

## APPENDIX C: SCHEDULE OF COSTS - ARBITRATION - CARO CENTRE

*Schedule of Costs excluding tax, fees and expenses applicable as at 27 September 2021 for a period of six months*

1) Schedule of Costs: arbitration proceedings and expedited arbitration proceedings (i) – see the general terms and conditions on page 4 *et seq.*

Amount in dispute (ii) In EUR (iii)	Schedule of administrative costs (iv) In EUR	Total administrative costs (v) In EUR	Hourly rate per arbitrator (vi) In EUR	Hourly volume anticipated (vii)
Up to 50,000	--	2,000	Between 80 and 120	Between 50 and 90 hours
From 50,001 to 100,000	+2% of the amount over 50,000	Between 2,000 and 3,000	Between 100 and 120	Between 50 and 100 hours
From 100,001 to 300,000	+1% of the amount over 100,000	Between 3,000 and 5,000	150	Between 60 and 120 hours
From 300,001 to 500,000	+1% of the amount over 300,000	Between 5,000 and 7,000	Between 150 and 180	Between 60 and 150 hours
From 500,001 to 1,000,000	+0.6% of the amount over 500,000	Between 7,000 and 10,000	Between 180 and 220	Between 60 and 150 hours
From 1,000,001 to 5,000,000	+0.15% of the amount over 1,000,000	Between 10,000 and 18,000	Between 220 and 300	Between 80 and 200 hours
From 5,000,001 to 10,000,000	+0.12% of the amount over 5,000,000	Between 18,000 and 22,000	Between 250 and 320	Between 100 and 250 hours
From 10,000,001 to 20,000,000	+0.05% of the amount over 10,000,000	Between 22,000 and 25,000	Between 320 and 350	Between 150 and 250 hours
From 20,000,001 to 30,000,000	+0.02% of the amount over 20,000,000	Between 25,000 and 30,000	Between 350 and 380	Between 150 and 250 hours
Over 30,000,000	+0.01% of the amount over 30,000,000	Over 30,000	Between 380 and 400	Between 150 and 250 hours

## 2) Indicative simulation of arbitration costs

Amount in dispute In EUR	Total administrative costs In EUR	Simulation of fees of the Arbitral Tribunal In EUR	Indicative simulation of arbitration fees In EUR (ix) (x)
Up to 50,000	2,000 <i>Of which registration fees: 1,000</i>	Sole Arbitrator: between 4,000 and 10,800 Three arbitrators (viii): between 12,000 and 32,400	Sole Arbitrator: between 6,000 and 12,800 Three arbitrators: between 14,000 and 34,400
From 50,001 to 100,000	Between 2,000 and 3,000 <i>Of which registration fees: 1,000</i>	Sole Arbitrator: between 5,000 and 12,000 Three arbitrators: between 15,000 and 36,000	Sole Arbitrator: between 7,000 and 15,000 Three arbitrators: between 17,000 and 39,000
From 100,001 to 300,000	Between 3,000 and 5,000 <i>Of which registration fees: 1,500</i>	Sole Arbitrator: between 9,000 and 18,000 Three arbitrators: between 27,000 and 54,000	Sole Arbitrator: between 12,000 and 23,000 Three arbitrators: between 30,000 and 59,000
From 300,001 to 500,000	Between 5,000 and 7,000 <i>Of which registration fees: 2,000</i>	Sole Arbitrator: between 9,000 and 27,000 Three arbitrators: between 27,000 and 81,000	Sole Arbitrator: between 14,000 and 34,000 Three arbitrators: between 32,000 and 88,000
From 500,001 to 1 million	Between 7,000 and 10,000 <i>Of which registration fees: 2,500</i>	Sole Arbitrator: between 10,800 and 33,000 Three arbitrators: between 32,400 and 99,000	Sole Arbitrator: between 17,800 and 43,000 Three arbitrators: between 39,400 and 109,000
From 1,000,001 to 5 million	Between 10,000 and 18,000 <i>Of which registration fees: 2,500</i>	Sole Arbitrator: between 17,600 and 60,000 Three arbitrators: between 52,800 and 180,000	Sole Arbitrator: between 27,600 and 78,000 Three arbitrators: between 62,800 and 198,000
From 5,000,001 to 10 million	Between 18,000 and 22,000 <i>Of which registration fees: 2,500</i>	Sole Arbitrator: between 25,000 and 80,000 Three arbitrators: between 75,000 and 240,000	Sole Arbitrator: between 43,000 and 102,000 Three arbitrators: between 93,000 and 262,000
From 10,000,001 to 20 million	Between 22,000 and 25,000 <i>Of which registration fees: 2,500</i>	Sole Arbitrator: between 45,000 and 87,500 Three arbitrators: between 135,000 and 262,500	Sole Arbitrator: between 67,000 and 112,500 Three arbitrators: between 157,000 and 287,500
From 20,000,001 to 30 million	Between 25,000 and 30,000 <i>Of which registration fees: 2,500</i>	Sole Arbitrator: between 52,500 and 95,000 Three arbitrators: between 157,500 and 285,000	Sole Arbitrator: between 77,500 and 125,000 Three arbitrators: between 182,500 and 315,000
Over 30 million	Over 30,000 <i>Of which registration fees: 2,500</i>	Sole Arbitrator: between 57,000 and 100,000 Three arbitrators: between 171,000 and 300,000	Sole Arbitrator: between 87,000 and 130,000 Three arbitrators: between 201,000 and 330,000

### 3) Emergency arbitration

- a. The administrative costs for emergency arbitration proceedings are EUR 2,500. These costs must be paid in full when filing a Notice of arbitration. Half of these costs are non-refundable.
- b. Total fees for emergency arbitration proceedings shall be fixed at between 15 and 20% of the fees that would have been due to the Sole Arbitrator in arbitration proceedings, based on the information provided in Table 1 above.
- c. The parties shall be asked to pay the full amount of the emergency arbitrator's fees prior to his appointment by the CARO Centre.
- d. Should the CARO Centre decide not to appoint an emergency arbitrator, on the basis of Article 2 of the Emergency Arbitration Rules, the fees anticipated for the remuneration of the emergency arbitrator shall be fully refunded to the parties and 50% of the administrative costs shall be refunded. Alternatively, if the parties decide to commence arbitration proceedings or expedited arbitration proceedings, these costs shall be considered an advance on the arbitration costs to be subsequently fixed by the CARO Centre at the commencement of proceedings.
- e. The arbitration costs for emergency arbitration proceedings shall be shared equally between the parties. However, they may be paid in full in advance by the initiating party.

## GENERAL TERMS AND CONDITIONS:

- (i) The Schedule of Costs in Table 1 applies to arbitration proceedings as provided for in the OHADAC Arbitration Rules (the “Rules”) and to expedited arbitration proceedings (Appendix B of the Rules). In expedited arbitration, the administrative costs are the same and the arbitrator’s fees shall be calculated in proportion to the time spent, using the hourly rate provided in Table 1, which varies according to the amount in dispute.
- (ii) The amount in dispute shall be determined on the basis of the cumulative amounts of all requests, including counterclaims, but excluding set-off claims and interest rates.

This amount shall be determined at the commencement of arbitration proceedings and shall be adjusted as and when any new requests are initiated by the parties during proceedings.

If the parties have not quantified their claims at the commencement of proceedings, the CARO Centre shall fix the administrative costs and the fees for the arbitrator(s) based on an amount in dispute of 500,000 Euros. This amount will then be reviewed during proceedings once the amount in dispute has been quantified.

- (iii) The arbitration fees shall be estimated in Euros (EUR). Nevertheless, the arbitration fees may be paid in the following other currencies: USD, based on the conversion rate in force on the date of the Notice of Arbitration.
- (iv) The administrative costs are payable for the work done by the Centre during the arbitration proceedings. The administrative costs include registration fees, which must be paid on the date of referral to the CARO Centre, and shall not be refunded, even if the arbitration proceedings are discontinued.

The administrative costs are shared equally between the parties to the arbitration proceedings, as provided for under Article 22(3) of the Rules and are payable for the work done by the CARO Centre:

- a. Registering the Notice of Arbitration and notification thereof to the Respondent(s);
- b. Setting up the Arbitral Tribunal;
- c. Financial management of the arbitration proceedings;

- d. Replacement of an arbitrator where he or she proves unable to conduct the arbitration proceedings in accordance with the OHADAC Arbitration Rules and the ethical rules applicable;
- e. Monitoring the delays of the arbitration proceedings;
- f. Reviewing procedural orders and the arbitral award;
- g. Administrative file management and archival;
- h. Assistance organising on-line or virtual hearings.

(v) The exact amount of the administrative costs varies within the range defined in the above table, depending on the following parameters: (i) exact amount in dispute; and (ii) time spent by the Secretariat and work undertaken. This latter aspect can be affected by the procedural and factual complexity of the dispute, the number and length of exchanges between the parties, the intensity of the work required of the Secretariat by the parties, and the number of phases in the proceedings, *etc.*

(vi) Specific provisions relative to the fees of the arbitrator or the Arbitral Tribunal:

- The arbitrator's fees are exclusive of VAT. The arbitrator(s) shall invoice VAT directly to the parties.
- The hourly rate defined in the range provided in Table 1, column 1 “Hourly rate per arbitrator” is fixed definitively, taking into account the complexity of the dispute, *i.e.* its procedural and factual complexity, the number of questions to be settled by the Arbitral tribunal, the length of the proceedings, and the attitude of the parties (who are encouraged to cooperate and follow the directions of the Arbitral Tribunal so that the proceedings can be conducted as efficiently as possible), the arbitrator’s experience and his diligence throughout the implementation of the arbitration proceedings, *etc.*

(vii) Anticipated hourly volume per case:

- The exact amount of the arbitrator’s fees depends on the number of hours worked to bring the proceedings to a conclusion by rendering an arbitral award settling the dispute between the parties.
- They are calculated based on a minimum hourly volume of 50 hours up to a maximum 250 hours for arbitration brought to a conclusion. However, this hourly volume is only indicative. Cases with a low amount at stake can prove extremely complex to resolve, while others for which the amount quantified by the parties is high can prove quite quick to resolve.

- Consequently, the CARO Centre reserves the right to amend the amount of the arbitrators' fees if the hourly volume varies by at least 10% above the upper limit of the range, and if the CARO Centre considers that this variation is warranted in view of the work to be done by the Arbitral Tribunal. The CARO Centre shall make this assessment based on the provisional budget for the Arbitral Tribunal's fees and expenses drawn up by the latter following the Organizational Hearing, and which is subject to the approval of the CARO Centre (Articles 26(3) and 27(3) of the OHADAC Arbitration Rules). If the hourly volume is lower than anticipated, a similar downward adjustment shall be made. Recourse to the services of a secretary by the Arbitral Tribunal shall also be taken into consideration.
- This hourly volume is variable according to the amount in dispute and the complexity of the case in legal and procedural terms. Therefore, the procedural choices made at the Organizational Hearing will play a key role in the variation of this hourly volume, particularly the aspects detailed in Article 24(2) of the OHADAC Arbitration Rules covering, *inter alia*, whether hearings are held or whether the arbitrator rules on the basis of documentation; whether hearings are held online or physically; whether one or more witnesses are interviewed; and whether a document and discovery procedure is requested, *etc.*

(viii) Number of arbitrators: the parties shall decide, in the arbitration agreement or by subsequent agreement, whether they wish their dispute to be settled by a Sole Arbitrator or by an Arbitral Tribunal with three arbitrators. The parties are strongly encouraged to opt for a Sole Arbitrator if the amount in dispute does not exceed one million Euros. Failing any choice by the parties as to the number of arbitrators, the CARO Centre will systematically favour the appointment of a Sole Arbitrator for disputes where the amount at stake is lower than this amount (Article 16(4)(i) of the OHADAC Arbitration Rules).

(ix) Simulation of arbitration fees:

- The arbitration fees include both the administrative costs and the fees for the Sole Arbitrator or the Arbitral tribunal (Article 44).
- These arbitration fees do not include the following costs:
  - o The costs of counsel hired by each party when they appoint a lawyer to represent them during the arbitration proceedings;
  - o For physical hearings, room rental and any travel costs and expenses incurred by arbitrators in this regard (hotel, transport, *etc.*), which will be invoiced separately. The CARO Centre shall, however, check that such costs are reasonable. The CARO Centre may also, where

- possible, guide the parties towards interesting solutions as regards the rental of hearing rooms, via the network and the CARO Centre partners in the Caribbean;
- The remuneration of any witnesses and experts called by the parties, who shall be paid by the party that has called on their services;
  - Remuneration of any witness and/or expert appointed by the Sole Arbitrator or the Arbitral Tribunal, whose costs shall be borne equally by each party until the Sole Arbitrator or Arbitral Tribunal determines the proportion in which the parties are to bear these costs (Article 44(4));
  - Any additional costs incurred in setting up a virtual hearing at the request of the parties.
- Furthermore, the figures provided in this table are a simulation, insofar as the hourly volume generated by the dispute can vary for the reasons indicated in point (vii) of this Schedule of Costs.

**(x)** Where the arbitration is not brought to a conclusion:

In some situations, arbitration does not lead to the notification of an arbitral award settling the dispute between the parties. This can happen where a question of competence arises and the Arbitral Tribunal finds, in an initial award, that it is not competent to rule on the dispute. It is also the case where – encouraged by the provisions of the OHADAC Rules – the parties reach agreement during the proceedings enabling them to terminate the proceedings.

In these cases, the Sole Arbitrator or Arbitral Tribunal shall be paid a portion of the fees provided in the Schedule of Costs, depending on the number of hours worked and his/its diligence. The conclusion of an agreement to the satisfaction of all parties to the proceedings and the diligence applied shall be taken into consideration when making this assessment.

The CARO Centre shall then pay back to the parties any surplus paid further to payment requests made on the basis of Article 22, if the arbitration costs prove lower than the sums advanced by the parties.