARO Centre shall ask the mediator 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 circumstances likely to cast doubts in the parties’ minds as to the mediator’s independence and/or impartiality, s/he must disclose these circumstances in the Statement of independence and impartiality. If one of the parties expresses reservations following such disclosures, the CARO Centre may not confirm the mediator and shall propose another candidate to the interested parties.

Article 6: Replacement of the mediator

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

6.2. If one or more parties to the procedure indicate in writing to the CARO Centre that the mediator 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 mediator after inviting the parties and the mediator 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 mediator 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 mediation request a replacement, the CARO Centre shall replace the mediator.

Article 7: Fees and expenses

7.1. The fees and expenses of the mediator 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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7.2. The registration fees shall be paid when the Request or the Joint Request is filed, as stipulated in Article 2.3 of these Rules. These fees are not reimbursable, regardless of whether the mediation appointment proceeds 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 mediator is appointed.

7.4. Failing payment of the Fees and Expenses of the mediator 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 mediator shall be liable to any person for any acts or omissions in relation to the mediator appointment procedure by the CARO Centre or in relation to the mediation that may or should arise.

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