



CENTRAL BANK OF
TRINIDAD & TOBAGO



POLICY FRAMEWORK ALTERNATE DISPUTE RESOLUTION SCHEMES FOR INSURANCE COMPANIES



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SUMMARY

In many jurisdictions worldwide, a combination of high case volumes and a constrained support infrastructure have limited the timeliness and effectiveness of the resolution of disputes. These constraints have resulted in significant delays in the resolution of many cases and ultimately has led to an escalation in costs to the stakeholders. In order to address these inefficiencies, many jurisdictions have been supporting the establishment of Alternate Dispute Resolution Schemes (ADRSs). The benefits of well governed ADRSs extend beyond the individual stakeholders, as quicker resolution of claims disputes will also result in reduced costs to the insurer as well as improved reputation for the industry as a whole.

This document introduces the policy framework for the establishment of ADRSs in Trinidad and Tobago. The framework follows two major themes as follows:

- **General Expectations and Principles of ADRS:** All ADRSs established in Trinidad and Tobago must be effective; fair to all stakeholders; impartial and independent at all times; must have the necessary expertise to effectively carry out its function; must ensure that its operations are transparent and must operate within the legislation. In addition to these main principles, the ADRSs must be a voluntary service offered to the customer and must at all times be consistently applied.
- **General Requirements of ADRS:** This framework advises that any ADRS established is well governed; financially viable; is well structured operationally in terms of policies; procedures and physical infrastructure and focusses on ensuring that its staff has the necessary expertise to effectively execute their responsibility both now and in the future.

Appendix 1 of this policy framework articulates the documents to be submitted by any entity wishing to be considered an approved ADRS.

1.0 INTRODUCTION

- 1.1** An ADRS denotes a wide range of dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement without the cost and time associated with litigation. The idea behind an ADRS is to make the resolution process simpler, more effective and more accessible. The ADRS philosophy relies on an independent 3rd party to manage the process which will ultimately lead to a resolution.
- 1.2** Section 250A of the Insurance Act 2018 (the Act) requires all registered insurance companies to enrol with an Alternate Dispute Resolution Scheme (ADRS).
- 1.3** By Circular letter dated March 25, 2021, the Central Bank of Trinidad and Tobago (Central Bank) advised all registered insurance companies that their involvement with the Financial Services Ombudsman (in accordance with the Agreement with Terms of Reference dated April 25, 2005) would be deemed as being enrolled with an ADRS.



2.0 PURPOSE, APPLICATION AND SCOPE

2.1 Throughout the world there has been a growing trend towards the use of ADRSs. Over the past decade many countries have established ADRSs as either entities formerly associated with the courts or as standalone establishments. This trend has resulted in the amendment of Civil proceedings in many jurisdictions to facilitate and promote mediation as a preferred approach to resolution. The main objective of these schemes is to stimulate and encourage early, fair and cost-effective dispute resolution. Litigation should always be the last resort.

2.2 The Central Bank recognises the benefits of utilising ADRSs in redressing conflicts. ADRSs have proven to be beneficial throughout jurisdictions as they increase efficiencies by being less expensive and facilitate faster settlements. As such the Central Bank fully supports all initiatives in relation to the establishment and usage of an ADRS once the entity is established along the fundamental principles articulated in Section 3.0 of this Policy Framework.

2.3 In addition to the significant benefits of establishing well governed ADRSs, the Central Bank is also cognisant of the evolutionary nature of the financial services sector. With the advent of

FINTEC and the increased use of electronic payment platforms and climate change, the nature of business interactions and ultimately the products offered by the insurance sector will change in the future. By extension, the nature of the disputes will also evolve in the future. This policy framework promotes a strong foundation for the establishment of effective ADRSs, however, the Central Bank is committed to refining the framework periodically to ensure that it properly services the needs of all stakeholders now and in the future.

2.4 The purpose of this Framework is to establish the main principles and operating parameters to govern ADRSs established under Section 250A of the Act.

3.0 GENERAL EXPECTATIONS AND PRINCIPLES OF AN ADRS

- An ADRS must **identify the scope of disputes addressed** and the grounds for refusing to deal with a dispute.
- An ADRS is **not formed for the purpose of dealing only with one particular dispute**.
- **ADRSs' procedures must be consistently applied** across all types of disputes.
- The ADRS is a **voluntary service**. Parties must be able to withdraw from an ADRS process at any point in time.
- Involvement in mediation conducted by a particular ADRS **does not negatively affect the rights of the parties to access to the courts** or other ADRS options.
- **The ADRS's process must involve reasonable resolution timelines.**
- The ADRS is fully **compliant with the relevant laws** of Trinidad and Tobago.

In addition to the General Expectations mentioned in Section 3.0 above, all ADRSs must be established according to the following principles:

3.1 Access and Transparency

ADRSs must ensure that stakeholders have access to the necessary information related to the ADR process. The information must be publically available and presented in a clear and easily understood manner. An ADRS must ensure that all parties are fully aware of each stage of the process as well as the supporting information and associated timelines. At the same time case specific information must be kept private and confidential at all times.

3.2 Expertise

ADRSs must ensure that they have the requisite expertise to effectively carry out their function. All officers and directors of the ADRS must be fit and proper. The ADRS must perform the necessary due diligence on 3rd party service providers to ensure they also have the requisite expertise.

3.3 Independence and Impartiality

ADRSs must ensure that they have the necessary systems, controls and procedures to ensure that they remain independent of the parties seeking redress and are able to execute their mandate in an impartial manner.

3.4 Effectiveness

ADRSs must ensure that their operations are structured for an effective resolution of the dispute.

3.5 Fairness

ADRSs must implement the necessary policies and procedures to ensure that the parties to the dispute are afforded a fair experience. A 'fair experience' relates to the timelines associated with various stages — in particular, affording the parties sufficient time to review information received. It is also expected that parties can withdraw from the process at any time. An ADRS must be prepared to explain the grounds for any decision made during the process.

insurance



4.0 GENERAL REQUIREMENTS FOR AN ADRS

4.1 Any ADRS established in accordance with this Framework is expected to be structured in such a manner as to fulfill certain Governance, Financial Management, Operational Management and Training and Development requirements. Figure 1 below introduces the conceptual framework which will be further articulated thereafter.



Figure 1: Conceptual Operational Framework of an ADRS

4.2 Governance

The ADRS is expected to have the necessary governance structure to effectively operate. These requirements would include, but are not limited to the organisational structure, the articles of incorporation of the entity, the Fitness and Propriety of ADRSs officials as well as what is being reported internally and externally.

4.3 Financial Management

The ADRS is expected to be a financially sound legal entity. Its business model should ensure that it is financially stable and remains impartial and independent. These requirements would include, but are not limited to the submission of a business plan (including projected income and expenses).

4.4 Operational Management

The ADRS is expected to be operationally effective. It is expected that it will have the necessary policies, procedures and controls in place to effectively carry out its mandate. Requirements associated with this will include, but are not limited to, internal policies and procedures; the need for a functional information management system; how the ADRS communicates with stakeholders (and what is communicated); as well as 3rd party service level agreements (and related controls).

4.5 Training and Development

The ADRS is expected to ensure that it has the requisite expertise at its disposal. These include Continuous Professional Development for staff, education or awareness campaigns for consumers.

4.6 The Central Bank will be reviewing each ADRS on their ability to adhere to both the principles outlined in Section 3.0 as well as the general requirements set out in Section 4.0. prior to approval being granted as well as during the course of operation of the ADRS. These requirements are set out in Appendix 1 of this document.



APPENDIX 1

Application Process to become an ADRS

ADRSs wishing to be established in accordance with Section 250A of the Insurance Act 2018 are required to submit a business plan for consideration which should include but is not limited to the following:

- o Proof of Incorporation; Organizational Structure; Fit and Proper Assessment of Officers and Directors in accordance with Central Bank's Fit and Proper Guideline; financial projections for first 3 years of operation; scope of services being offered; strategic plan summary; a narrative of the information management systems, public awareness; a listing of 3rd Party service providers and a narrative on the associated controls; high level process flows for main activities; a narrative on how the ADRS will ensure it has and will continue to have the necessary expertise to carry out its function;

Successful ADRS applicants are required to report to the Central Bank on an annual basis as follows

- o Annual Activity Report, a narrative on any material change to the particulars submitted in the initial application and the latest audited financial statements.

A successful ADRS applicant's registration will be subject to the following general conditions:

- o Registered initially for a period of 3 years; must give Central Bank Notice if the ADRS decides to exit the system; Central Bank has access to non-confidential information related to the operations and governance of ADRSs, the ADRS must, at all times adhere to the principles set out in section 3.0.

Appendix 1, represents the general requirements for an entity seeking to be considered an approved ADRS, however the Central Bank reserves the right to request additional information on a case by case basis. The Central Bank is available to provide any further information or to answer queries to applicants on the process and requirements.



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