

Prof. Dr. Antonio Rigozzi / Erika Hasler / Brianna Quinn

The 2011, 2012 and 2013 revisions to the Code of Sports-related Arbitration

Le 1er mars 2013, le Tribunal arbitral du sport (TAS) a publié la cinquième édition de son Code de l'arbitrage en matière de sport (Code TAS). La quatrième édition du Code avait été publiée en janvier 2010. Entre la quatrième et la cinquième édition, deux versions révisées du Code ont été promulguées en 2011 et 2012. Faisant suite à un précédent article consacré à la quatrième édition du Code, cette contribution propose un récapitulatif et une première évaluation – focalisée sur la pratique – des modifications principales qui ont été introduites avec les révisions effectuées entre 2011 et 2013.

Domaine(s) juridique(s) : Sport ; Arbitrage ; Articles scientifiques

Proposition de citation : Antonio Rigozzi / Erika Hasler / Brianna Quinn, The 2011, 2012 and 2013 revisions to the Code of Sports-related Arbitration, in : Jusletter 3 juin 2013

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Annexe

I. Introduction

[Rz 1] On 1st March 2013, a new edition of the Code of Sports-related Arbitration (the CAS Code) came into force.¹ This latest edition was preceded by a series of revisions, which resulted in new releases of the CAS Code being issued in 2010,² 2011³ and 2012.⁴ In an article published in this review in September 2010,⁵ we analyzed the main changes introduced in the 2010 edition of the Code. The present contribution

covers the subsequent revisions, up to and including the latest edition.⁶

[Rz 2] For ease of reference, the structure adopted here follows that of our 2010 article. Thus, after this brief introduction, we will address the main changes brought about by the 2011–2013 revisions in the different sections of the CAS Code. The limited scope of this contribution, which is primarily meant as a practice-oriented review of the main changes, makes it impossible to cover every single one of the amendments (both formal and substantive) that were made to the Code's text in the course of the 2011–2013 revisions. For a more comprehensive and in-depth analysis, readers may refer, in particular, to an article-by-article commentary of the CAS Code's procedural rules (Articles R27 to R70) which will shortly be published as part of a collective work on arbitration in Switzerland.⁷

[Rz 3] By way of background, the CAS Code consists of two main parts. The first part contains the Statutes of the Bodies Working for the Settlement of Sports-related Disputes (Articles S1 to S26 of the CAS Code, see below Section I). The second part contains the Procedural Rules, which include a set of General Provisions (Articles R27 to R37, see below, Section II.1), followed by the more specific rules governing the so-called Ordinary Arbitration Procedure (Articles R38 to R46, see below Section II.2) and the Appeal Arbitration Procedure (Articles R47 to R59, see below Section II.3). Until 2012, the Procedural Rules also contained a set of Special Provisions Applicable to Consultation Proceedings, which have now been abrogated (Articles R60–R62 and R66, see below Section II.4). Finally, in addition to an article dealing with the interpretation of CAS awards (Article R63, see below Section II.5), the Procedural Rules contain a section regulating costs (Articles R64 and R65, see below Section II.6), followed by a few miscellaneous provisions (Articles R67 to R70).⁸

[Rz 4] Contrary to previous revisions, the CAS did not issue a document highlighting the changes made to the Code's

¹ 5th edition of the CAS Code, entered into force on 1st March 2013, available at www.tas-cas.org/statutes.

² 4th edition of the CAS Code, entered into force on 1st January 2010, available at www.tas-cas.org/statutes.

³ Revised version of the CAS Code, in force as of 1st July 2011.

⁴ Revised version of the CAS Code, in force as of 1st January 2012, available at www.tas-cas.org/statutes.

⁵ ANTONIO RIGOZZI, The Recent Revision of the Code of Sports-related Arbitration (CAS Code), in: Jusletter 13 September 2010.

⁶ For an overview of the changes introduced with the latest revision of the Code, see also MICHAEL NOTH/BARBARA ABEGG, Neuerungen im CAS Code, CaS 2/2013 (forthcoming, June 2013). As to the previous revisions, see XAVIER FAVRE-BULLE, Recent amendments to the CAS Code (2010-2012), GSL-TR 2012, pp. 46-50; CHRISTIAN KRÄHE, Novellierung des CAS-Codes, SpuRt 2012, p. 17; MATTHIEU REEB, Les modifications essentielles apportées au Code de l'Arbitrage en matière de sport entre le 1er janvier 2010 et le 1er janvier 2012, CAS Bulletin 2012, pp. 27–38.

⁷ MICHAEL NOTH and ANTONIO RIGOZZI/ERIKA HASLER, Chapter 5 – Sports Arbitration under the CAS Rules, in Arroyo (Ed.), Arbitration in Switzerland – The Practitioner's Guide, Kluwer Law International, forthcoming, June 2013 (hereinafter referred to as "[AUTHOR], Commentary of the CAS Rules, ad [Article n.], para. [n.]").

⁸ These provisions deal, inter alia, with the dates of applicability of the Code's successive versions (Article R67), the prevailing language in case of discrepancy between the Code's two (French and English) linguistic versions (Article R69) and the procedure for amending the Procedural Rules (Article R70).

text together with the 2013 edition.⁹ This is unfortunate as the number of amendments introduced in the latest edition is significant, and the «marked-up» documents issued by the CAS for the 2010 and 2012 revisions had proved to be a very helpful tool for those used to working with (previous versions of) the Code.¹⁰ One of the purposes of this contribution is to assist practitioners in identifying the important changes¹¹ and avoiding possible errors due to reliance on past (but no longer valid) customary practices. We also hope that it will provide useful insights on how some unclear provisions ought to be interpreted in the absence of materials explaining the rationale of the changes.

II. Amendments to the Statutes of the Bodies Working for the Settlement of Sports-Related Disputes

[Rz 5] The Statutes of the Bodies Working for the Settlement of Sports-related Disputes (CAS Statutes) are, in substance, the CAS's constitution. They are particularly important as they establish the prerogatives and functions of the International Council of Arbitration for Sport (ICAS), the body supervising the entire CAS organization. Among the Statutes' main provisions are of course those regarding the composition of the ICAS, which is responsible for the appointment of the so-called CAS members, that is, the persons who will be named on the «CAS List» of arbitrators from which the arbitrators sitting in CAS proceedings must mandatorily be selected (hereinafter the CAS List).¹² This «closed-list» system has been upheld by the Swiss Supreme Court in its landmark *Lazutina* decision,¹³ but is currently under scrutiny before the European Court of Human Rights, in particular as to its conformity with Article 6 of the European Convention on Human Rights (ECHR).¹⁴ While it is submitted that the

current CAS organization – albeit certainly «perfectible»¹⁵ – complies with the minimum standards of Article 6(1) ECHR, the latest reform has brought about some welcome developments, laying the foundations for significant improvements to the system, which should dispel any doubts as to the CAS's independence.¹⁶

1. Appointment of members of ICAS and CAS arbitrators

[Rz 6] As per Article S2 of the CAS Code, the purpose of the ICAS is to «facilitate the resolution of sports-related disputes through arbitration or mediation and to safeguard the independence of the CAS and the rights of the parties. The ICAS is also responsible for the administration and financing of the CAS».¹⁷ In effect, the twenty «experienced jurists» of the ICAS¹⁸ are charged with the responsibilities of: adopting and amending the CAS Code, appointing (and removing) the Secretary General and the CAS arbitrators, resolving challenges to arbitrators during proceedings, overseeing the finances of the CAS¹⁹ and «any other action which [is deemed] necessary to protect the rights of the parties and to promote the settlement of sports-related disputes through arbitration and mediation».²⁰

[Rz 7] Given the vital nature of the regulatory functions bestowed upon the ICAS, and in light of the recurring character of the reservations voiced in various quarters as to the independence of the CAS *vis-a-vis* the IOC and International Federations,²¹ it is particularly important for the ICAS not only to be independent but also to be perceived as such.

[Rz 8] While the 2010 edition implemented a mostly symbolic change regarding the procedure for the election of the ICAS President and two Vice-Presidents by the ICAS members,²² the 2012 revision saw more meaningful changes concerning the procedure for the appointment of various ICAS and CAS

⁹ Only a short summary of the «most important changes» was posted on the CAS's website's «Latest News» section on 8 February 2013, where it was announced that «on the occasion of its last meeting, the International Council of Arbitration for Sport (ICAS), the governing body of the Court of Arbitration for Sport (CAS), reviewed the English version of the Code of Sports-related Arbitration and amended some provisions of the same Code» (see www.tas-cas.org/en/infogenerales.asp/4-3-5467-1092-4-1-1/5-0-1092-15-1-1/).

¹⁰ Even though these documents only highlighted the «main changes» that were made to the Code and were not in fact exhaustive.

¹¹ A marked-up version of the 2013 edition of the Code, showing all the changes made in comparison to the 2012 version is attached as an annex to this article.

¹² See in particular Articles S13–S18 of the Code.

¹³ ATF 129 III 445 (*Larissa Lazutina & Olga Danilova v. IOC, FIS & CAS*; Decision of Swiss Federal Supreme Court (4P.267/2002) of 27 May 2003, ASA Bull. 2003, pp. 601–627; Yearbook Commercial Arbitration 2004, Vol. XXIX, Kluwer Law International 2004, pp. 206–231).

¹⁴ See *Pechstein v. Switzerland*, Application number 67474/10.

¹⁵ ATF 129 III 445, para. 3.3.3.3.

¹⁶ See for instance the concerns expressed by PIERMARCO ZEN-RUFFINEN, *La nécessaire réforme du Tribunal Arbitral du Sport*, in: *Citius, Altius, Fortius*, Mélanges en l'honneur de Denis Oswald, Basel 2012, pp. 483–537.

¹⁷ Articles S2 to S11 of the CAS Code govern the operations of the ICAS.

¹⁸ See Article S4 of the Code: the ICAS members are appointed by various institutions such as the International Sports Federations (IFs); the Association of National Olympic Committees (ANOCs); the International Olympic Committee (IOC); and additional members appointed by the members elected by the aforementioned bodies.

¹⁹ Including, for example, creating a «legal aid fund to facilitate access to CAS arbitration for individuals without sufficient financial means» (Article S6(9)).

²⁰ See Article S6 of the CAS Code.

²¹ See FC Sion's arguments in CAS 2011/O/2574, *UEFA v Olympique des Alpes/FC Sion*, Award of 31 January 2012, esp. paras. 188–189.

²² This change provided for consultation with the IOC and other relevant associations prior to the election of these members rather than electing the President «proposed» by the IOC. See Rigozzi, in: Jusletter 13 September 2010, fn 5 above, p. 2, para. 5.

members. The 2013 edition completed this reform by extending the provisions to mediators, clarifying the timing of nominations and elections of ICAS members and providing for the possibility of a special list of arbitrators in the future.

A. Timing of the nomination of ICAS members

[Rz 9] Both the 2012 and 2013 revisions have dealt with the question of timing for the nomination of ICAS members (and the election to the various posts on offer within the organization) during the renewable period of membership of four years.²³

[Rz 10] Relevantly, changes were made to Articles S5 and S6 to the effect that ICAS members shall be nominated during the last year of the four year cycle, and the election of the President, Vice-Presidents, Division Presidents and their deputies shall take place at the ICAS meeting which follows the appointment of the ICAS members for the forthcoming period of four years.

[Rz 11] The elections under Article S6(2) of the Code will now take place only after the appointment of any new ICAS members has been completed, meaning that these new members will have an active role in electing the personalities who will both represent and govern the ICAS and, by extension, the CAS. As the way in which ICAS members have been appointed in the past is not known, it is difficult to assess the practical relevance and/or implications of this change.

B. Appointment of «proposed» arbitrators

[Rz 12] An important amendment made in the 2012 revision was the removal of the requirement that the ICAS establish the CAS List of arbitrators according to a so-called «distribution» of arbitrators proposed (directly or indirectly) by the sport governing bodies.²⁴

[Rz 13] In removing the requirement for input from the governing bodies in selecting CAS arbitrators and concentrating instead on the essential qualifications of such arbitrators²⁵ it appears that the focus is now on the inherent capabilities of the arbitrators to strengthen the institution, rather than the maintenance of equal representation for the interested parties behind the institution itself.

[Rz 14] Such a change – and its explicit extension to

mediators in the 2013 edition²⁶ – ought to be welcomed as it develops even further the CAS's structural independence from the sports governing bodies.

C. Special lists of arbitrators

[Rz 15] The 2013 revision has also seen the introduction of terminology which would allow for the creation of separate lists of arbitrators specialized in certain areas. Whilst at present, the CAS website distinguishes between a «general» list of arbitrators and a «football» list, Article S6 of the 2013 CAS Code specifically provides that the «ICAS may identify the arbitrators with a specific expertise to deal with certain types of disputes».

[Rz 16] The obvious «type of dispute» for which this clause may be relevant is of course anti-doping proceedings, which can often produce markedly different results in nearly identical factual scenarios. The creation of a list of arbitrators specialized in doping would have both benefits and drawbacks. On the one hand, it is arguable that specifying particular arbitrators who are well versed in the intricacies of the World Anti-Doping Code (WADC) could result in a more consistent body of jurisprudence in that field. The clear benefit of this would be certainty and equal treatment of athletes worldwide. That said, the obvious (main) drawback would be the consequent reduction of the parties' choice of arbitrator, such choice being one of the key factors for the Swiss Supreme Court's acceptance of the CAS closed list of arbitrators and the validity of CAS as a true arbitral institution.²⁷ One must therefore wonder whether narrowing an already limited field of qualified arbitrators in the interests of consistency would be worth the potential for challenges to the validity of the system. Furthermore, and as noted by several arbitrators in doping jurisprudence, «although consistency of sanctions is a virtue, correctness remains a higher one»²⁸ and the benefit of certainty could be considerably outweighed by the inability to hear and debate fresh viewpoints on the interpretation and effects of instruments such as the WADC. Overall, such a development appears positive as it would allow parties who are not familiar with the CAS to be able to readily identify those arbitrators specialized in particular fields. Additionally, the quality of CAS awards ought to be enhanced through the arbitrators' specialized knowledge of the type of dispute in question. In practice, however, such lists should be approached with caution to ensure that new arbitrators (and opinions) are able to contribute to all areas of CAS arbitration

²³ As per Article S5 of the Code.

²⁴ The «distribution» (as set out in the previous version of Article S14) required arbitrators selected in equal numbers from: (i) those «proposed» by the IOC; (ii) those «proposed» by the IFs; (iii) those «proposed» by the NOCs; (iv) arbitrators chosen with a view to safeguarding the interests of the athletes; and (v) arbitrators chosen from among persons independent of the bodies responsible for proposing arbitrators (i.e. the IOC, IFs and NOCs).

²⁵ Such qualifications being: (i) appropriate legal training; (ii) recognized competence in sports law and/or international arbitration; (iii) general sports knowledge; and (iv) a good command of at least one working CAS language (see Article S14, first paragraph).

²⁶ Article S14 has seen the addition of the express requirement that CAS mediators have «experience in mediation and a good knowledge of sport in general».

²⁷ As per the Swiss Supreme Court's reasoning in the aforementioned *Lazutina* decision (129 III 445, para. 3.3.3.2).

²⁸ See for example CAS 2011/IA/2518, *Robert Kendrick v. ITF*, Award of 10 November 2011, at para. 10.23.

and that the parties have as wide a choice of arbitrator as possible.

[Rz 17] The new wording could also potentially enhance consistency by allowing for initiatives such as, for instance, the creation of the recently proposed CAS «Grand Chamber», a five-arbitrator Chamber empowered to make authoritative decisions on points of general importance arising in CAS proceedings.²⁹ In practice however, the most likely development is the constitution of a special «List of Presidents», that is a pool of arbitrators who would only act as President of the relevant CAS Panel. This development has recently been announced by the CAS Secretary General at a conference organized by the Council of Europe (in the wake of the first CAS cases landing on the European Court of Human Rights' docket).³⁰ The implementation of such a proposal would help not only in achieving consistency but also in enhancing the perception of independence of the system, provided of course that the members of the «List of Presidents» will be personalities possessing a good knowledge of sports and sports law, but with no particular links with the sports-governing bodies.³¹

2. Legal aid

[Rz 18] The 2013 revision has also seen a seemingly minor amendment to the wording of Article S6(9) which, departing

from the affirmative language used in the previous versions of the Code, now provides that the ICAS *may* create a legal aid fund for individuals without sufficient financial means and *may* create guidelines for the operation of such fund.³² Whilst this change may not appear to be significant, the fact that not only are such guidelines not yet in existence³³ but now merely *optional* is certainly a step back for this important feature of the CAS Code.

[Rz 19] As will become clear in the section of this article devoted to the changes to CAS appeal proceedings, legal aid may in fact become a crucial aspect of CAS arbitration now that the scope of the «free of charge» proceedings has been (even further) reduced.³⁴ Quite simply, many athletes (and indeed some organizations) may depend on the provision of legal aid to even contemplate bringing proceedings before the CAS. Accordingly, a failure to provide appropriate assistance might be the difference between those athletes and organizations being able to access the CAS arbitration system (which, notably, is most often mandatorily imposed on them) and those who are effectively prohibited from exercising their legal rights.³⁵ In such circumstances, one can only hope that concrete steps will be taken to ensure that the hypothetical legal aid guidelines become a reality in the near future and that the CAS legal aid fund will be systematically proposed to athletes, in a transparent way and with clear and publicly accessible rules.

[Rz 20] For the moment, and whilst this may not be clear to the majority of practitioners unfamiliar with the CAS or relying only on the information available on the CAS website, the possibility to apply for legal aid does already exist. The request should be made to the ICAS through a «Legal Aid Application Form» that can be obtained upon request from the CAS Court Office.³⁶ Essentially (according to this form), legal aid will be granted when the applicant's income and

²⁹ See JAMES SEGAN, *Does the Court of Arbitration for Sport need a «Grand Chamber»*, Sports Law Bulletin, 19 April 2013, who emphasizes the need for CAS to create greater consistency in awards: «It is of the very essence of any system of law, of course, that its rules are consistent, accessible and predictable. Lawyers must be able to advise their clients with a degree of confidence as to what those rules actually are. It is only with such predictability that the core objectives of swift and inexpensive justice can be achieved. Without legal certainty, every case, no matter how small and apparently straightforward, will descend into an expensive legal debate. In this regard, CAS is seriously and obviously failing. There are now a whole series of important issues in the «lex ludica» which are the subject of diverging strands of CAS case law, which can never be authoritatively resolved because each CAS Panel has full jurisdiction to review the «facts and the law» (article available at <http://sportslawbulletin.org/2013/04/19/does-the-court-of-arbitration-for-sport-need-a-grand-chamber/>).

³⁰ This development, which was presented as a «scoop» by the CAS Secretary General Mr. Reeb in his speech devoted to the «Independence of sports justice», was greeted with favorable reactions by the experts in attendance at the Seminar on Sports Judiciary and Human Rights, held in Strasbourg on 14 February 2013 under the aegis of the Council of Europe and the Enlarged Partial Agreement on Sport (EPAS).

³¹ We contemplated the creation of such a list of Presidents in 2005 as an answer to the criticism of the so-called closed list: indeed, having a closed list of *Presidents* would promote consistency, and ensure that at least the key person in the Panel has the required expertise and professionalism to ensure both speed and the quality of the award without having to limit the parties' freedom in their choice of the arbitrator (Antonio Rigozzi, *L'arbitrage international en matière de sport*, Basel 2005, para. 575, pp. 298–299). The normal list of arbitrators would then be a tool for parties that are not aware of particularly experienced arbitrators in the relevant field, however the appointment arbitrators from the list would not be mandatory where a party wished to exercise its discretion to appoint someone from outside of the system.

³² Article S6(9) of the 2012 version of the CAS Code provided that «[i]f it deems such action appropriate, [the ICAS] creates a legal aid fund [...] The operation of the legal aid fund including criteria to access the funds is set out in the CAS legal aid guidelines» (emphasis added).

³³ Despite being explicitly mentioned as early as the 2004 Code and despite assurances from the CAS Secretary General in the 2010 reform that whilst the «free of charge» rule had been limited «the ICAS will however make sure that the financial constraints will not be too onerous for athletes and will shortly adopt new guidelines regarding legal aid» (MATTHIEU REEB, *The New Code of Sports-related Arbitration*, CAS Bulletin 2010/1, p. 33).

³⁴ See Rz 88–93.

³⁵ This is particularly so with respect to disciplinary sanctions that are essentially international in nature however delegated to national hearing bodies and thus seemingly outside of the purview of the new Article R65. See Rz 90.

³⁶ The four-page long form requires basic information such as the applicant's name, marital status and address, as well as details of his/her financial situation, including his/her monthly income, any payments received from sponsors, sports organizations, social security or other benefits, assets, any charges (e.g., rent) and outstanding debts. Supporting documentation must be provided for some of these data.

capital «are not sufficient to allow him/her to cover the costs of proceedings before the CAS without drawing on that part of his/her assets necessary to support him/herself and his/her family». Conversely, legal aid will be refused «if it is obvious that the applicant's claims or grounds of defence have no legal basis [and] if it is obvious that the proceedings will not be begun or pursued by a reasonable litigant conducting his/her case at his/her own expense».

III. Amendments to the Procedural Rules

[Rz 21] Before turning to the discussion of the main amendments introduced in the Code's Procedural Rules it is worth noting that according to Article R67 such rules «are applicable to all procedures initiated by the CAS as from 1st March 2013. The procedures which are pending on 1st March 2013 remain subject to the Rules in force before 1st March 2013, unless both parties request the application of these Rules».

1. General Provisions (Articles R27 to R37 CAS Code)

[Rz 22] The Code's General Provisions, which apply to all CAS arbitrations regardless of the Division they are assigned to,³⁷ did not undergo major changes in either the 2012 or 2013 revisions. In particular, the fundamental provision that all CAS arbitrations have their seat in Lausanne (regardless of the place where they are actually conducted) has remained unchanged. The amendments to be noted concern: (A.) communications and notifications; (B.) the extension of time limits; and (C.) provisional measures. A number of other general amendments are considered briefly in (D.) below.

A. Communications and notifications – Article R31

[Rz 23] The 2013 revision has seen some significant improvements to the article relating to communications and notifications. However, it has also brought some uncertainty with respect to the management of such changes.

[Rz 24] Article R31 now distinguishes between three types of communications in determining the manner in which these shall be deemed validly made: (a.) awards, orders and other decisions made by the CAS or the relevant Panel; (b.) any other communications from the parties intended for the CAS Court Office or the Panel; and (c.) the Request for Arbitration, the Statement of Appeal and any other written submissions.

a. Awards, orders and other decisions by the Panel

[Rz 25] As to the communication of awards, orders and decisions, these shall be notified «by courier and/or by facsimile and/or by electronic mail, but at least in a form permitting proof of receipt».³⁸ It is difficult to understand the rationale of this new wording since the Swiss Supreme Court has clearly stated that only the notification of the original *signed* version of the award triggers the time limit to file an action to set aside a CAS award.³⁹ «Signature» and «form permitting proof of receipt» are different concepts under Swiss law. If the purpose of the revision was to clarify things it would have been preferable to add an additional sentence along the following lines: «an original version of the signed award shall also be notified in a form permitting proof of receipt». This would have codified the current practice and avoided any confusion.

b. Parties' written submissions

[Rz 26] The most significant amendments to Article R31 concern the filing of submissions, including the Request for Arbitration, Statement of Appeal and any other written submissions (whether printed in hard copy or saved on digital medium). As per the terms of the 2013 Code, such submissions must be filed by courier delivery to the CAS Court Office. Importantly, the revised Article R31 now also specifically provides that if the submissions are transmitted by facsimile in advance, the filing is valid upon receipt of the facsimile «provided that the written submission is *also filed by courier* within the relevant time limit» (emphasis added).

[Rz 27] Practitioners must be aware of this amendment as it has previously been considered customary practice to file submissions by facsimile before midnight on the date of expiration of the relevant time limit, with the hard copy then sent by courier the next day. Given the inability to send mail by courier after close of business in many countries this new wording may therefore impact the time and manner in which submissions are filed.

[Rz 28] That said, there is another amendment to Article R31 which may nevertheless allow parties to file submissions after close of business on the relevant date of expiration of the time limit, but at present the validity of filing in this manner is uncertain. The 2013 revision has seen the welcome addition of the ability to file submissions electronically «under the conditions set out in the CAS guidelines on electronic filing».⁴⁰ At this stage, however, caution must be taken in exercising this option given that no such guidelines have been published by

³⁷ According to Article S20 of the Code, the CAS is composed of two divisions – the Ordinary Arbitration Division and the Appeals Arbitration Division. Upon receipt of a Statement of Appeal or Request for Arbitration, the proceedings will be assigned by the CAS Court Office to one of these two divisions and the specific rules in the relevant section of the Code (Ordinary or Appeals) will apply together with the General Provisions. Notably, proceedings may be transferred to another division «in the event of a change of circumstances during the proceedings».

³⁸ Article R31, second paragraph. The previous version of this provision read as follows: «[a]ll arbitration awards, orders, and other decisions made by the CAS and the Panel shall be notified by any means permitting proof of receipt».

³⁹ Decision of Swiss Federal Supreme Court 4A_392/2010 of 12 January 2011, para. 2.3.2.

⁴⁰ Article R31, fourth paragraph.

the CAS, making it impossible to determine whether or not electronic submissions will be deemed validly filed.

[Rz 29] A minor amendment was also made to the paragraph dealing with exhibits to submissions, which provides that these documents may be filed by e-mail (in accordance with previous versions of the Code). The filing of exhibits by e-mail has now been made conditional on each exhibit being (a) listed and (b) clearly identifiable.⁴¹

[Rz 30] In general, there are two significant features to the above amendments which ought to be highlighted, being the maintenance of the CAS's control over the communications between the parties and with the Panel, and the introduction of the ability to correspond via e-mail.

[Rz 31] The maintenance of control by the CAS is understandable insofar as the Panel does not play a direct role in the actual conduct of CAS proceedings and given that the parties litigating before the CAS are not always represented by counsel accustomed to the practices of international arbitration,⁴² although in practice, this often entails a significant amount of extra work and, under certain circumstances, may cause inconvenient delays.

[Rz 32] Conversely, the ability to receive and send communications by e-mail (particularly the novelty of sending submissions through this medium) ought to be seen as a positive development given the increasing prevalence and reliability of this mode of communication worldwide. That said, and considering Article R31's express statement that submissions must be filed according to the CAS guidelines on electronic filing, it is particularly important that the CAS publishes such guidelines without delay as it is essential that practitioners are able to determine the precise requirements for validly filing such documents by e-mail.

c. Other communications

[Rz 33] Article R31 also now contains a catch-all statement to the effect that communications from the parties intended for the CAS Court Office or the Panel, other than submissions, are to be sent by courier, facsimile or electronic mail to the CAS Court Office.⁴³

B. Time limits and extensions – Article R32

[Rz 34] The 2013 revision has seen two amendments to Article R32 of the Code, one of which simplifies matters and the other seemingly complicates them.

[Rz 35] The first amendment relates to the observance of time limits, with Article R32 now expressly stating that the time limits fixed under the Code will be respected if the

parties' communications are sent before midnight, «time of the location where the notification has to be made». Whilst the objective of making the terms of this important provision more specific is commendable, the wording of the amendment could lead to confusion as to its proper interpretation. Indeed, it is unclear whether the «time of the location where the notification has to be made» refers to Swiss time (as the notification must be made to the CAS Court Office) or the local time of the party making the notification (as it will be made from that location). It is hoped that CAS practice and jurisprudence will clarify the exact meaning of this provision, and in the meantime it is suggested that, if in doubt, practitioners should contact the CAS or the relevant counsel assigned to their proceedings to determine the definite date and time a communication is due.

[Rz 36] The second amendment to Article R32 concerns whether or not consultation with the other party(-ies) will be required in granting a party-requested extension of a time limit.⁴⁴ The extension of any time limit by the President of the Panel (or relevant Division) will require consultation with the other party(-ies) unless the request involves a first extension of a maximum of five days. The latter may be decided by the CAS Secretary General without consultation with the other party(-ies) which, positively, will allow the CAS to make efficient decisions on straightforward requests for an extension. The express requirement for consultation for any additional (or longer) time limit is also positive as it provides an opportunity for the other party(-ies) to address any potentially unreasonable requests for an extension of time from an opposing party.

C. Provisional measures – Article R37

[Rz 37] Provisional measures, which are governed by Article R37 of the Code,⁴⁵ often play an important role in CAS arbitrations, particularly in appeals proceedings, where the dynamics surrounding a given case may require immediate (even if temporary) determinations as to the parties' respective rights and obligations pending a final decision on the merits.

[Rz 38] Under Swiss arbitration law, arbitral tribunals and state courts have concurrent jurisdiction to grant provisional measures. However, pursuant to Article R37, in agreeing to submit to arbitration under the CAS Code the parties expressly waive their right to request any such measures from

⁴¹ Article R31, fifth paragraph.

⁴² Including, for example, sending a copy of any communications to the Panel also to the opposing party(-ies).

⁴³ Article R31, fifth paragraph.

⁴⁴ See Article R55, first paragraph.

⁴⁵ Article R37 is entitled «Provisional and Conservatory Measures». The Code then goes on to use the expressions «provisional measures», «provisional or conservatory measures», «preliminary relief» (Article R37) and «interim measures» (Article R52) interchangeably. In this article, we will use the term «provisional measures» to refer to all these concepts, which collectively correspond to all types of holding orders that are intended to safeguard the parties' rights or to regulate the situation between them pending the final outcome of the proceedings.

the state courts.⁴⁶ This waiver, originally limited to appeals proceedings, was extended to ordinary arbitration proceedings in the 2013 edition of the Code. The temporal scope of the waiver has also been extended in the latest edition of the Code: in particular, in appeals proceedings the CAS now has jurisdiction to hear requests for provisional measures as from the notification of the decision under appeal,⁴⁷ whereas in its previous version Article R37 expressly stated that parties could not apply to obtain such measures under the Code before the (Request for Arbitration or) the Statement of Appeal had been filed with the CAS.⁴⁸ The purpose of this extension *ratione temporis* of the CAS's exclusive jurisdiction to hear requests for provisional measures is to prevent parties from circumventing Article R37's waiver by seizing the state courts before the expiry of the time limit for appeal, and then relying on the *perpetuatio fori* principle to oust CAS jurisdiction in that respect.⁴⁹

[Rz 39] It should be recalled here that, under the CAS procedural rules, the President of the relevant Division (ordinary or appeals) is competent to deal with requests for provisional measures prior to the transfer of the file to the Panel appointed to hear the case (and *a fortiori* with any such requests lodged prior to the filing of the Statement of Appeal or Request for Arbitration).⁵⁰

[Rz 40] The 2010 amendment to Article R37 clarified that prior to issuing any order on a request for interim relief the President of the relevant Division or the Panel (where already appointed) must first rule on CAS jurisdiction. This has been further elaborated upon in the 2013 edition of the Code, which specifies that such ruling shall be made on a *prima facie* basis when issued by the Division President, thus making it clear that the final decision on jurisdiction is for the Panel to make (unless the Division President, upon such *prima facie* examination, comes to the conclusion that the CAS

«clearly has no jurisdiction»⁵¹ and decides to terminate the proceedings).⁵²

[Rz 41] One aspect that has seen an important change is that, at long last, the 2013 edition of the Code has codified the substantive prerequisites to be satisfied for the CAS to grant a request for provisional measures. According to the amended text of Article R37, fourth paragraph, «[w]hen deciding whether to award preliminary relief, the President of the Division or the Panel, as the case may be, shall consider whether the relief is necessary to protect the applicant from irreparable harm, the likelihood of success on the merits of the claim, and whether the interests of the Applicant outweigh those of the Respondent(s).» These three requirements were already well-established in the CAS case law, which until now applied them by reference to the criteria stipulated in Article 14(2) of the CAS Ad Hoc Division Rules⁵³ and/or the practice generally followed in international commercial arbitration. According to CAS case law, the aforementioned requirements are to be applied cumulatively.⁵⁴ However, the same jurisprudence allows for the necessary flexibility, in that CAS Panels will take all the circumstances of the case into account in making their decision. As a result, although each of the prerequisites is relevant, any one of them can be decisive on the facts of a given case.⁵⁵

⁴⁶ Article R37, third paragraph. On the validity of this waiver, see ANTONIO RIGOZZI/FABRICE ROBERT-TISSOT, La pertinence du consentement dans l'arbitrage du Tribunal Arbitral du Sport, in: Jusletter 16 July 2012.

⁴⁷ This is of course subject to the exhaustion of «all internal legal remedies provided for in the rules of the federation or sports-body concerned», as expressly stated in the first paragraph of Article R37.

⁴⁸ This restriction was set out in the first paragraph of Article R37 up to and including the 2012 version of the Code.

⁴⁹ This is in effect what the football club FC Sion attempted to do in the judicial saga against FIFA, UEFA and the Swiss Football Association before various Swiss Cantonal courts between 2011 and 2012.

⁵⁰ Article R37, third paragraph. Although the Division President is not an «arbitral tribunal» within the meaning of Article 183 PILA, it is generally accepted that the parties may confer the power to order provisional measures on the arbitral institution itself. Under the CAS Code, the file is transferred to the Panel only once its members have been confirmed by the Division President, who must first ascertain their independence and impartiality pursuant to Article R33 (see Articles R40.3 and R54, third paragraph), and provided the advance of costs has been duly paid (Article R64.2).

⁵¹ In this connection, note that the language in the Code has been changed, with the 2013 revision, to substitute the adverb «manifestly» with «clearly». In our opinion, the change should be considered purely cosmetic, and not meant as a signal that the degree of scrutiny should change from that established in the CAS practice by reference to the previous wording. This is supported by the fact that the language in the French version of the Code (which according to Article R69 remains the prevailing one) still uses the word «manifestement» in Article R37 (and other provisions where the terminology has been changed from «manifestly» to «clearly» in the English version).

⁵² This also means that while a positive (*prima facie*) decision on jurisdiction by the Division President cannot be challenged as such before the Swiss Supreme Court, a decision holding that there is no jurisdiction is final and amounts in effect to an award. It is therefore open to challenge in accordance with Articles 190–192 PILA, within the 30-day time limit of Article 100(1) LTF.

⁵³ The wording of Article 14(2) CAS Ad Hoc Rules (the set of special rules that are adopted to govern the proceedings before the CAS Ad Hoc Divisions, which are set up to hear disputes at the Olympic Games and other major international sporting events) provides that: «when deciding whether to award any preliminary relief, the President of the ad hoc Division or the Panel, as the case may be, shall consider whether the relief is necessary to protect the applicant from irreparable harm, the likelihood of success on the merits of the claim, and whether the interests of the applicant outweigh those of the opponent or of other members of the Olympic Community».

⁵⁴ See, e.g., CAS 98/200, A. & S.v. UEFA, Order of 17 July 1998, pp. 10–11, para. 41; and, more recently, CAS 2011/A/2473, A. Club v. Saudi Arabian Football Federation (SAFF), Order of 17 June 2011, p. 5, para. 6.3, with the references.

⁵⁵ CAS OG 02/004, COA v. ISU, Order of 14 February 2002, published in Digest of CAS Awards III, 2001–2003, The Hague 2004, pp. 592–594, at p. 593.

[Rz 42] Finally, from a procedural point of view, it is important to note that the 2013 version of Article R37 includes a new provision, according to which provisional measures may be granted (or maintained) only if the applicant files its claim on the merits within a certain time limit. In ordinary proceedings, the Request for Arbitration must be filed within 10 days from the filing of the application for provisional measures; in appeals proceedings, the Statement of Appeal is to be filed within the time limit determined in accordance with Article R49 of the Code. The new wording of Article R37 specifies that if these non-extendable time limits are not met, the proceedings will be terminated and any measure that may have been granted in the meantime will be revoked.

D. Other amendments

[Rz 43] The following amendments (from both the 2012 and 2013 revisions) made to the General Provisions in the Code's Procedural Rules are also worth mentioning:

- Article R28 has been amended to remove the possibility for the President of the relevant Division to decide to hold a hearing in another location with the effect that this decision will now always be made by the President of the Panel.⁵⁶
- Conversely, Article R29 now provides for the Division President to order certified translations of documents.⁵⁷
- Article R30 has removed the requirement to provide a power of attorney, requiring instead that «written confirmation» of representation by an attorney or other person is provided to the CAS Court Office.⁵⁸ This amendment seemingly serves three functions: it reflects the fact that parties can be represented by persons other than attorneys, it requires empowerments to be made in writing, and, by implication, it suggests that «confirmation» of representation can be made at a later stage (i.e. does not necessarily have to be provided with the relevant written submission).⁵⁹
- Articles R33 and R34 have seen the addition of the term «impartiality» to the express requirement of «independence» of the CAS arbitrators and the grounds to challenge the appointment of an arbitrator.⁶⁰ Such an amendment merely confirms (in express terms) the recent case law of the Swiss Supreme Court.⁶¹ Article

R34 has also been amended to ensure that a petition for challenge is sent directly to the CAS Court Office and that any comments from the other party(-ies) or the arbitrator(s) are circulated.⁶²

- Article R35 was amended in 2012 to provide that an arbitrator may be removed by the ICAS if he refuses or is prevented from carrying out his duties (or fails to do so) «within a reasonable time». This additional language provides greater flexibility for the ICAS to remove arbitrators who are unable to (or simply do not) comply with the CAS's objective of efficiency in sports arbitrations.
- The 2013 revision also resulted in a slight amendment to Article R35, which now expressly provides that the removal of an arbitrator cannot be requested by a party. Accordingly, only the ICAS itself has the authority to remove an arbitrator on the grounds that he or she has failed or refused to fulfill his or her duties. It is submitted that the ICAS should also remove an arbitrator upon a joint request from the parties.

2. Special provisions applicable to the ordinary arbitration procedure (Articles R38 to R46 of the CAS Code)

[Rz 44] The ordinary arbitration procedure governs arbitrations assigned to the Ordinary Arbitration Division, essentially commercial disputes related to sports.

[Rz 45] Noteworthy amendments to this regime have been made in the 2012 and 2013 editions of the Code to deal with: (A.) incomplete requests for arbitration; (B.) issues of jurisdiction; (C.) the formation of the Panel; and (D.) some formal aspects of the award. Other amendments are considered briefly in (E.) below.

A. Request for Arbitration – Article R38

[Rz 46] The 2013 revision has seen a slight amendment to the wording of Article R38, which now states that if an incomplete Request for Arbitration is submitted and the relevant party does not complete the necessary details within the short additional time limit which may be granted by the CAS Court Office to that effect, the latter «shall not proceed». This terminology differs from the previous version which referred to the Request for Arbitration being «deemed withdrawn» in such circumstances. The meaning of this revision (and its likely effects) are unclear at present, however it is expected that the CAS will issue a termination order in such cases.⁶³

⁵⁶ See 2013 amendments to the Code.

⁵⁷ See 2013 amendments to the Code, Article R29, third paragraph.

⁵⁸ See 2013 amendments to the Code.

⁵⁹ See NOTH, Commentary of the CAS Rules, ad Article R30, para. 5.

⁶⁰ See 2013 amendments to the Code, Article R33, first paragraph and Article R34, first paragraph.

⁶¹ ATF 136 III 605, para. 3.3.1. See also ANTONIO RIGOZZI, The Swiss Supreme Court slams the door four times on Valverde's Operation Puerto challenges, Paris Journal of International Arbitration 2012, pp. 647–657, at p.

651.

⁶² See 2013 amendments to the Code, Article R34, second paragraph.

⁶³ See NOTH, Commentary of the CAS Rules, ad Article R38, paras. 17 and 18.

B. Respondent's Answer – Jurisdiction (Articles R39 and R55) and Consolidation (Article R39)

[Rz 47] Both the 2012 and 2013 revisions have seen amendments to Articles R39 and R55 of the Code, which are the provisions dealing with the Respondent's Answer to the Request for Arbitration or Statement of Appeal. The most significant additions were made in the 2012 revision, with the insertion of two new paragraphs reflecting the principles of Swiss arbitration law with regard to jurisdictional matters and *lis pendens*.

[Rz 48] First, Articles R39 and R55 now set out in their fourth paragraph that «[t]he Panel shall rule on its own jurisdiction». This merely restates the fundamental principle of «competence-competence», which is embodied in Article 186(1) PILA and was already recognized in CAS jurisprudence prior to the 2012 revision.⁶⁴ The following part of Articles R39 and R55's fourth paragraph then goes on to state, in accordance with Article 186(1bis) PILA, that CAS panels shall rule on their jurisdiction «irrespective of any legal action already pending before a State court or another arbitral tribunal relating to the same object between the same parties».⁶⁵ Just like Article 186(1bis) PILA, Articles R39 and R55 then set out the exception to the above-stated principle – however, as far as the English-language version of the Code is concerned, in slightly misleading terms. Indeed, Articles R39 and R55 refer to the existence of «substantive grounds» requiring a stay of the proceedings, rather than «serious reasons», which would be the correct translation of the expression «*motifs sérieux*» used in Article 186(1bis) PILA (and in the French-language version of Articles R39 and R55).⁶⁶

[Rz 49] The fifth paragraph of Articles R39 and R55 states, in its first sentence, that the CAS «shall invite the opposing party (parties) to file written submissions on the matter of CAS jurisdiction», thus codifying the previous practice according to which the Claimant(s)/Appellant(s) should be given an opportunity to file a written response to a jurisdictional challenge by the Respondent(s).

[Rz 50] The second sentence of the fifth paragraph of Articles R39 and R55 deals with the issue of bifurcation by providing that «[t]he Panel may rule on its jurisdiction either in

a preliminary decision or in an award on the merits». This wording is at odds with that of Article 186(2) PILA, which states that «the arbitral tribunal shall, *as a rule*, decide on its jurisdiction by preliminary award» (emphasis added). Contrary to appeals proceedings, ordinary arbitrations involve mainly commercial disputes, where the need to avoid possibly unnecessary proceedings generally prevails over the goal of obtaining a final decision within a short timeframe. Therefore, while the omission of the phrase «as a rule» is justified with respect to CAS appeals arbitration proceedings,⁶⁷ we see no reason why this well-established principle of international arbitration should be disregarded in ordinary proceedings.

[Rz 51] The final amendment to Article R39 in 2012 was the addition of its sixth paragraph, which provides for the possibility to consolidate proceedings where a party files a Request for Arbitration which relates to an arbitration agreement and facts similar to those which are the subject of a pending ordinary procedure before CAS.⁶⁸ The addition of this article is positive in that (in theory) it may lead to the simplification of matters, consistent awards and reduced costs, however it could arguably be improved by providing for the precise requirements necessary for consolidation. Factors to take into account in deciding whether or not to consolidate multiple proceedings may include the precise links between the cases, the progress already made in the existing proceedings, the type of proceedings and the likely impact on costs. In any event the requirement to consult the parties must be strictly adhered to.⁶⁹

[Rz 52] Contrary to the 2012 edition, the 2013 revision has seen only two (relatively minor) amendments to Article R39. The first of these relates to the *prima facie* examination of the existence of a valid arbitration agreement, with the opening phrase of Article R39 now stating that the CAS Court Office shall take all steps to set the arbitration in motion unless «it is clear from the outset that there is no arbitration agreement referring to the CAS», rather than «it is apparent from the outset that there is manifestly» no such agreement.⁷⁰ As already noted, given that the reference to «*manifestement*» has been maintained in the relevant articles of the French version of the Code, it appears that the changing of this wording will not be material.⁷¹

[Rz 53] The 2013 revision also added the specification that the Respondent may request that the time limit for filing the Answer be fixed after the Claimant has paid «his share of the advance of costs provided by Article R64.2 [of the Code]».⁷²

⁶⁴ See NOTH, Commentary of the CAS Rules, ad Article R39, para. 10 (as to CAS jurisprudence confirming this principle see, for example, CAS 2009/A/1910, *Telecom Egypt Club v. EFA*, Award of 9 September 2010, para. 2).

⁶⁵ See NOTH, Commentary of the CAS Rules, ad Article R39, para. 13 and Rigozzi/Hasler, Commentary of the CAS Rules, ad Article R55, para. 18.

⁶⁶ Note that CAS panels have interpreted Article 186(1bis) PILA (later reflected in Article R55, fourth paragraph) as meaning that the mere possibility that another court seized with the case might render a different decision than that of the CAS was «manifestly not» a serious reason within the meaning of that provision, see CAS 2009/A/1880 & 2009/A/1881, *FC Sion v. FIFA & Al-Ahly Sporting Club; El-Hadary v. FIFA & Al-Ahly SC*, Award of 7 October 2009, paras. 66-68.

⁶⁷ See Rz 70.

⁶⁸ The corresponding provision in appeals proceedings is Article R52, fourth paragraph, referring to the filing of statements of appeals in connection with the same decision.

⁶⁹ See NOTH, Commentary of the CAS Rules, ad Article R39, para. 15.

⁷⁰ Article R39, first paragraph.

⁷¹ See, for instance, Article R37 and fn 51 above.

⁷² Article R39, third paragraph.

While this wording is somewhat unclear as to whether the Respondent's Answer will be due after the Claimant has paid his own share of the advance of costs or that of the Respondent, common sense would dictate that only the former interpretation can be correct.⁷³

C. Formation of the Panel – Article R40

[Rz 54] Article R40 was amended slightly in both the 2012 and 2013 editions, with the 2012 revision adding express reference to the fact that only arbitrators from the CAS List may be appointed to a Panel.⁷⁴

[Rz 55] The 2013 revision has also specified that in circumstances where three arbitrators shall be appointed to the Panel, if the Claimant fails to nominate an arbitrator together with the Request for Arbitration or within the time limit set by the President of the Division, the Request for Arbitration will be deemed to have been withdrawn.⁷⁵ The rationale for this provision is unclear, in particular as it is, at least to our knowledge, unprecedented in international arbitration. In practice, we believe it would be appropriate for the CAS to make use of its discretion under Article R38, third paragraph, to grant a single short deadline to nominate an arbitrator when the arbitrator is not expressly appointed with the Request for Arbitration, and that a similar «grace period» should be given also when the time limit to appoint the arbitrator is fixed by the President of the Division.

[Rz 56] Article R40.1 has also been amended in the 2013 edition, and now states that the Division President may choose to appoint a Sole Arbitrator where the Claimant requests this and the Respondent does not pay its share of the advance of costs within the relevant time limit. Such an amendment should be welcomed as it provides some financial protection for a Claimant in circumstances where the Respondent refuses to cover the costs of the arbitration.

[Rz 57] Finally, in determining whether to appoint a sole arbitrator or a Panel of three arbitrators, the requirement for the President of the Division to take into account the «amount in dispute and complexity of the dispute» has been replaced with the more general concept of the «circumstances of the case», allowing the Division President to take into account other relevant factors as, for instance, the parties' financial resources.

D. The award – Article R46 (and Article R59)

[Rz 58] Article R46 regulates the making and effects of the award in CAS ordinary proceedings. The corresponding provision for appeals proceedings is Article R59.⁷⁶

[Rz 59] Both Article R46 and Article R59 provide that «the award shall be written, dated and signed», and, in line with Article 189(2) PILA, that in cases heard by a three-member panel the President's signature will suffice. A novelty was introduced in this respect with the 2013 edition of the Code, which now stipulates that where the President does not sign, the award can be issued bearing only the signatures of the two co-arbitrators.⁷⁷ This change implicitly acknowledges the right of a dissenting arbitrator (whatever his role within the Panel) not to sign an award with which he disagrees.⁷⁸ However, the amendment may have been introduced for mainly practical reasons, with a view to avoiding unnecessary delay in dispatching the decision to the parties when the Panel's President is not available to sign. Be that as it may, one should not automatically conclude that an award bearing only the President's or the co-arbitrators' signature(s) is necessarily the result of a majority decision.

[Rz 60] The 2013 revision has also seen the addition of a paragraph to Article R46 specifying that the Panel may decide to communicate the operative part of the award to the parties prior to the delivery of the reasons. This possibility was already available as early as the 1994 edition of the Code for awards rendered in appeals proceedings (pursuant to Article R59). Thus, the new wording of Article R46 now gives the panels sitting in ordinary proceedings the same degree of flexibility, allowing them to inform the parties of the dispositive portion of their decision within a shorter time frame than that required to draft and issue the full, reasoned award.⁷⁹ That said, experience suggests that some issues might become apparent only during the drafting of the award. Accordingly, we would submit that Panels should envisage opting for this possibility only where it is clearly appropriate and with the explicit agreement of both parties.

[Rz 61] As to the effects of the award, the aforementioned changes, as well as those introduced in Article R31 with regard to the notification of CAS decisions,⁸⁰ call for the following observations. According to Article 190(1) PILA, «the award shall be final when communicated». This means that

⁷³ The same is true, we submit, for the analogous wording used in Article R55 (third paragraph) with respect to the Respondent's Answer in appeals proceedings. This interpretation is also supported by the text of Articles R40.1 and R50, where a clear reference is made to the Respondent's share of the advance of costs with the possessive pronoun "its", rather than "his", as in Articles R39 and R55.

⁷⁴ Article R40.2, first paragraph.

⁷⁵ Article R40.2, third paragraph.

⁷⁶ Article R59 will also be briefly addressed further below in connection with the issue of confidentiality in appeals proceedings, see Rz 74–76.

⁷⁷ Article R46, first paragraph and Article R59, first paragraph.

⁷⁸ Article R46, first paragraph in fine (as Article R59) is also clear that «dissenting opinions are not recognized by the CAS and are not notified» to the parties.

⁷⁹ In this connection, it bears recalling here that in the case of ordinary (but not appeals) proceedings, the parties are also free to agree to dispense with the reasons for the award altogether, as per Article R46, second sentence.

⁸⁰ See Rz 23–25.

the award is binding on the parties (as Articles R46 and R59 also state) and has *res judicata* effect as from the notification, even if only of its operative part, and whether such notification is made by courier, facsimile and/or e-mail, as now provided by Article R31. Technically, the award, even if it is issued only in its operative part at first, can be enforced as from receipt of that part. In reality, however, this may prove difficult, especially if enforcement is sought abroad under the New York Convention.⁸¹

[Rz 62] The thirty-day time limit for challenging the award before the Swiss Supreme Court, as per Article 100(1) of the Swiss Supreme Court Act (LTF), only runs from receipt of the (original signed) decision in full.⁸² Nevertheless, a party is free to challenge the award immediately upon receipt of the operative part, in particular to seek an order staying its execution, while reserving the right to complete the challenge once it has received the reasoned decision.

E. Other amendments

[Rz 63] Other minor amendments have been made to various provisions in the ordinary arbitration procedural rules, including the following in relation to the provisions governing multiparty arbitration (Article R41) and the procedure before the panel (Article R44):

- Article R41.4 now contains an express requirement for the Panel to consider the parties' submissions filed on third party intervention and *amicus curiae* briefs rather than «consulting» the parties.⁸³
- The same article now also provides for the ability of the Panel to set terms and conditions for the filing of *amicus curiae* briefs.⁸⁴
- The requirement to name witnesses «whom [a party intends] to call», the requirement to list the name(s) of any experts (seemingly whether or not the relevant party intends to call them) and the clarification that witness statements are to be filed by the parties together with the submissions unless the President of the Panel decides otherwise are among the changes made to Article R44.1.⁸⁵
- Article R44.2 has been amended to expressly provide that the parties «may only» call such witnesses and experts that they have specified in their written

submissions.⁸⁶ In the 2012 revision, Article R44.2 was also amended to grant the President of the Panel the ability to decide (in general and not only «exceptionally», as was the case before) to conduct hearings by video- or tele-conference», and to provide for him to issue directions with respect to the hearing «as soon as possible» rather than «once the exchange of proceedings is closed».

- Article R44.3 was amended in 2013 to require the Panel to invite a prospective Panel-appointed expert to disclose any circumstances likely to affect his independence prior to appointing him.⁸⁷ One would have thought that consistency with the newly amended Articles R33 and R34 should have resulted in the requirement that Panel-appointed experts shall be not only independent but also impartial.
- Article R44.5 now provides that if a party «or its witnesses» fails to attend a hearing the Panel may nevertheless proceed with the hearing «and deliver an award».⁸⁸

3. Special provisions applicable to the appeals arbitration procedure (Articles R47 to R59 of the CAS Code)

[Rz 64] The provisions relating to the CAS appeals procedure govern arbitral proceedings assigned to the Appeals Arbitration Division.⁸⁹ Under this procedure, the CAS will hear all disputes relating to «the decisions of federations, associations or other sports-related bodies», provided that «the statutes or regulations of the said sports-related bodies or a specific arbitration agreement so provide».⁹⁰ The great majority of CAS arbitrations are conducted as appeals proceedings.⁹¹

[Rz 65] Among the notable changes introduced in this part of the Code are those relating to (A.) the observance of the time limit for appeal; (B.) the decision on jurisdiction; (C.) the *de novo* character of CAS appeals proceedings, and (D.) the award and confidentiality issues. A number of other amendments are briefly noted in section (E.) below.

A. Time limit for appeal – Article R49

[Rz 66] Article R49, the provision governing the time limit for

⁸¹ Since incompatibility with public policy is a ground to resist enforcement under the Convention (Article V(2)(b) NYC), one can reasonably argue that such a defence cannot be meaningfully addressed by examining an award rendered without reasons.

⁸² See Rz 25.

⁸³ See 2013 amendments to the Code, Article R41.1, fifth and sixth paragraphs.

⁸⁴ See 2013 amendments to the Code, Article R41.4, sixth paragraph.

⁸⁵ See 2013 amendments to the Code, Article R44.1, third paragraph.

⁸⁶ See 2013 amendments to the Code.

⁸⁷ See 2013 amendments to the Code, Article R44.3, third paragraph.

⁸⁸ See 2013 amendments to the Code, Article R44.5, third paragraph. The same amendment was made to Article R57, third paragraph, dealing with the conduct of hearing in appeals proceedings.

⁸⁹ See Article S20.

⁹⁰ Article R47.

⁹¹ See the CAS Statistics, available at: <www.tas-cas.org/d2wfiles/document/437/5048/0/stat2012.pdf>

appeal,⁹² remained unchanged until the 2013 revision of the Code, when the last sentence of this article was reworded to provide that «[t]he Division President shall not initiate a procedure if the statement of appeal is, on its face, late». The newly introduced language is clearly firmer than the pre-existing version of the same sentence, which merely contemplated that «after having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late» (emphasis added). Thus, at this preliminary stage, the decision on the timeliness of the appeal will now be taken by the Division President *ex officio*, without consulting the parties, and upon a *prima facie* review of the Statement of Appeal.⁹³

[Rz 67] This highlights – if need be – that it is vital for Appellants to ensure that they file their Statement of Appeal within the applicable time limit.⁹⁴ As discussed in more detail elsewhere, failing to do this will result in the loss of the Appellant's substantive claim, not simply of the right to bring it before the CAS.⁹⁵ In its current wording, Article R49 states that in such a case the Division President shall «notify» the person who made the belated filing. Since the Division President's determination that the appeal is late «on its face» will mean that a procedure is not even initiated, the notification will likely be given in the form of a simple letter, rather than as a formal termination order or other procedural act. However, regardless of the form in which it is made, this notification will in effect constitute a final award dismissing the claim on the merits and, as such, it may be challenged before the Swiss Supreme Court, in accordance with Articles 190–192 PILA.

[Rz 68] If the Statement of Appeal withstands the Division President's *prima facie* scrutiny and a procedure is initiated, Article R49 now expressly provides that a decision to terminate the proceedings on the ground that the statement of appeal was filed belatedly may be taken at a subsequent stage. Such decision must be based upon the request of a party and may be taken either by the Division President or by the President of the Panel once the latter has been constituted. In this case, as per the new wording of Article R49, the decision will be rendered «after considering any submission made by

the other parties». In our opinion, in view of the importance of the decision at stake, this language should be interpreted to mean that the authority called upon to make the decision shall *invite* the parties to make specific submissions on the question of the timeliness of the appeal prior to making its determination, rather than just consider any submissions that may have already been made in that respect. At this stage too, a decision terminating the proceedings on the ground that the appeal was brought out of time constitutes a final award on the merits and is therefore subject to challenge before the Swiss Supreme Court in accordance with Articles 190–192 PILA.

B. CAS Jurisdiction – Article R55

[Rz 69] As seen above, the 2012 revision incorporated the principles of Swiss arbitration law on jurisdictional matters in Article R39 – and also, accordingly, in Article R55. In general, the observations made with respect to Article R39 also apply in the context of appeals proceedings under Article R55.

[Rz 70] The one difference we see between the two regimes is that the CAS Code's approach with regard to decisions on jurisdiction (that is, its deviation from the presumption in favor of bifurcation under Article 186(2) PILA)⁹⁶ is better suited to CAS appeals proceedings than ordinary proceedings. Indeed, in appeals cases, the overarching need for a speedy resolution of the dispute may justify issues of jurisdiction being decided together with the case on the merits, as bifurcation will inevitably slow down the proceedings and entail a risk of abuse by the Respondent. As a matter of fact, CAS practice in appeals proceedings shows that panels will order a bifurcation upon a party's request or *sua sponte*, when the jurisdictional challenge is straightforward and can be easily dealt with separately in a time- and cost efficient manner and/or it would otherwise be procedurally unfair to require the Respondent to prepare a full submission addressing the Appellant's submissions on the merits (where it appears likely that the case may not even reach the merits phase).

C. De novo character of CAS appeals proceedings – Article R57

[Rz 71] The principle of *de novo* review before the CAS is well-established in the case law and indeed one of the pillars of the CAS appeals system. The meaning of this principle is, in a nutshell, that the CAS will «re-hear» the matter afresh, as if it had not been previously heard or decided.⁹⁷ In other words, in appeals proceedings, the CAS panels' scope of review is «basically unrestricted»;⁹⁸ they are not bound by the

⁹² The default rule set out in Article R49 with regard to the time limit for appeal is that «[i]n the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against». For an analysis of the questions surrounding the determination of the applicable time limit for appeal, see RIGOZZI/HASLER, Commentary of the CAS Rules, ad Article R49, paras. 7–16.

⁹³ Of course, the Respondent will still be free to raise an objection as to the timeliness of the appeal at a later stage, as discussed below, Rz 68.

⁹⁴ In this connection, it is worth noting that the Statement of appeal can be filed in the form of a very short document, as long as it complies with the requirements of Article R48. On these requirements and the related practicalities, see RIGOZZI/HASLER, Commentary of the CAS Rules, ad Article R48.

⁹⁵ RIGOZZI/HASLER, Commentary of the CAS Rules, ad Article R49, paras. 21–22.

⁹⁶ See above, Rz 50.

⁹⁷ See e.g., CAS 2008/A/1718 to CAS 2008/A/1724, *IAAF v. All Russia Athletic Federation & Yegorova et al.*, Award of 18 November 2009, para. 166.

⁹⁸ See e.g., CAS 2008/A/1700 & CAS 2008/A/1710, *Deutsche Reiterliche Vereinigung e.V. v. FEI & Ahlmann; Ahlmann v. FEI*, Award of 30 April 2009, para. 66.

factual or legal findings of, or the evidence adduced before, the previous deciding instances.⁹⁹ An important implication of this principle is the «curing effect» associated with the panels' unfettered power of review of the facts and the law, which is instrumental in guaranteeing the validity of the exclusion of the state courts' jurisdiction over sports disputes. Such exclusion is justified by the fact that any violations of the parties' procedural rights at first instance can be remedied («cured») by the availability of full and proper arbitration proceedings (compliant with the fundamental principles of due process) before the CAS.¹⁰⁰

[Rz 72] For this reason, the wording introduced with the 2013 revision in Article R57's third paragraph, to the effect that «[t]he Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered», inevitably raises delicate questions. We submit that this new provision should be applied with caution, so as not to impinge upon the fundamental principle of *de novo* review by the CAS. The amendment may make sense in those cases where the CAS acts as a second instance arbitral tribunal, reviewing an award rendered by another arbitral panel at the end of genuine arbitral proceedings.¹⁰¹ But in appeals proceedings against decisions rendered by the hearing bodies of the sports-governing organizations, where the curing effect of a full, *de novo* review by the CAS assumes all its importance, we believe Panels should use the discretion now granted to them by Article R57 only in those cases where the adducing of pre-existing evidence amounts to abusive or otherwise unacceptable procedural conduct by a party.¹⁰²

[Rz 73] In addition, to the extent that the current draft of the upcoming WADA Code (WADC 2015) is not altered during the last part of the consultation process, CAS panels will in

fact have no discretion as far as new evidence is concerned in doping cases. Indeed, as presently drafted, the WADC 2015 expressly states in a new subsection to Article 13.1 on «Decisions Subject to Appeal» that «[i]n making its decision [on appeal], CAS shall not give deference to the findings made, or discretion exercised, by the body whose decision is being appealed».¹⁰³ The official comment to this provision in the draft WADC 2015 reads as follows: «CAS proceedings are *de novo*. The [proceedings before an Anti-Doping Organization's internal hearing bodies] do not limit the evidence or carry weight in the hearing before CAS».¹⁰⁴

D. Award – Article R59

[Rz 74] As seen above, just like Article R46, Article R59 provides that «the award shall be written, dated and signed» and that the Panel's President's signature or, as from the 2013 edition of the Code, those of the two coarbitrators will suffice.¹⁰⁵

[Rz 75] The comments made in relation to Article R46 above as to the notification of the award, its enforceability and the time limit for challenging it also apply, *mutatis mutandis*, to Article R59 in the context of appeals proceedings.

[Rz 76] The issue of confidentiality is also addressed in some more detail in the 2013 version of Article R59. The last paragraph of this article now expressly states that while, as before, the confidential treatment of the award is conditional upon the parties' joint request to that effect,¹⁰⁶ «the other elements of the case record shall remain confidential» in any event. We believe this new provision should not discourage the CAS from publishing (e.g. in the CAS Bulletin and if need be in redacted form) examples of procedural orders, such as decisions rendered on applications for provisional measures, challenges of arbitrators and document production requests, in order to keep CAS users up to date with the institution's practices with respect to these important matters.

E. Other changes

[Rz 77] In addition to the foregoing, we would also note the

⁹⁹ See, e.g., CAS 2002/A/383, *IAAF v. Dos Santos*, Award of 27 January 2003, para. 71.

¹⁰⁰ This concept was famously put in the following terms by the Panel in CAS 1998/A/208, *N., J., Y., W. v. FINA*: «[t]he virtue of an appeal system which allows for a full rehearing before an appellate body is that issues of the fairness or otherwise of the hearing before the tribunal of first instance fade to the periphery [...]. The Appellant's entitlement was to a system which allowed any defects in the hearing before the doping panel to be cured by the hearing before CAS» (Award of 22 December 1998, published in Digest of CAS Awards II 1998–2000, The Hague 2002, pp. 234–254, at p. 246).

¹⁰¹ This possibility is envisaged in Article R47, second paragraph. On this procedure, see RIGOZZI/HASLER, Commentary of the CAS Rules, ad Article R47, para. 46.

¹⁰² As an example of such abusive conduct one could think to a club that files a totally unsubstantiated claim against another club before the FIFA Dispute Resolution Chamber with the obvious intent to put forward its case only once the FIFA decision should be appealed in CAS. In that case, the dispute resolution process provided for by FIFA would be *de facto* circumvented as the FIFA instance would be put in the difficult situation of having to make a decision based on a poorly substantiated case, with the risk that such decision would then be overturned by CAS simply because all the relevant arguments and evidence have been put forward (only) at that stage.

¹⁰³ Article 13.1.2, Draft 2015 WADC (version 2.0), entitled «CAS Shall Not Defer to the Findings Being Appealed». The Draft WADC 2015 can be found on WADA's website, at <http://playtrue.wada-ama.org/news/publication-of-second-draft-of-2015-code/>.

¹⁰⁴ *Ibid.*

¹⁰⁵ See Rz 59.

¹⁰⁶ In practice, when notifying the award, the CAS will ask the parties for their confirmation that it can be published. If the award contains sensitive and/or personal information, the CAS will specifically ask the parties whether they consider that any such information should remain confidential, indicating that, if such should be the case, «they should send a request, with grounds, to the CAS» within a given time limit, «in order that such information could potentially be removed, to the extent such removal does not affect the comprehension of the decision» (CAS 2011/A/2425, *Fusimalohi v. FIFA*, Award of 8 March 2012).

following changes made to the rules governing appeals arbitration procedures:

- In the 2013 revision, Article R48, the provision dealing with the filing of the statement of appeal, has been modified to provide that the Appellant may «request the appointment of a sole arbitrator» upon submitting his statement.¹⁰⁷ It is for the President of the Division to decide whether it would be appropriate to deviate from the presumption in favor of appeals being heard by three-member panels (as per Article R50), whether *sua sponte* or upon a party's request.¹⁰⁸ According to the new wording introduced in Article R50, in deciding whether to submit the appeal to a sole arbitrator, the Division President shall take into account the circumstances of the case, «including whether or not the Respondent paid its share of the advance of costs within the time limit fixed by the CAS Court Office» (Article R50, first paragraph). Among the relevant «circumstances» referred to we would also include whether or not a party has requested the appointment of a sole arbitrator, the complexity of the issues raised by the dispute, the importance of the case and the amount in dispute.
- As revised in 2012, Article R55 now requires the Respondent to provide a «brief summary of [the] expected testimony» of any witnesses, and a statement as to the «area of expertise» of any experts, whom he intends to call.¹⁰⁹ This change simply clarifies that Article R55 should of course contain the same requirements as those introduced in 2010 with respect to the Appellant's witnesses and experts under Article R51.
- The 2013 revision has also seen the addition of the obvious specification, in Article R57, that a witness' (and not only a party's) failure to appear at the hearing, when duly summoned, shall not preclude the Panel from proceeding with the hearing and rendering an award.

¹⁰⁷ As previously worded, Article R48 (and Article R50) did not allow the Appellant to request the appointment of a sole arbitrator when filing the appeal, but only envisaged the possibility for the parties to agree (before or «at the time of the statement of appeal») to have their dispute heard by a sole arbitrator.

¹⁰⁸ We are aware of only very few cases where the Division President decided that an appeal should be submitted to a sole arbitrator without the parties' agreement (see CAS 2009/A/1846, *Azovmash Mariupol Basketball v. van De Hare et al.*, Award of 30 November 2009, paras. 13 and 16). Conversely, it is not so rare for the parties to agree to have the case heard by a sole arbitrator after the filing of the statement of appeal (see, for instance, CAS 2008/A/1698, *Riccò v. CONI*, Award of 17 March 2009, para. 36).

¹⁰⁹ See 2012 amendments to the Code, Article R55, first paragraph.

4. Abrogation of consultation proceedings (Articles R60-R62 and R66)

[Rz 78] Articles R60 to R62 and R66 of the Code, governing the so-called CAS «consultation» or «advisory proceedings», pursuant to which CAS panels could, upon request by the IOC, IFs, WADA and other sports organisations, give opinions on any questions of law or general interpretation related to sports activities, were abrogated with effect from 1st January 2012.¹¹⁰

5. Interpretation of the Award (Article R63)

[Rz 79] Article R63 of the Code provides the legal basis for the CAS panels' power to interpret (and/or correct) their awards.¹¹¹ It outlines the circumstances in which an application for interpretation (and/or correction) of the award may be made to the CAS, and the procedure that will be followed in dealing with it.¹¹²

[Rz 80] Until the 2013 revision, one of Article R63's distinctive features, compared to similar provisions in other arbitration rules, was that it set no time limit within which such requests should be made,¹¹³ a situation which generated uncertainty and was difficult to reconcile with the fundamental principle of the finality of arbitral awards. Thus, the new wording of Article R63, which now specifies that requests for interpretation (and/or correction) are to be lodged «not later than 45 days following the notification of the award», is a welcome clarification.¹¹⁴

6. Costs of the Arbitration Proceedings (Articles R64 and R65)

[Rz 81] Articles R64 and R65 are the provisions governing costs in CAS ordinary and appeals arbitration proceedings.

¹¹⁰ These were the so called «C proceedings» in the CAS roll's numbering system and had been in existence since the inception of the CAS. Articles R60-R62 regulated the procedural aspects and Article R66 dealt with the costs related to the Advisory procedure. On the background and the reasons stated for the ICAS's decision to suppress this procedure, see RIGOZZI/HASLER, Commentary of the CAS Rules, ad Articles R60-62 and R66.

¹¹¹ The PILA contains no provision on the interpretation, correction or supplementation of awards. Nevertheless, it is well-settled that international arbitral tribunals sitting in Switzerland do have the power to correct or interpret their awards (see ATF 126 III 524). The conditions for the exercise of such power are primarily governed by the parties' agreement, which will generally be expressed in an indirect manner, by reference to the relevant provisions in the applicable arbitration rules.

¹¹² For a detailed analysis of Article R63, also dealing with the relationship between correction/interpretation and other post-award remedies in CAS arbitrations, see RIGOZZI/HASLER, Commentary of the CAS Rules, ad Article R63.

¹¹³ Virtually all sets of arbitration rules provide for a short time limit, in most cases of one month or 30 days, within which requests for interpretation and/or correction of awards may be lodged.

¹¹⁴ On the notification of CAS awards, see Rz 25 above.

Article R64 sets out the general rules with regard to costs. It applies to ordinary proceedings and to all appeals proceedings that do not come within the scope of Article R65, the provision dealing with the costs of «appeals against decisions issued by international federations in disciplinary matters».¹¹⁵ Articles R64 and R65 are to be read together with the Schedule of Arbitration Costs, which is set out in Appendix II to the Code.¹¹⁶

A. Costs in general – Article R64

[Rz 82] In accordance with the latest version of Article R64.4,¹¹⁷ the costs of the arbitration in proceedings before the CAS include, in addition to the CAS Court Office fee; the «administrative costs of the CAS calculated in accordance with the CAS scale»;¹¹⁸ the fees and costs of the arbitrators and of the panel's ad hoc clerk where one is appointed,¹¹⁹ as well as those of any expert(s) and/or interpreters of which the panel may avail itself; and the costs sustained by the parties in connection with the hearing and/or the proceedings more generally (e.g. for the appearance of witnesses or the services rendered by party-appointed experts or interpreters).

[Rz 83] The CAS Court Office fee, which, pursuant to Article R64.1, is payable upon the filing of the Request for Arbitration or the Statement of Appeal,¹²⁰ was doubled from CHF 500.- to CHF 1,000.- in July 2011. This was the first increase in the fee since 1994. Even though in absolute terms the rise was significant, compared with the filing fees charged by other institutions,¹²¹ the CAS Court Office fee remains moderate, and as such it can hardly be considered as an impediment

to access to justice for the parties, even in appeals cases involving impecunious athletes or clubs.

[Rz 84] In a separate paragraph, Article R64.1 expressly provides, since the 2012 revision (as further amended in 2013), that in case the arbitration proceedings are terminated prior to the constitution of the Panel, «the Division President shall rule on costs in the termination order». According to this same provision, the Division President «may only order the payment of legal costs upon request of a party and after all parties have been given the opportunity to file written submissions on costs».

[Rz 85] The parties' «legal costs» at the end of proceedings that have followed a normal course (resulting in an award) are dealt with in Article R64.5. As in the previous editions, Article R64.5 provides that the Panel has discretion to grant the prevailing party «a contribution towards its legal fees and other expenses incurred in connection with the proceedings, [...] in particular, the costs of witnesses and interpreters». The new addition to this provision, in its 2013 version, is that the complexity of the case has been included in the list of criteria that the Panel is to take into account in determining the amount of the contribution. The other criteria are, as before, «the outcome of the proceedings, as well as the conduct and the financial resources of the parties».¹²²

[Rz 86] The requirement for the Panel to consider the complexity of the case in its decision on the contribution for legal costs may have been inserted in reaction to a recent critical remark by the Swiss Supreme Court, according to which «it would be desirable for the CAS to specify the concept of contribution within the meaning of Article R64.5 of the Code, in order to give a framework to the discretionary power of the arbitrators in these matters».¹²³ We submit, however, that the complexity of the dispute may be more directly relevant to the Panel's assessment of the reasonableness of the parties' statements of costs than to the exercise of its discretion in determining the contribution to be granted to the prevailing party for legal costs, or in any event that it should not operate to restrict the Panel's discretion in this respect. To illustrate the point, we consider that the fact that the prevailing party has presented a multitude of unnecessarily complex legal and factual allegations that were eventually dismissed by the Panel should be taken into account to *reduce* the amount of any contribution as may be granted towards the legal costs of that party.

[Rz 87] That being said, the important point to note is that a party can be granted a contribution towards its legal costs only if it has made a request to that effect in its prayers for relief. In doing so, a party may opt to leave it to the arbitrator(s) to

¹¹⁵ See Article R65.1.

¹¹⁶ The Schedule can also be found on the CAS website at <http://www.tas-cas.org/arbitration-costs>.

¹¹⁷ Article R64.4 provides that the CAS Court office shall determine the final amount of the costs of the arbitration, and that the relevant account, including the elements listed in that provision, «may either be included in the award or communicated separately to the parties». For a discussion of the CAS's practice in this respect, see RIGOZZI/HASLER, Commentary of the CAS Rules, ad Article R64, paras. 15–17.

¹¹⁸ The scale forms part of the CAS's Schedule of Arbitration Costs (see fn. 116 above). With regard to the CAS's costs, Article R64.4 also refers to an unspecified «contribution towards the expenses of the CAS» as one of the components of the costs of the arbitration. This should in most cases relate to costs arising in connection with the holding of the hearing.

¹¹⁹ As per Articles R40.1 and R54. Article R64.4 only refers to the fees of the Ad Hoc Clerk and not his costs. We submit this may be an oversight and that the Ad Hoc Clerk's costs, if any, should also be included in the final account of costs. The fees and costs of the arbitrators, and of the Ad Hoc Clerk where one is appointed, are to be calculated in accordance with the criteria set out in CAS's Schedule of Costs (see fn. 116 above).

¹²⁰ See Articles R38, second paragraph and R48, second paragraph, or, where a request for provisional measures is lodged prior to the filing of the Request for Arbitration or Statement of Appeal, Article R37, second paragraph.

¹²¹ See, for instance, Article 1 of Appendix III to the ICC Rules, providing for a filing fee of USD 3'000.

¹²² For a review of the CAS's practice in this regard, see RIGOZZI/HASLER, Commentary of the CAS Rules, ad Article R64, paras. 24–28.

¹²³ Decision of Swiss Federal Supreme Court 4A_600/2010 of 17 March 2011, para. 4.2, free translation from the French original.

determine what a fair contribution should be, or request that a specific amount be granted. When asking for a contribution, parties should apply for leave to make a submission on costs, and in that submission they should obviously address all the criteria listed in Article R64.5.

B. Costs in cases involving «appeals against decisions issued by international federations in disciplinary matters» – Article R65

[Rz 88] Article R65 sets out the so-called «free of charge» rule for certain cases,¹²⁴ in effect partially departing from the general rules on costs set out in Article R64. This rule operates to exempt parties from the costs of the proceedings before the CAS, which in the cases covered by Article R65 are borne by the institution itself. The free of charge rule does not extend to the parties' own costs, such as legal representation fees and any costs incurred in connection with the involvement of witnesses, experts and interpreters.¹²⁵

[Rz 89] Under the original Code, the free of charge rule in Article R65 extended to *all* appeals proceedings. However, as discussed in more detail elsewhere,¹²⁶ this general exemption was gradually limited from one revision of the Code to the next, starting with the 2004 edition, which restricted the scope of application of the rule to «disciplinary cases of an international nature» only. By the 2012 revision, the scope of the free of charge rule had been further narrowed down to «decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body», excluding, in particular, cases which would be deemed to be of an international nature but involved decisions rendered by a national federation acting by delegation of powers by the international federation.

[Rz 90] Thus, as the rule now stands, in all cases concerning non-disciplinary decisions or (even) disciplinary decisions taken by a national federation or body, the parties are required to advance their share of the arbitration costs. In our view, there is no particular justification for operating a distinction, in terms of the charging of costs, between cases involving disciplinary decisions rendered by international sports-governing bodies and all other cases. It is difficult to see, for instance, why a person sanctioned for match-fixing by FIFA should benefit from the free of charge rule, while an athlete challenging a decision by FIFA rejecting his or her request to change sports-nationality cannot. This is particularly so when certain international federations, as a rule, delegate international-level doping proceedings to national federations, thus

precluding international athletes in particular sports from benefiting from the free of charge rule.¹²⁷

[Rz 91] In light of the foregoing, the amendment introduced to Article R65.1 in the 2013 edition of the Code, according to which a dispute regarding the application of the free of charge rule shall be decided by the Panel hearing the case is a welcome step.¹²⁸ The same provision stipulates that where an objection concerning the application of Article R65 is raised, «the CAS Court Office may request that the arbitration costs be paid in advance», pending the Panel's decision. We submit that in such a case, in view of the limited scope of the decision at issue, and in particular when the very reason of the dispute is one party's inability to pay the costs of the arbitration, only a fraction of the advance should be requested ahead of the Panel's determination.

[Rz 92] Be that as it may, the question remains whether the criteria in Article R65.1 for determining whether a case is subject to the free of charge rule constitute, to the extent they effectively preclude potential appellants from bringing disputes before the CAS, an impediment to the parties' right of access to justice.¹²⁹ In this context, the availability of legal aid becomes of crucial importance to sustain the legitimacy of the CAS system. Unfortunately, as seen above,¹³⁰ the latest revision of the Code has produced unsatisfactory results in this regard, bringing the system back to the status of just a hypothetical development in the hands of the ICAS, rather than translating the institution's previous assurances as to the future availability of a legal aid fund and guidelines into a black letter rule in the Code.

[Rz 93] Finally, it bears noting here that as per Article R65.4, even in cases which would normally be subject to the free of charge rule, the Division President can decide (*ex officio* or upon request by the President of the Panel) to apply Article R64's provisions, and thus have the Parties bear the costs of the proceedings, «if the circumstances so warrant». According to the 2013 edition of the Code, the «predominant economic nature» of the case or the fact that «the federation which has rendered the challenged decision is not a signatory to the Agreement constituting ICAS» are among the circumstances that should be taken into account.¹³¹

¹²⁷ This is the case, for instance, under the UCI and IAAF rules.

¹²⁸ See Article R65.1, second sentence.

¹²⁹ One should bear in mind that the obligation to submit sports disputes to arbitration deprives athletes from the benefit of any legal aid as may be available to them before the (otherwise) competent national courts. As argued elsewhere, an Appellant without sufficient financial resources could rescind the arbitration agreement on the ground that it does not afford him access to justice (see GABRIELLE KAUFMANN-KOHLER/ANTONIO RIGOZZI, *Arbitrage international à la lumière de la LDIP*, 2nd ed., Bern 2010, para. 280a and the references provided).

¹³⁰ See Rz 18–19.

¹³¹ Examples of cases having «a predominant economic nature» (in French, «caractère économique prépondérant») within the meaning of Article R65.4 could include, for instance, disputes relating to the application of UEFA's

¹²⁴ As specified in Article R65.1: «[t]his Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body».

¹²⁵ For the prevailing party, as just seen, a contribution towards these costs may be ordered by the Panel, in accordance with Article R65.3.

¹²⁶ RIGOZZI/HASLER, *Commentary of the CAS Rules*, ad Article R65, para. 3.

Annexe

Marked-up version of the 2013 edition of the Code – PDF

Antonio Rigozzi teaches international arbitration and sports law at the University of Neuchâtel law school. He is a partner at Lévy Kaufmann-Kohler, a boutique law firm in Geneva specialising in international arbitration, including sports arbitration. Erika Hasler and Brianna Quinn are associates at Lévy Kaufmann-Kohler.

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Financial Fair Play regulations, or FIFA's disciplinary sanctions for failure to comply with previous CAS awards. With respect to the second scenario mentioned in Article R65.4, i.e. cases involving appeals against decisions rendered by federations that are not signatories to the Paris agreement constituting the ICAS (and thus do not participate in the funding of the CAS organization), one could mention, for instance, challenges brought against anti-doping sanctions imposed by the Fédération Internationale de l'Automobile (FIA).

CODE OF SPORTS-RELATED ARBITRATION RULES

(Articles S1-R70)

5TH EDITION – 2013 (TRACK CHANGES)

Note:

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STATUTES OF THE BODIES WORKING FOR THE SETTLEMENT OF SPORTS-RELATED DISPUTES

A. Joint Dispositions

S1 In order to settle~~resolve~~ sports-related disputes through arbitration and mediation, two bodies are hereby created:

- the International Council of Arbitration for Sport (~~the~~ ICAS)
- the Court of Arbitration for Sport (~~the~~ CAS).

The disputes to which a federation, association or other sports-related body is a party are a matter for arbitration in the sense of~~pursuant to~~ this Code, only insofar as the statutes or regulations of the ~~said sports-related~~ bodies or a specific agreement so provide.

The seat of ~~the~~both ICAS and ~~the~~ CAS is ~~established in~~ Lausanne, Switzerland.

S2 The ~~task~~purpose of ~~the~~ ICAS is to facilitate the settlement~~resolution~~ of sports-related disputes through arbitration or mediation and to safeguard the independence of ~~the~~ CAS and the rights of the parties. ~~To this end, it looks after~~ It is also responsible for the administration and financing of ~~the~~ CAS.

S3 ~~The CAS, which~~ maintains a list of arbitrators, and provides for the arbitral resolution of sports-related disputes through arbitration conducted by Panels composed of one or three arbitrators.

~~The CAS is comprised~~comprises of an Ordinary Arbitration Division and an Appeals Arbitration Division.

~~The CAS, which~~ maintains a list of mediators, and provides for the resolution of sports-related disputes through mediation. The mediation procedure is governed by ~~separate~~the CAS Mediation Rules.

B. The International Council of Arbitration for Sport (ICAS)

1. Composition

S4 ~~The~~ ICAS is composed of twenty members, ~~namely high-level~~ experienced jurists appointed in the following manner:

- a. four members are appointed by the International Sports Federations (~~the~~ IFs), viz. three by the Association of Summer Olympic IFs (ASOIF) and one by the Association of Winter Olympic IFs (AIOWF), chosen from within or ~~from~~ outside their membership;
- b. four members are appointed by the Association of the National Olympic Committees (ANOC), chosen from within or ~~from~~ outside its membership;
- c. four members are appointed by the International Olympic Committee (IOC), chosen from within or ~~from~~ outside its membership;
- d. four members are appointed by the twelve members of ~~the~~ ICAS listed above, after appropriate consultation with a view to safeguarding the interests of the athletes;
- e. four members are appointed by the sixteen members of ~~the~~ ICAS listed above and chosen from among personalities independent of the bodies designating the other members of the ICAS.

S5 The members of ~~the~~ ICAS are appointed for a one or several renewable period(s) of four years. Such nominations shall take place during the last year of ~~the~~ each four-year cycle.

Upon their appointment, the members of ~~the~~ ICAS sign a declaration undertaking to exercise their function ~~in a personal capacity~~ personally, with total objectivity and independence, in conformity with this Code. They are, in particular, bound by the confidentiality obligation provided in Article R43.

~~The members~~ Members of the ICAS may not appear on the list of CAS arbitrators or mediators nor act as counsel to ~~one of the parties~~ any party in proceedings before the CAS.

If a member of the ICAS resigns, dies or is prevented from carrying out his functions for any other reason, he is replaced, for the remaining period of his mandate, in conformity with the terms applicable to his appointment.

~~The~~ ICAS may grant the title of Honorary Member to any former ICAS member who has made an exceptional contribution to the development of ICAS ~~or~~ CAS. The title of Honorary Member may be granted posthumously.

2. Attributions

S6 ~~The~~ ICAS exercises the following functions:

1. It adopts and amends this Code;
2. It elects from among its members for a one or several renewable period(s) of four years:
 - the President,
 - two Vice-Presidents who shall replace the President if necessary, by order of seniority in age; if the office of President becomes vacant, the senior Vice-President shall exercise the functions and responsibilities of the President until the election of ~~the~~ a new President,

- the President of the Ordinary Arbitration Division and the President of the Appeals Arbitration Division of the CAS,
- the deputies of the two Division Presidents who can replace them in the event they are prevented from carrying out their functions;

The election of the President and of the Vice-Presidents shall take place ~~at the~~after consultation with the IOC, the ASOIF, the AIOWF and the ANOC. ICAS meeting following the appointment of the ICAS members for a period of four years.

The election of the President, Vice-Presidents, Division Presidents and their deputies shall take place at the ~~last ICAS plenary meeting before~~following the end~~appointment~~of the ICAS members for the forthcoming period of four years. four-year cycle.

3. It appoints the ~~personalities arbitrators~~ who ~~are to constitute the list of CAS arbitrators and the mediators who~~ constitute the list of ~~arbitrators and the~~CAS arbitrators and the ~~mediators who constitute the~~ list of CAS mediators ~~and; it can also remove them from those lists (Article S3);~~;
4. It ~~exercises those functions concerning the challenges to and removals~~ of arbitrators, and ~~performs~~ any other functions ~~which identified in the Procedural Rules confer upon it;~~
5. It ~~looks after~~ is responsible for the financing of ~~the~~ CAS. ~~To this end~~For such purpose, inter alia;
 - 5.1 it receives and manages the funds allocated to its operations, ~~in conformity with the financial regulations of the CAS;~~
 - 5.2 it approves the ICAS budget prepared by the CAS Court Office;
 - 5.3 it approves the annual accounts of ~~the~~ CAS ~~established~~prepared by the CAS Court Office;
6. It appoints the CAS Secretary General and ~~terminates~~may terminate his duties upon proposal of the President;
7. It supervises the activities of the CAS Court Office;
8. ~~If it deems such action appropriate, it sets up~~ It provides for regional or local, permanent or ~~ad hoc~~ arbitration ~~structures;~~
9. ~~If it deems such action appropriate, it creates~~ It may create a legal aid fund to facilitate access to CAS arbitration for ~~natural persons~~individuals without sufficient financial means. ~~The operation of the legal aid fund including criteria to access the funds is set out in the and may create~~ CAS legal aid guidelines for the operation of the fund;
10. It may take any other action which it deems ~~likely~~necessary to protect the rights of the parties and, ~~in particular, to best guarantee the total independence of the arbitrators and to promote the settlement of sports-related disputes through arbitration~~ and mediation.

S7

~~The~~ ICAS exercises its functions ~~either~~ itself, or through ~~the intermediary of~~ its Board, ~~comprising consisting of~~ the President ~~and, the~~ two Vice-Presidents of the ICAS, the President of the Ordinary Arbitration Division and the President of the CAS Appeals Arbitration Division.

The ICAS may not delegate to the Board the functions listed under Article S6, paragraphs 1, 2, 5.2 and 5.3.

3. Operation

- S8 1. ~~The~~ ICAS meets whenever the activity of ~~the~~ CAS so requires, but at least once a year.

~~The ICAS constitutes a~~ A quorum ~~when at meetings of the ICAS consists of at~~ least half its members ~~participate in taking a decision.~~ Decisions are taken during meetings or by correspondence by a majority of the votes cast. Abstentions and blank or spoiled votes are not taken into consideration in the calculation of the required majority. Voting by proxy is not allowed. Voting is held by secret ballot if the President so decides or upon the request of at least a quarter of the members present. The President has ~~thea~~ casting vote in the event of a tie.

2. Any modification of this Code requires a majority of two-thirds of the ICAS members. Furthermore, the provisions of ~~item Article S8.1 above~~ apply.
3. Any ICAS member is eligible to be a candidate for the ICAS Presidency. Registration ~~for candidature~~ as a candidate shall be made in writing and filed with the Secretary General no later than four months prior to the election meeting.

The election of the ICAS President shall take place at the ICAS meeting following the appointment of the ICAS members for a period of four years. The quorum for such election is three-quarters of the ICAS members. The President is elected by an absolute majority of the members present. If there is more than one candidate for the position of President, successive rounds of voting shall be organized. If no absolute majority is attained, the candidate having the least number of votes in each round shall be eliminated. In the case of a tie among two or more candidates, a vote between those candidates shall be organized and the candidate having the lesser least number of votes shall be eliminated. If following this subsequent vote, there is still a tie, the candidate(s) ~~who has(have) seniority of senior in~~ age is(are) selected.

If ~~thea~~ quorum is not ~~reached~~ present or if the last candidate in the voting rounds, or the only candidate, does not obtain an absolute majority in the last round of voting ~~round,~~ the current ~~acting~~ president shall remain in his position until a new election can be held. The new election shall be held within four months of the unsuccessful election and in accordance with the above rules, with the exception that the President is elected by a simple majority when two candidates or less remain in competition.

The election is held by secret ballot. An election by correspondence is not permitted ~~allowed~~.

4. The CAS Secretary General takes part in the decision-making with a consultative voice and acts as Secretary to ~~the~~ ICAS.

- S9 The President of ~~the~~ ICAS is also President of ~~the~~ CAS. He is ~~also~~ responsible for the ordinary administrative tasks within the remit of pertaining to the ICAS.

- S10 The Board of ~~the~~ ICAS meets at the invitation of the ICAS President.

The CAS Secretary General ~~participates~~ takes part in the decision-making with a consultative voice and acts as Secretary to the Board.

~~The Board constitutes a~~ A quorum ~~if of the Board consists of~~ three of its members ~~participate in taking a decision.~~ Decisions are taken during meetings or by correspondence ~~with~~ by a simple majority of those voting; the President has ~~thea~~ casting vote in the event of a tie.

S11 A member of ~~the~~ ICAS or the Board may be challenged when circumstances allow legitimate doubt to be cast on his independence *vis-à-vis* ~~one of the parties~~ a party to an arbitration which must be the subject of a decision by ~~the~~ ICAS or the Board pursuant to Article S6, paragraph 4. He shall ~~spontaneously~~ pre-emptively disqualify himself when the subject of a decision is an arbitration procedure in which a sports-related body to which he belongs appears as a party or in which a member of the law firm to which he belongs is an arbitrator or counsel.

~~The~~ ICAS, with the exception of the challenged member, shall determine the ~~directions~~ process with respect to the procedure for challenge.

The disqualified member shall not take part in ~~the~~ any deliberations concerning the arbitration in question and shall not receive any information on the activities of ~~the~~ ICAS and the Board concerning such arbitration.

C. The Court of Arbitration for Sport (CAS)

1. Mission

S12 ~~The CAS sets in operation~~ constitutes Panels which have the ~~task of providing for the resolution~~ responsibility of resolving disputes arising in the context of sport by arbitration and/or mediation ~~of disputes arising within the field of sport in conformity with~~ pursuant to the Procedural Rules (Articles R27 et seq.).

~~To this end, the~~ For such purpose, the CAS ~~attends to~~ provides the necessary infrastructure, effects the constitution of Panels and oversees the ~~smooth running~~ efficient conduct of the proceedings. ~~It places the necessary infrastructure at the disposal of the parties.~~

The responsibilities of ~~such~~ Panels are, *inter alia*:

- a. to resolve the disputes ~~that are~~ referred to them through ordinary arbitration;
- b. to resolve through the appeals arbitration procedure disputes concerning the decisions of federations, associations or other sports-related bodies, insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provide;
- c. to resolve the disputes that are referred to them through mediation.

2. Arbitrators and mediators

S13 The personalities designated by ~~the~~ ICAS, ~~in conformity with~~ pursuant to Article S6, paragraph 3, appear on the CAS list for ~~a one or several~~ renewable period(s) of four years. ~~The~~ ICAS reviews the complete list every four years; the new list enters into force on 1 January of the year following ~~year~~ its establishment.

There ~~are at least~~ shall be not less than one hundred ~~and~~ fifty arbitrators and ~~at least~~ fifty mediators.

S14 In establishing the list of CAS arbitrators, ~~the~~ ICAS shall call upon personalities with full appropriate legal training, recognized competence with regard to sports law and/or international arbitration, a good knowledge of sport in general and a good command of at least one CAS working language, whose names and qualifications are brought to the attention of ~~the~~

ICAS, including by the IOC, the IFs and the NOCs. ICAS may identify the arbitrators with a specific expertise to deal with certain types of disputes.

In establishing the list of CAS mediators, the ICAS shall appoint personalities with experience in mediation and a good knowledge of sport in general.

S15 ~~The proposals for designating such arbitrators that shall constitute the list referred to in Article S14, shall be notified to the ICAS.~~

The list ICAS shall publish such lists of CAS arbitrators and mediators, as well as all subsequent modifications to such list are published thereof.

S16 ~~In~~When appointing ~~the personalities who appear on the list of~~ arbitrators and mediators, the ICAS shall, ~~wherever possible, ensure fair~~ consider continental representation ~~of the continents and of~~ the different juridical cultures.

S17 Subject to the provisions of the Procedural Rules (Articles R27 et seq.), if a CAS arbitrator resigns, dies or is ~~prevented from carrying out~~ unable to carry out his functions for any other reason, he may be replaced, for the remaining period of his mandate, in conformity with the terms applicable to his appointment.

S18 ~~The personalities~~ Arbitrators who appear on the CAS list ~~of arbitrators~~ may ~~be called upon to~~ serve on Panels constituted by either of the CAS Divisions.

Upon their appointment, ~~the~~ CAS arbitrators and mediators shall sign ~~an official~~ declaration undertaking to exercise their functions personally with total objectivity ~~and~~ independence and impartiality, and in conformity with the provisions of this Code.

CAS arbitrators and mediators may not act as counsel for a party before the CAS.

S19 CAS arbitrators and mediators are bound by the duty of confidentiality, which is provided for in the Code and in particular shall not disclose to any third party any facts or other information relating to proceedings conducted before CAS.

~~The~~ ICAS may remove, ~~temporarily or permanently,~~ an arbitrator or a mediator from the list of CAS members, temporarily or permanently, if he violates any rule of this Code or if his action affects the reputation of ICAS ~~and/or~~ CAS.

3. Organisation of the CAS

S20 The CAS is composed of two divisions, the Ordinary Arbitration Division and the Appeals Arbitration Division.

a. **The Ordinary Arbitration Division** constitutes Panels, whose ~~task~~ responsibility is to resolve disputes submitted to the ordinary procedure, and performs, through the intermediary of its President or his deputy, all other functions in relation to the ~~smooth~~ efficient running of the proceedings ~~conferred upon it by~~ pursuant to the Procedural Rules (Articles R27 et seq.).

b. **The Appeals Arbitration Division** constitutes Panels, whose ~~task~~ responsibility is to resolve disputes concerning the decisions of federations, associations or other sports-related bodies insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provide. It performs, through the intermediary of its President or his deputy, all other functions in relation to the ~~smooth~~ efficient running of the proceedings ~~conferred upon it by~~ pursuant to the Procedural Rules (Articles R27 et seq.).

Arbitration proceedings submitted to ~~the~~ CAS are assigned by the CAS Court Office ~~to one of these two Divisions according to their nature.~~ to the appropriate Division. Such assignment may not be contested by the parties ~~or nor be~~ raised by them as a cause of irregularity. In the event of a change of circumstances during the procedure proceedings, the CAS Court Office, after consultation with the Panel, may assign the arbitration to another Division. Such re-assignment shall not affect the constitution of the Panel or the validity of ~~the~~ any proceedings ~~that have taken place, decisions or orders~~ prior to such re-assignment.

The CAS ~~has a~~ mediation system ~~that it sets in motion in accordance with its~~ operates pursuant to the CAS Mediation Rules. ~~regulations.~~

- S21** The President of ~~one or other of the two Divisions of the CAS~~ either Division may be challenged if circumstances exist that give rise to legitimate doubts with regard to his independence *vis-à-vis* one of the parties to an arbitration assigned to his Division. He shall spontaneously pre-emptively disqualify himself if, in arbitration proceedings assigned to his Division, one of the parties is a sports-related body to which he belongs, or if a member of the law firm to which he belongs is acting as arbitrator or counsel.

~~The~~ ICAS, ~~with the exception of the challenged member,~~ shall determine the directions procedure with respect to ~~the procedure for any~~ challenge. The challenged President shall not participate in such determination.

If the President of ~~one of the two Divisions~~ a Division is challenged, the functions relating to the smooth efficient running of the proceedings conferred upon him by the Procedural Rules (Articles R27 et seq.), ~~are~~ shall be performed by his deputy or by the CAS President, if the deputy is also challenged. ~~The persons~~ No disqualified person shall ~~not~~ receive any information concerning the activities of ~~the~~ CAS regarding the arbitration proceedings ~~which led giving rise to their~~ his disqualification.

- S22** ~~The~~ CAS includes a Court Office composed of ~~a~~ the Secretary General and one or more Counsel, who ~~replace~~ may represent the Secretary General when required.

The CAS Court Office performs the functions ~~which are~~ assigned to it by this Code.

D. Miscellaneous Provisions

- S23** These Statutes are supplemented by the Procedural Rules adopted by ~~the~~ ICAS.

- S24** The English text and the French text are authentic. In the event of any divergence, the French text shall prevail.

- S25** These Statutes may be amended by decision of the ICAS, ~~in conformity with~~ pursuant to Article S8.

- S26** These Statutes and Procedural Rules come into force ~~through~~ by the decision of ~~the~~ ICAS, taken by a two-thirds majority.

PROCEDURAL RULES

A. General Provisions

R27 Application of the Rules

These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to ~~the~~ CAS. Such ~~disputes~~reference may arise out of an arbitration clause ~~inserted~~contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement ~~provides~~provide for an appeal to ~~the~~ CAS (appeal arbitration proceedings).

Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests ~~brought into play in~~relating to the practice or the development of sport and, may include, more generally ~~speaking~~, any activity or matter related or connected to sport.

R28 Seat

The seat of ~~the~~ CAS and of each Arbitration Panel (Panel) is Lausanne, Switzerland. However, should circumstances so warrant, and after consultation with all parties, the President of the Panel ~~or, if he has not yet been appointed, the President of the relevant Division~~ may decide to hold a hearing in another place and ~~issues~~may issue the appropriate directions related to such hearing.

R29 Language

The CAS working languages are French and English. In the absence of agreement between the parties, the President of the Panel or, if he has not yet been appointed, the President of the relevant Division, shall select one of these two languages as the language of the arbitration at the outset of the procedure, taking into account all ~~pertinent~~relevant circumstances. Thereafter, the ~~procedure is~~proceedings shall be conducted exclusively in ~~the~~that language ~~selected~~, unless the parties and the Panel agree otherwise.

The parties may request that ~~another~~a language other than French or English be selected, provided that the Panel and the CAS Court Office agree. If agreed, the CAS Court Office determines with the Panel the conditions related to the choice of the language; ~~if necessary,~~ the Panel may order that the parties bear all or part of the costs of translation and ~~interpreting~~costs-interpretation.

The Panel or, prior to the constitution of the Panel, the Division President may order that all documents submitted in languages other than that of the ~~procedure~~proceedings be filed together with a certified translation in the language of the ~~procedure~~proceedings.

R30 Representation and Assistance

The parties may be represented or assisted by persons of their choice. The names, addresses, electronic mail addresses, telephone and facsimile numbers of the persons representing the

parties shall be communicated to the CAS Court Office, the other party and the Panel after its formation. A power of attorney must be provided. Any party represented by an attorney or other person shall provide written confirmation of such representation to the CAS Court Office.

R31 Notifications and Communications

All notifications and communications that ~~the~~ CAS or the Panel intend for the parties shall be made through the CAS Court Office. The notifications and communications shall be sent to the address shown in the arbitration request or the statement of appeal, or to any other address specified at a later date.

All arbitration awards, orders, and other decisions made by ~~the~~ CAS and the Panel shall be notified by any means courier and/or by facsimile and/or by electronic mail but at least in a form permitting proof of receipt.

All communications from the parties intended for CAS or the Panel shall be sent by courier or facsimile to the CAS Court Office, failing which they shall be declared inadmissible. The request for arbitration, the statement of appeal and ~~any other~~ written submissions, printed or saved on digital medium, must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself. In case of non-compliance with this rule, the CAS will not proceed., failing which the CAS shall not proceed. If they are transmitted by facsimile in advance, the filing is valid upon receipt of the facsimile by the CAS Court Office provided that the written submission is also filed by courier within the relevant time limit, as mentioned above.

Filing of the above-mentioned submissions by electronic mail is permitted under the conditions set out in the CAS guidelines on electronic filing.

The exhibits attached to any written submissions may be sent to the CAS Court Office by electronic mail, provided that they are listed and that each exhibit can be clearly identified; the CAS Court Office may then forward them by the same means.

Any other communications from the parties intended for the CAS Court Office or the Panel shall be sent by courier, facsimile or electronic mail to the CAS Court Office.

R32 Time limits

The time limits fixed under this Code shall begin from the day after that on which notification by the CAS is received. Official holidays and non-working days are included in the calculation of time limits. The time limits fixed under this Code are respected if the communications by the parties are sent before midnight, time of the location where the notification has to be made, on the last day on which such time limits expire. If the last day of the time limit is an official holiday or a non-business day in the country where the notification ~~has been~~ is to be made, the time limit shall expire at the end of the first subsequent business day.

Upon application on justified grounds, and after consultation with the other party (or parties), either the President of the Panel or, if he has not yet been appointed, the President of the relevant Division, may extend the time limits provided in these Procedural Rules, with the exception of the time limit for the filing of the statement of appeal, if the circumstances so warrant and provided that the initial time limit has not already expired. With the exception of the time limit for the statement of appeal, any request for a first extension of time of a maximum of five days can be decided by the CAS Secretary General. without consultation with the other party or parties.

The Panel or, if it has not yet been constituted, the President of the relevant Division may, upon application on justified grounds, suspend an ongoing arbitration for a limited period of time.

R33 Independence and Qualifications of Arbitrators

Every arbitrator shall be and remain impartial and independent of the parties and shall immediately disclose any circumstances ~~likely to~~which may affect his independence with respect to any of the parties.

Every arbitrator shall appear on the list drawn up by the ICAS in accordance with the Statutes which are part of this Code, shall have a good command of the language of the arbitration and shall ~~have the availability~~be available as required to ~~expeditiously~~expeditiously complete the arbitration expeditiously.

R34 Challenge

An arbitrator may be challenged if the circumstances give rise to legitimate doubts over his independence ~~or over his impartiality~~. The challenge shall be brought within seven days after the ground for the challenge has become known.

Challenges ~~are in the exclusive power of~~shall be determined by the ICAS Board, which ~~may decide at its~~has the discretion to refer a case to ~~the~~ ICAS. ~~The~~ The challenge of an arbitrator shall be lodged by the party raising it, in the form of a petition setting forth the facts giving rise to the challenge, which shall be ~~lodged by a party~~sent to the CAS Court Office. The ICAS Board or ~~the~~ ICAS shall rule on the challenge after the other party ~~(ies~~(or parties), the challenged arbitrator and the other arbitrators, if any, have been invited to submit written comments. Such comments shall be communicated by the CAS Court Office to the parties and to the other arbitrators, if any. The ICAS Board or ~~the~~ ICAS shall give brief reasons for its decision and may decide to publish it.

R35 Removal

An arbitrator may be removed by the ICAS if he refuses to or is prevented from carrying out his duties or if he fails to fulfil his duties pursuant to ~~the present~~this Code within a reasonable time. ~~The~~ ICAS may exercise such power through its Board ~~in accordance with the Statutes which form part of this Code~~. The Board shall invite the parties, the arbitrator in question and the other arbitrators, if any, to submit written comments and shall give brief reasons for its decision. Removal of an arbitrator cannot be requested by a party.

R36 Replacement

In the event of resignation, death, removal or successful challenge ~~or removal~~ of an arbitrator, such arbitrator shall be replaced in accordance with the provisions applicable to his appointment. Unless otherwise agreed by the parties or otherwise decided by the Panel, the proceedings shall continue without repetition of ~~the procedure which took place~~any aspect thereof prior to the replacement.

R37 Provisional and Conservatory Measures

No party may apply for provisional or conservatory measures under these Procedural Rules before all internal legal remedies provided for in the rules of the federation or sports-body concerned have been exhausted.

Upon filing of the request for provisional measures, the Applicant shall pay a non-refundable Court Office fee of Swiss francs 1,000.—, without which CAS shall not proceed. The CAS Court Office fee shall not be paid again upon filing of the request for arbitration or of the statement of appeal, which implies the exhaustion of internal remedies, has been filed with the CAS in the same procedure.

The President of the relevant Division, prior to the transfer of the file to the Panel, or thereafter, the Panel may, upon application by ~~one of the parties~~ a party, make an order for provisional or conservatory measures. In agreeing to submit any dispute subject to the ordinary arbitration procedure or to the appeal arbitration procedure to these Procedural Rules ~~any dispute subject to appeal arbitration proceedings~~, the parties expressly waive their rights to request any such measures from state authorities. ~~This waiver does not apply to provisional or conservatory measures in connection with disputes subject to ordinary arbitration proceedings or tribunals.~~

~~If~~ Should an application for provisional measures ~~is~~ be filed, the President of the relevant Division or the Panel ~~invites~~ shall invite the ~~opponent~~ other party (or parties) to express ~~his~~ his position within ten days or ~~within~~ a shorter time limit if circumstances so require. The President of the relevant Division or the Panel shall issue an order ~~within a short time~~ on an expedited basis and shall ~~rule~~ first rule on the prima facie CAS jurisdiction. The Division President may terminate the arbitration procedure if he rules that the CAS clearly has ~~manifestly~~ no jurisdiction. In ~~case~~ cases of utmost urgency, the President of the relevant Division, prior to the transfer of the file to the Panel, or thereafter the President of the Panel may issue an order upon mere presentation of the application, provided that the opponent is ~~heard~~ subsequently heard.

When deciding whether to award preliminary relief, the President of the Division or the Panel, as the case may be, shall consider whether the relief is necessary to protect the applicant from irreparable harm, the likelihood of success on the merits of the claim, and whether the interests of the Applicant outweigh those of the Respondent(s).

The procedure for provisional measures and the provisional measures already granted, if any, are automatically annulled if the party requesting them does not file a related request for arbitration within 10 days following the filing of the request for provisional measures (ordinary procedure) or any statement of appeal within the time limit provided by Article R49 of the Code (appeals procedure). Such time limits cannot be extended.

Provisional and conservatory measures may be made conditional upon the provision of security.

B. Special Provisions Applicable to the Ordinary Arbitration Procedure

R38 Request for Arbitration

The party intending to submit a reference ~~matter~~ to arbitration under these Procedural Rules (Claimant) shall file a request with the CAS Court Office containing:

- the name and full address of the Respondent(s);

- a brief statement of the facts and legal argument, including a statement of the issue to be submitted to the CAS for determination;
- ~~the Claimant's~~ its request for relief;
- a copy of the contract containing the arbitration agreement or of any document providing for arbitration in accordance with these Procedural Rules;
- any relevant information about the number and choice of the arbitrator(s) ~~, in particular~~; if the relevant arbitration agreement provides for three arbitrators, the name ~~and address~~ of the arbitrator ~~chosen by the Claimant~~ from the CAS list of arbitrators chosen by the Claimant.

Upon filing its request, the Claimant shall pay the Court Office fee provided in Article R64.1.

If the above-mentioned requirements are not fulfilled when the request for arbitration is filed, the CAS Court Office ~~shall~~may grant ~~once only a single~~ short deadline to the Claimant to complete ~~his~~the request, failing which ~~it~~the CAS Court Office shall ~~be deemed withdrawn~~not proceed.

R39 Initiation of the Arbitration by ~~the~~ CAS and Answer – CAS Jurisdiction

Unless it is ~~apparent~~clear from the outset that there is ~~manifestly~~ no arbitration agreement referring to ~~the~~ CAS, the CAS Court Office shall take all appropriate actions to set the arbitration in motion. ~~To this effect, it~~ It shall ~~in particular~~ communicate the request to the Respondent, call upon the parties to express themselves on the law applicable to the merits of the dispute and set time limits for the Respondent to submit any relevant information about the number and choice of the arbitrator(s) ~~, in particular to appoint an arbitrator~~ from the CAS list, as well as to file an answer to the request for arbitration.

The answer shall contain:

- a brief statement of ~~the~~ defence;
- any defence of lack of jurisdiction;
- any counterclaim.

The Respondent may request that the time limit for the filing of the answer be fixed after the payment by the Claimant of his share of the advance of costs provided by Article R64.2 of this Code.

The Panel shall rule on its own jurisdiction. ~~It shall rule on its jurisdiction,~~ irrespective of any legal action already pending before a State court or another arbitral tribunal relating to the same object between the same parties, unless substantive grounds require a suspension of the proceedings.

When an objection to ~~the~~ CAS jurisdiction is raised, the CAS Court Office or the Panel, if already constituted, shall invite the opposing party (parties) to file written submissions on ~~the CAS~~ jurisdiction. ~~In general, the arbitral tribunal~~ The Panel may rule on its jurisdiction either in a preliminary decision or in an award on the merits.

Where a party files a request for arbitration related to an arbitration agreement and facts similar to those being which are the subject of a pending ordinary procedure before ~~the~~ CAS, the President of the Panel, or if he has not yet been appointed, the President of the Division, may, after consulting the parties, decide to consolidate the two procedures.

R40 Formation of the Panel

R40.1 Number of Arbitrators

The Panel is composed of one or three arbitrators. If the arbitration agreement does not specify the number of arbitrators, the President of the Division shall determine the number, taking into account the ~~amount in dispute and the complexity of the dispute~~circumstances of the case. The Division President may choose to appoint a Sole arbitrator when the Claimant so requests and the Respondent does not pay its share of the advance of costs within the time limit fixed by the CAS Court Office.

R40.2 Appointment of the Arbitrators

The parties may agree on the method of appointment of the arbitrators from the CAS list. In the absence of an agreement, the arbitrators shall be appointed in accordance with the following paragraphs.

If, by virtue of the arbitration agreement or a decision of the President of the Division, a sole arbitrator is to be appointed, the parties may select him by mutual agreement within a time limit of fifteen days set by the CAS Court Office upon receipt of the request. In the absence of ~~an agreement being reached~~ within that time limit, the President of the Division shall proceed with the appointment.

If, by virtue of the arbitration agreement, or a decision of the President of the Division, three arbitrators are to be appointed, the Claimant shall nominate its arbitrator in the request or within the time limit set in the decision on the number of arbitrators ~~and the, failing which the request for arbitration is deemed to have been withdrawn. The~~ Respondent shall nominate its arbitrator within the time limit set by the CAS Court Office upon receipt of the request. In the absence of such appointment, the President of the Division shall proceed with the appointment in lieu of the ~~parties~~Respondent. The two arbitrators so appointed shall select the President of the Panel by mutual agreement within a time limit set by the CAS Court Office. ~~In the absence of an Failing agreement being reached~~ within that time limit, the President of the Division shall appoint the President of the Panel ~~in lieu of the two arbitrators~~.

R40.3 Confirmation of the Arbitrators and Transfer of the File

~~Any~~An arbitrator nominated by the parties or by other arbitrators shall only be deemed appointed after confirmation by the President of the Division. ~~Before proceeding with such confirmation, the latter, who~~ shall ascertain that ~~the~~each arbitrator ~~fulfills~~complies with the requirements of Article R33.

Once the Panel is formed, the CAS Court Office takes notice of the formation and transfers the file to the arbitrators, unless none of the parties has paid an advance of costs provided by ~~Art.~~Article R64.2 of the Code.

An *ad hoc* clerk independent of the parties may be appointed to assist the Panel. ~~He must be independent from the parties.~~ His fees shall be included in the arbitration costs.

R41 Multiparty Arbitration

R41.1 Plurality of Claimants / Respondents

If the request for arbitration names several Claimants and/or Respondents, ~~the~~ CAS shall proceed with the formation of the Panel in accordance with the number of arbitrators and the method of appointment agreed by all parties. In the absence of ~~such an~~ agreement, the President of the Division shall decide on the number of arbitrators in accordance with Article R40.1.

If a sole arbitrator is to be appointed, Article R40.2 shall apply. If three arbitrators are to be appointed and there are several Claimants, the Claimants shall jointly nominate an arbitrator. If three arbitrators are to be appointed and there are several Respondents, the Respondents shall jointly nominate an arbitrator. In the absence of such a joint nomination, the President of the Division shall proceed with the particular appointment ~~in lieu of the Claimants/Respondents~~.

If there are three or more parties with divergent interests, both arbitrators shall be appointed in accordance with the agreement between the parties. In the absence of ~~such~~ agreement, the arbitrators shall be appointed by the President of the Division in accordance with Article R40.2.

In all cases, the arbitrators shall select the President of the Panel in accordance with Article R40.2.

R41.2 Joinder

If a Respondent intends to cause a third party to participate in the arbitration, it shall ~~mention~~ it so state in its answer, together with the reasons therefor, and file an additional copy of its answer. The CAS Court Office shall communicate this copy to the person whose participation is requested and ~~set such person~~ fix a time limit for such person to state its position on its participation and to submit a response pursuant to Article R39. It shall also ~~set~~ fix a time limit for the Claimant to express its position on the participation of the third party.

R41.3 Intervention

If a third party ~~intends~~ wishes to participate as a party to the arbitration, it shall file ~~with the CAS~~ an application to this effect with the CAS Court Office, together with the reasons therefor within 10 days after the arbitration has become known to the intervenor ~~but before, provided that such application is filed prior to~~ the hearing, or ~~before~~ prior to the closing of the evidentiary proceedings if no hearing is held. The CAS Court Office shall communicate a copy of this application to the parties and ~~set~~ fix a time limit for them to express their position on the participation of the third party and to file, to the extent applicable, an answer pursuant to Article R39.

R41.4 Joint Provisions on Joinder and Intervention

A third party may only participate in the arbitration if it is bound by the arbitration agreement or if ~~itself~~ it and the other parties agree in writing.

Upon expiration of the time limit set in Articles R41.2 and R41.3, the President of the Division or the Panel, if it has already been appointed, shall decide on the participation of the third party, taking into account, in particular, the *prima facie* existence of an arbitration agreement as ~~referred to~~ contemplated in Article R39 ~~above~~. The decision of the President of the Division shall be without prejudice to the decision of the Panel on the same matter.

If the President of the Division accepts the participation of the third party, ~~the~~ CAS shall proceed with the formation of the Panel in accordance with the number of arbitrators and the method of appointment agreed by all parties. In the absence of ~~such an~~ agreement between the parties, the President of the Division shall decide on the number of arbitrators in accordance with Article R40.1. If a sole arbitrator is to be appointed, Article R40.2 shall apply. If three arbitrators are to be appointed, the arbitrators shall be appointed by the President of the Division and shall nominate the President of the Panel in accordance with Article R40.2.

Regardless of the decision of the Panel on the participation of the third party, the formation of the Panel cannot be challenged. In the event that the Panel accepts the participation, it shall, if required, issue related procedural directions.

~~After consultation with the~~ consideration of submissions by all parties concerned, the Panel shall determine the status of the third party and its rights in the procedure.

After ~~consultation with the~~ consideration of submissions by all parties concerned, the Panel may allow the filing of *amicus curiae* briefs, on such terms and conditions as it may fix.

R42 Conciliation

The President of the Division, before the transfer of the file to the Panel, and thereafter the Panel may at any time seek to resolve the dispute by conciliation. Any settlement may be embodied in an arbitral award rendered by consent of the parties.

R43 Confidentiality

Proceedings under these Procedural Rules are confidential. The parties, the arbitrators and ~~the~~ CAS undertake not to disclose to any third party any facts or other information relating to the dispute or the proceedings without the permission of ~~the~~ CAS. Awards shall not be made public unless all parties agree or the Division President so decides.

R44 Procedure before the Panel

R44.1 Written Submissions

The ~~procedure~~ proceedings before the Panel ~~comprises~~ comprise written submissions and, if the Panel deems it appropriate, an oral hearing. Upon receipt of the file and if necessary, the President of the Panel, ~~if appropriate~~, shall issue directions in connection with the written submissions. As a general rule, there shall be one statement of claim, one response and, if the circumstances so require, one reply and one second response. The parties may, in the statement of claim and in the response, raise claims not contained in the request for arbitration and in the answer to the request. Thereafter, no party may raise any new claim without the consent of the other party.

Together with their written submissions, the parties shall produce all written evidence upon which they intend to rely. After the exchange of the written submissions, the parties shall not be authorized to produce further written evidence, except by mutual agreement, or if the Panel so permits, on the basis of exceptional circumstances.

In their written submissions, the parties shall list the name(s) of any witnesses, whom they intend to call, including a brief summary of their expected testimony, and the name(s) of any experts, stating their area of expertise, ~~which they intend to call and~~ and shall state any other

evidentiary measure which they request. Any witness statements shall be filed together with the parties' submissions—, unless the President of the Panel decides otherwise.

If a counterclaim and/or jurisdictional objection is filed, the CAS Court Office shall fix a time limit for the filing of Claimant to file an answer to the counterclaim and/or jurisdictional objection ~~by the Claimant.~~

R44.2 Hearing

~~The~~ If a hearing is to be held, the President of the Panel shall issue directions with respect to the hearing as soon as possible and ~~in particular~~ set the hearing date. As a general rule, there shall be one hearing during which the Panel hears the parties, ~~the~~any witnesses and ~~the expert~~any experts, as well as the parties' final oral arguments, for which the Respondent ~~has the floor~~is heard last.

The President of the Panel shall conduct the hearing and ensure that the statements made are concise and limited to the subject of the written presentations, to the extent that these presentations are relevant. Unless the parties agree otherwise, the hearings are not public. Minutes of the hearing may be taken. Any person heard by the Panel may be assisted by an interpreter at the cost of the party which called such person.

The parties may only ~~call to be heard by the Panel~~ such witnesses and experts which they have specified in their written submissions. ~~The parties are~~ Each party is responsible for the availability and costs of the witnesses and experts it has called ~~to be heard.~~

The President of the Panel may decide to conduct a hearing by video-conference or to hear some parties, witnesses and experts via tele-conference or video-conference. With the agreement of the parties, he may also exempt a witness/ or expert from appearing at the hearing if the ~~latter~~witness or expert has previously filed a statement.

The Panel may limit or disallow the appearance of any witness or expert, or any part of their testimony, on the grounds of irrelevance.

Before hearing any witness, expert or interpreter, the Panel shall solemnly invite such person to tell the truth, subject to the sanctions of perjury.

Once the hearing is closed, the parties shall not be authorized to produce further written pleadings, unless the Panel so orders.

After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing.

R44.3 Evidentiary Proceedings Ordered by the Panel

A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that ~~the~~such documents are likely to exist and to be relevant.

If it deems it appropriate to supplement the presentations of the parties, the Panel may at any time order the production of additional documents or the examination of witnesses, appoint and hear experts, and proceed with any other procedural ~~act~~step. The Panel may order the parties to contribute to any additional costs related to the hearing of witnesses and experts.

The Panel shall consult the parties with respect to the appointment and terms of reference of such~~any~~ expert. The expert ~~appointed by the Panel~~ shall be ~~and remain~~ independent of the parties ~~and shall~~. Before appointing him, the Panel shall invite him to immediately disclose any circumstances likely to affect his independence with respect to any of the parties.

R44.4 Expedited Procedure

With the consent of the parties, the Division President or the Panel may proceed in an expedited manner and ~~shall~~may issue appropriate directions therefor.

R44.5 Default

If the Claimant fails to submit its statement of claim in accordance with Article R44.1 of the Code, the request for arbitration shall be deemed to have been withdrawn.

If the Respondent fails to submit its response in accordance with Article R44.1 of the Code, the Panel may nevertheless proceed with the arbitration and deliver an award.

If any of the parties ~~is, or its witnesses, has been~~ duly summoned ~~yet~~and fails to appear at the hearing, the Panel may nevertheless proceed with the hearing and deliver an award.

R45 Law Applicable to the Merits

The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law. The parties may authorize the Panel to decide *ex aequo et bono*.

R46 Award

The award shall be made by a majority decision, or, in the absence of a majority, by the President alone. The award shall be written, dated and signed. Unless the parties agree otherwise, it shall briefly state reasons. The sole signature of the President of the Panel or the signatures of the two co-arbitrators, if the President does not sign, shall suffice. Before the award is signed, it shall be transmitted to the CAS Secretary General who may make rectifications of pure form and may also draw the attention of the Panel to fundamental issues of principle. Dissenting opinions are not recognized by the CAS and are not notified.

The Panel may decide to communicate the operative part of the award to the parties, prior to delivery of the reasons. The award shall be enforceable from such notification of the operative part by courier, facsimile and/or electronic mail.

The award notified by the CAS Court Office shall be final and binding upon the parties. It may not be challenged by way of an action for setting aside to the extent that the parties have no domicile, habitual residence, or business establishment in Switzerland and that they have expressly excluded all setting aside proceedings in the arbitration agreement or in ~~an~~a subsequent agreement ~~entered into subsequently~~, in particular at the outset of the arbitration.

C. Special Provisions Applicable to the Appeal Arbitration Procedure

R47 Appeal

An appeal against the decision of a federation, association or sports-related body may be filed with ~~the~~ CAS ~~insofar as if~~ the statutes or regulations of the said body so provide or ~~as if~~ the parties have concluded a specific arbitration agreement and ~~insofar as if~~ the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of ~~the said sports-related~~that body.

An appeal may be filed with ~~the~~CAS against an award rendered by ~~the~~CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules ~~applicable to the procedure of first instance of the federation or sports-body concerned.~~

R48 Statement of Appeal

The Appellant shall submit to ~~the~~CAS a statement of appeal containing:

- the name and full address of the Respondent(s);
- a copy of the decision appealed against;
- the Appellant's request for relief;
- the nomination of the arbitrator chosen by the Appellant from the CAS list, unless the ~~parties have agreed to a Panel composed~~Appellant requests the appointment of a sole arbitrator;
- if applicable, an application to stay the execution of the decision appealed against, together with reasons;
- a copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to ~~the~~CAS.

Upon filing the statement, the Appellant shall pay the CAS Court Office fee provided for ~~under~~in Article R64.1 or Article R65.2.

If the above-mentioned requirements are not fulfilled when the statement of appeal is filed, the CAS Court Office ~~shall~~may grant ~~once a one-time-only a~~ short deadline to the Appellant to complete ~~his~~its statement of appeal, failing receipt of which ~~it shall be deemed withdrawn~~within the deadline, the CAS Court Office shall not proceed.

R49 Time limit for Appeal

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or ~~of~~in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. ~~After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders his decision after considering any submission made by the other parties.~~

R50 Number of Arbitrators

The appeal shall be submitted to a Panel of three arbitrators, unless ~~the Appellant establishes at the time of the statement of appeal that~~ the parties have agreed to a Panel composed of a sole arbitrator or, in the absence of any agreement between the parties regarding the number of arbitrators, the President of the Division decides to submit the appeal to a sole arbitrator, taking into account the circumstances of the case~~-, including whether or not the Respondent has paid its share of the advance of costs within the time limit fixed by the CAS Court Office.~~

When two or more cases ~~have manifestly clearly involve~~ the same ~~object~~ issues, the President of the Appeals Arbitration Division may invite the parties to agree to refer these cases to the same Panel; ~~in the absence of~~ failing any agreement between the parties, the President of the Division shall decide.

R51 Appeal Brief

Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which he intends to rely ~~or~~. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief, ~~failing which the~~. The appeal shall be deemed to have been withdrawn ~~if the Appellant fails to meet such time limit~~.

In his written submissions, the Appellant shall specify the name(s) of any witnesses, including a brief summary of their expected testimony, and the name(s) of any experts, stating their area of expertise, ~~whom~~ he intends to call and state any other evidentiary measure which he requests. The witness statements, if any, shall be filed together with the appeal brief, unless the President of the Panel decides otherwise.

R52 Initiation of the Arbitration by the CAS

Unless it ~~is apparent~~ appears from the outset that there is ~~manifestly clearly~~ no arbitration agreement referring to ~~the~~ CAS or that the agreement is ~~manifestly clearly~~ not related to the dispute at stake, ~~the~~ CAS shall take all appropriate actions to set the arbitration in motion. ~~To this effect, the~~ The CAS Court Office shall, ~~in particular~~, communicate the statement of appeal to the Respondent, and the President of the Division shall proceed with the formation of the Panel in accordance with Articles R53 and R54. If applicable, he shall also decide promptly on ~~any~~ application for a stay or for interim measures.

The CAS Court Office shall send a copy of the statement of appeal and appeal brief, ~~for information,~~ to the authority which ~~has~~ issued the ~~decision~~ challenged decision, ~~for information~~.

With the agreement of the parties, the Panel or, if it has not yet been appointed, the President of the Division may proceed in an expedited manner and shall issue appropriate directions for such procedure.

Where a party files a statement of appeal in connection with a decision which is the subject of a pending appeal before ~~the~~ CAS, the President of the Panel, or if he has not yet been appointed, the President of the Division, may decide, after ~~consulting~~ inviting submissions from the parties, ~~decide~~ to consolidate the two procedures.

R53 Nomination of Arbitrator by the Respondent

Unless the parties have agreed to a Panel composed of a sole arbitrator or the President of the Division considers that the appeal should be submitted to a sole arbitrator, the Respondent shall nominate an arbitrator within ten days after receipt of the statement of appeal. In the absence of a nomination within such time limit, the President of the Division shall ~~proceed with~~ make the appointment ~~in lieu of the Respondent~~.

R54 Appointment of the Sole Arbitrator or of the President and Confirmation of the Arbitrators by ~~the~~ CAS

If, by virtue of the parties' agreement or of a decision of the President of the Division, a sole arbitrator is to be appointed, the President of the Division shall appoint the sole arbitrator upon receipt of the motion for appeal. ~~or as soon as a decision on the number of arbitrators has been rendered.~~

If three arbitrators are to be appointed, the President of the Division shall appoint the President of the Panel ~~upon~~following nomination of the arbitrator by the Respondent and after having consulted the arbitrators. The arbitrators nominated by the parties shall only be deemed appointed after confirmation by the President of the Division. Before proceeding with such confirmation, the President of the Division shall ensure that the arbitrators ~~fulfill~~comply with the requirements of Article R33.

Once the Panel is formed, the CAS Court Office takes notice of the formation of the Panel and transfers the file to the arbitrators, unless none of the parties has paid an advance of costs in accordance with Article R64.2 of the Code.

An *ad hoc* clerk, independent of the parties, may be appointed to assist the Panel. ~~He must be independent from the parties.~~ His fees shall be included in the arbitration costs.

~~In addition,~~ Article R41 ~~is applicable~~applies *mutatis mutandis* to the appeals arbitration procedure, except that the President of the Panel is appointed by the President of the Appeals Division.

R55 Answer of the Respondent – CAS Jurisdiction

Within twenty days from the receipt of the grounds for the appeal, the Respondent shall submit to the CAS Court Office an answer containing:

~~1.~~1. a statement of defence;

~~2.~~2. any defence of lack of jurisdiction;

- any exhibits or specification of other evidence upon which the Respondent intends to rely;
- the name(s) of any witnesses, including a brief summary of their expected testimony; the witness statements, if any, shall be filed together with the answer, unless the President of the Panel decides otherwise;
- the name(s) of any experts he intends to call, stating their area of expertise, ~~whom he intends to call~~ and state any other evidentiary measure which he requests.

If the Respondent fails to submit its ~~response~~answer by the ~~given~~stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award.

The Respondent may request that the time limit for the filing of the answer be fixed after the payment by the Appellant of his share of the advance of costs in accordance with Art. R64.2 ~~of this Code~~.

The Panel shall rule on its own jurisdiction. It shall rule on its jurisdiction irrespective of any legal action already pending before a State court or another arbitral tribunal relating to the same object between the same parties, unless substantive grounds require a suspension of the proceedings.

When an objection to ~~the~~ CAS jurisdiction is raised, the CAS Court Office or the Panel, if already constituted, shall invite the opposing party (parties) to file written submissions on the matter of CAS jurisdiction. ~~In general, the arbitral tribunal~~The Panel may rule on its jurisdiction either in a preliminary decision or in an award on the merits.

R56 Appeal and answer complete - Conciliation

Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, ~~nor~~ to produce new exhibits, ~~nor~~ or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer.

The Panel may at any time seek to resolve the dispute by conciliation. Any settlement may be embodied in an arbitral award rendered by consent of the parties.

R57 Scope of Panel's Review – Hearing

The Panel ~~shall have~~has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. ~~Upon transfer of the file~~The President of the Panel may request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal. Upon transfer of the CAS file to the Panel, the President of the Panel shall issue directions in connection with the hearing for the examination of the parties, the witnesses and the experts, as well as for the oral arguments. ~~He may also request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal. Articles R44.2 and R44.3 shall apply.~~

After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing. At the hearing, the proceedings take place in camera, unless the parties agree otherwise.

The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply.

If any of the parties ~~is,~~ or any of its witnesses, having been duly summoned ~~yet,~~ fails to appear, the Panel may nevertheless proceed with the hearing and render an award.

R58 Law Applicable to the merits

The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, ~~the application of which~~ the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

R59 Award

The award shall be rendered by a majority decision, or in the absence of a majority, by the President alone. It shall be written, dated and signed. The award shall state brief reasons. The sole signature of the President of the Panel or the signatures of the two co-arbitrators, if the President does not sign, shall suffice.

Before the award is signed, it shall be transmitted to the CAS Secretary General who may make rectifications of pure form and may also draw the attention of the Panel to fundamental issues of principle. Dissenting opinions are not recognized by ~~the~~ CAS and are not notified.

The Panel may decide to communicate the operative part of the award to the parties, prior to the reasons. The award shall be enforceable from such ~~written communication, notification of the operative part by courier, facsimile and/or electronic mail.~~

The award, notified by the CAS Court Office, shall be final and binding upon the parties. It may not be challenged by way of an action for setting aside to the extent that the parties have no domicile, habitual residence, or business establishment in Switzerland and that they have expressly excluded all setting aside proceedings in the arbitration agreement or in an agreement entered into subsequently, in particular at the outset of the arbitration.

The operative part of the award shall be communicated to the parties within three months after the transfer of the file to the Panel. Such time limit may be extended by the President of the Appeals Arbitration Division upon a reasoned request from the President of the Panel.

The award, a summary and/or a press release setting forth the results of the proceedings shall be made public by ~~the~~ CAS, unless both parties agree that they should remain confidential.

In any event, the other elements of the case record shall remain confidential.

The award, a summary and/or a press release setting forth the results of the proceedings shall be made public by ~~the~~ CAS, unless both parties agree that they should remain confidential. In any event, the other elements of the case record shall remain confidential.

D. Special Provisions Applicable to the Consultation Proceedings

~~R60, R61, R62~~ ([abrogated])

R61 [abrogated]

R62 [abrogated]

E. Interpretation

R63 A party may, not later than 45 days following the notification of the award, apply to ~~the~~ CAS for the interpretation of an award issued in an ordinary or appeals arbitration, ~~whenever, if~~ the operative part of the award is unclear, incomplete, ambiguous ~~or whenever, if~~ its components are self-contradictory or contrary to the reasons, or ~~whenever if~~ the award contains clerical mistakes or ~~a miscalculation of figures~~ mathematical miscalculations.

When an application for interpretation is filed, the President of the relevant Division shall review whether there are grounds for interpretation. If so, he shall submit the request for interpretation to the Panel which ~~has rendered the award for interpretation.~~ Any Panel members who are unable to act at such time shall be replaced in accordance with Article R36. The Panel shall rule on the request within one month following the submission of the request for interpretation to the Panel.

F. Costs of the Arbitration Proceedings

R64 ~~In general~~ General

R64.1 Upon filing of the request/statement of appeal, the Claimant/Appellant shall pay a non-refundable Court Office fee of Swiss francs ~~10001,000.—~~, without which the CAS shall not proceed. ~~The CAS shall in any event keep this fee.~~ The Panel shall take ~~itsuch fee~~ into account when assessing the final amount of costs.

If an arbitration procedure ~~shall be~~ terminated before a Panel has been constituted, the Division President shall rule on costs in the termination order. ~~However, he can~~ He may only order the payment of legal costs ~~only~~ upon request of a party and after all parties have been given the opportunity to file written submissions on costs.

R64.2 Upon formation of the Panel, the CAS Court Office shall fix, subject to later changes, the amount, the method and the ~~method of~~ time limits for the payment of the advance of costs. The filing of a counterclaim, ~~where applicable~~, or a new claim ~~shall~~ may result in the calculation of ~~separate~~ additional advances.

To determine the amount to be paid in advance, the CAS Court Office shall fix an estimate of the costs of arbitration, which shall be borne by the parties in accordance with Article R64.4. The advance shall be paid in equal shares by the Claimant~~/(s)~~/Appellant~~(s)~~ and the Respondent~~:(s)~~. If a party fails to pay its share, ~~the other~~ another may substitute for it; in case of non-payment of the entire advance of costs within the time limit fixed by the CAS, the request/appeal shall be deemed withdrawn and the CAS shall terminate the arbitration; this provision ~~shall also apply~~ applies mutatis mutandis to any counterclaim, ~~where applicable.~~

R64.3 Each party shall ~~advance~~ pay for the ~~cost~~ costs of its own witnesses, experts and interpreters.

If the Panel appoints an expert or an interpreter, or orders the examination of a witness, it shall issue directions with respect to an advance of costs, if appropriate.

R64.4 At the end of the proceedings, the CAS Court Office shall determine the final amount of the ~~costs~~ cost of arbitration, which shall include-:

- the CAS Court Office fee,
- the administrative costs of the CAS calculated in accordance with the CAS scale,
- the costs and fees of the arbitrators,
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,
- a contribution towards the expenses of the CAS, and
- the costs of witnesses, experts and interpreters.

The final account of the arbitration costs may either be included in the award or communicated separately to the parties.

R64.5 In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.

R65 Appeals against decisions issued by international federations in disciplinary matters

R65.1 ~~The present~~This Article R65 ~~is applicable~~applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. In case of objection by any party concerning the application of the present provision, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the Panel on the issue.

R65.2 Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of ~~the~~ CAS are borne by ~~the~~ CAS.

Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs ~~1000~~1,000. — without which ~~the~~ CAS shall not proceed and the appeal shall be deemed withdrawn. ~~The CAS shall in any event keep this fee.~~

If an arbitration procedure ~~shall be~~is terminated before a Panel has been constituted, the Division President shall rule on costs in the termination order. ~~However, he can~~He may only order the payment of legal costs ~~only~~ upon request of a party and after all parties have been given the opportunity to file written submissions on costs.

R65.3 ~~The~~ Each party shall pay for the costs of ~~the parties, its own~~ witnesses, experts and interpreters ~~shall be advanced by the parties.~~ In the arbitral award, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.

R65.4 If ~~all the~~ circumstances so warrant, including the predominant economic nature of a disciplinary case or whether the federation which has rendered the challenged decision is not a signatory to the Agreement constituting ICAS, the President of the Appeals Arbitration Division may ~~decide to~~ apply Article R64 to an appeals arbitration, either ex officio or upon request of the President of the Panel.

R66 Consultation Proceedings

[abrogated]

G. Miscellaneous Provisions

R67 ~~The present~~These Rules are applicable to all procedures initiated by the CAS as from 1 ~~January 2010~~March 2013. The procedures which are pending on 1 ~~January 2010~~March 2013 remain ~~submitted~~subject to the Rules in force before ~~2010~~1 March 2013, unless both parties request the application of ~~the present~~these Rules.

R68 ~~Neither the~~ CAS arbitrators, ~~nor the~~ CAS mediators, ~~nor the~~ ICAS and its members, ~~nor the~~ CAS and its employees ~~shall be~~are not liable to any person for any act or omission in connection with any CAS ~~procedure~~proceeding.

R69 The French text and the English text are authentic. In the event of any discrepancy, the French text shall prevail.

R70 The Procedural Rules may be amended ~~by the decision of the Council, in conformity with~~pursuant to Article S8.