

User Guide to the Court of Arbitration for Sport

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1. Introduction

The purpose of this guide is to provide a summary of the Code of Sports-related Arbitration (Edition 2017) (the Code), which governs practice in the Court of Arbitration for Sport (CAS).

The guide is intended to provide an introduction to those who have never appeared before the court, and for those who appear infrequently, a better understanding of the some of the procedural rules that govern the arbitral body upon which much of sport relies for dispute resolution.

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(The content of this guide has been prepared for information purposes only and is not intended to be definitive. It should not be regarded as legal advice, and any party that is or may be appearing at the CAS should take both legal advice and consult the Code, which appears on the CAS website at www.tas-cas.org)

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2. The Court of Arbitration for Sport

The Court of Arbitration for Sport (CAS), also known by its French name, Tribunal Arbitral du Sport (TAS), was established at the initiative of the International Olympic Committee (IOC) in 1984, when an increasing number of sports-related disputes required adjudication by specialists within the field of sports law, in a procedure that was flexible, quick and inexpensive.

CAS has its headquarters in Lausanne, Switzerland and has two permanent decentralised offices in Sydney and New York, which are competent to receive and notify all procedural acts, and hearing centres in Kuala Lumpur, Abu Dhabi and Cairo.

A dispute may be submitted to CAS only where there is an arbitration agreement in writing between the parties that specifies recourse to CAS. This agreement in writing will often be found within the statutes or regulations of a sporting organisation or in the contract between the parties. It may also be concluded after a dispute has arisen.

Article R.27 of the Code stipulates that CAS has jurisdiction only to rule on disputes connected with sport.

Rule 61 of the Olympic Charter provides that all disputes in connection with the Olympic Games can only be submitted to CAS, and all Olympic International Federations have recognised the jurisdiction of CAS for at least some disputes. Through compliance with the 2009 World Anti-Doping Code, all signatories, including all Olympic International Federations and National Olympic Committees, have recognised the jurisdiction of CAS for anti-doping rule violations.

In 2005, the Fédération Internationale de Football Association (FIFA) accepted the jurisdiction of CAS, and football-related matters comprise some 80% of cases heard.

Not all sports adhere to the jurisdiction of CAS, with notable exceptions being the Fédération Internationale de l'Automobile (FIA), The International Cricket Council (ICC) and the International Basketball Federation (FIBA).

There are two types of dispute submitted to CAS: those of a commercial nature and those of a disciplinary nature.

Commercial disputes ordinarily involve issues relating to the execution of contracts (for example, sponsorship contracts, sale of television rights, staging of sports events, player transfers and agency contracts), but can also include disputes relating to civil liability (for example, an accident causing injury to an athlete during a sporting competition). These disputes are handled by CAS acting as a court of sole instance and fall under the jurisdiction of the **Ordinary Arbitration Division** of the Court.

Disciplinary cases represent the second type of disputes submitted to CAS, of which a large number are doping-related matters; although, there have also been disputes over other disciplinary matters, such as violence on the playing field, match-fixing or crowd violence. Such cases are generally dealt with at first instance by the competent sports authorities, and on exhaustion of all internal remedies, are then referred, on appeal, to CAS, which acts as a court of last instance and fall under the jurisdiction of the **Appeals Arbitration Division** of the Court.

3. Organisation of CAS

Following a 1993 decision of the Swiss Federal Supreme Court, CAS was determined to be an independent judicial body rendering arbitral awards, provided that the IOC is not party to the proceedings.

The following major reforms were undertaken to strengthen CAS' independence:

- The establishment of the **International Council for Arbitration for Sport (ICAS)** as supervisory authority of CAS
- The drawing of a clear distinction between cases where CAS acts as sole instance and cases where it hears appeals against decisions of a sports governing body
- The establishment within CAS of the Ordinary Arbitration Division and the Appeal Arbitration Division

Following these reforms, the Swiss Federal Supreme Court acknowledged that CAS is sufficiently independent from the IOC and that its decisions comprise awards that have the same authority as court decisions.

ICAS and CAS operate under the **Statutes of the Bodies Working for the Settlement of Sports-Related Disputes** (the CAS Statutes).

The CAS Statutes are supplemented by procedural rules: **The Code of Sports-related Arbitration**.

Together, the CAS Statutes and the CAS Rules are referred to as "the Code".

CAS Mediation

CAS mediation is a non-binding and informal procedure, based on an agreement to mediate, which may arise from a mediation clause inserted in a contract or by separate agreement, in which each party undertakes, to negotiate in good faith and with the other party or parties, with a view to settling a sports-related dispute without recourse to litigation.

The parties are assisted in their negotiations by a Mediator appointed from the CAS list of Mediators and the process is governed by the CAS Mediation Rules which form part of the Code of Sports-related Arbitration and Mediation Rules. Please contact us for further guidance and information on the CAS Mediation Rules.

4. Types of CAS Arbitration

There are three different types of CAS arbitration:

- The Ordinary Arbitration Procedure
- The Appeal Arbitration Procedure
- The Ad Hoc Arbitration Procedure

The Ordinary Arbitration Procedure

The Ordinary Arbitration Procedure applies to sports-related first-instance disputes, which are often of a commercial nature and relate, for example, to sponsorship agreements or broadcasting rights.

These cases are handled by the Ordinary Arbitration Division and account for less than 10% of the CAS caseload.

The Appeal Arbitration Procedure

The Appeal Arbitration Procedure applies to cases in which CAS hears appeals from decisions rendered by disciplinary tribunals or similar bodies of sports federations or sports organisations.

These cases are managed by the CAS Appeal Arbitration Division and account for approximately 80% of the CAS caseload.

The Ad Hoc Arbitration Procedure

First established in 1996, the Ad Hoc Division provides the participants of the respective sports events with a dispute resolution body capable of resolving disputes that occur during the event, in a final manner and within strict time limits (ordinarily within 24 hours of the dispute being notified), that respect the time schedules of the particular competitions.

Ad Hoc Divisions have been created since 1996 for each edition of the Summer and Winter Olympic Games; since 1998 for the Commonwealth Games; since 2000 for the UEFA European Championship; and since 2006 for the FIFA World Cup.

Since 2016, an Ad Hoc Anti-doping Division of CAS has judged doping cases at the Olympic Games, replacing the IOC Disciplinary Commission. Decisions of the Ad Hoc Anti-doping Division can be appealed to the CAS Ad Hoc Court established in the Olympic host city or, if the Ad Hoc Court is no longer available, to the permanent CAS.

5. Standard Arbitration Clauses

Ordinary Arbitration Procedure

The standard contractual arbitration clause for arbitration under the Ordinary Arbitration Procedure at CAS, available on the CAS website, reads as follows:

“Any dispute arising from or related to the present contract will be submitted exclusively to the Court of Arbitration for Sport in Lausanne, Switzerland, and resolved definitively in accordance with the Code of sports-related arbitration.”

The parties may also provide for the constitution of the Panel and the language of the arbitration. For example:

“The Panel will consist of one [or three] arbitrator(s).”

“The language of the arbitration will be [...]”

If an arbitration agreement is reached after the dispute has arisen, the standard agreement is as follows:

1. *[Brief description of the dispute]*
2. *The dispute will be submitted exclusively to the Court of Arbitration for Sport in Lausanne, Switzerland, and settled definitively in accordance with the Code of sports-related arbitration.*

Alternative 1:

“The Panel set in operation by the Court of Arbitration for Sport will consist of a sole arbitrator designated by the President of the CAS Division concerned.”

Alternative 2:

“The Panel set in operation by the Court of Arbitration for Sport will consist of three arbitrators. Each party designates the following arbitrator:

- *Claimant: Mr/Mrs ... [insert the name of a person included on the list of CAS arbitrators (see Annex I)];*
- *Defendant: Mr/Mrs ... [insert the name of a person included on the list of CAS arbitrators (see Annex I)];*
- *These two arbitrators will designate the President of the Panel within 30 days following the signature of this agreement. If no agreement is reached within this time limit, the President of the Ordinary Arbitration Division will designate the President of the Panel.”*

Appeal Arbitration Procedure

The standard arbitration clause for arbitration under the Appeal Arbitration Procedure with CAS is ordinarily found within the statutes of a sports federation, association or other sports body as follows:

“Any decision made by ... [insert the name of the disciplinary tribunal or similar court of the sports federation, association or sports body which constitutes the highest internal tribunal] may be submitted exclusively by way of appeal to the Court of Arbitration for Sport in Lausanne, Switzerland, which will resolve the dispute definitively in accordance with the Code of sports-related arbitration. The time limit for appeal is twenty-one days after the reception of the decision concerning the appeal.”

It is preferable for an athlete to expressly accept this arbitration clause with a general written declaration applicable to all future disputes between them and the sports federation or with respect to a specific sports event:

“I the undersigned [name of athlete] accept the statutes of [name of the federation], in particular the provision which foresees the exclusive competence of the Court of Arbitration for Sport.”

Or:

“Within the framework of my participation in [name of the event], I the undersigned [name of athlete] accept that any decision made by the highest internal tribunal in relation to this event may be the object of appeal arbitration proceedings pursuant to the Code of sports-related arbitration of the Court of Arbitration for Sport in Lausanne, Switzerland. I accept the competence of the CAS, excluding all recourse to ordinary courts.”

NOTE:

- i. *The precise form of the arbitration clause is not regulated by the Code. Article 178 Swiss Private International Law Act (PILA) provides that “the arbitration agreement shall be valid if it is made in writing by telegram, telex, telecopier or any other means of communication the terms of the agreement by a text”.*
- ii. *Not all national legal systems will accept a clause excluding recourse before an ordinary or national court.*
- iii. *In 2016, the German Federal Tribunal (Bundesgerichtshof) ruled on an appeal brought by Speedskater Claudia Pechstein against the International Skating Union (ISU), that the monopolistic position of the ISU in organising international skating events and the acceptance by athletes of the ISU regulations as a condition of entry, which indirectly incorporated an arbitration clause in favour of CAS, did not constitute an abuse of a dominant position under German competition law.*

6. CAS Rules: Provisions Common to Ordinary and Appeals Arbitration Procedures

The general provisions found in Articles R.27 to R.37 of the Code apply to both the Ordinary Arbitration Procedure and the Appeal Arbitration Procedure. They cover the following aspects of the arbitration:

- **Article R.27** – Application of the Rules
- **Article R.28** – Seat of the Arbitration
- **Article R.29** – Language
- **Article R.30** – Representation and Assistance
- **Article R.31** – Notifications and Communications
- **Article R.32** – Time Limits
- **Article R.33** – Independence and Qualification of Arbitrators
- **Article R.34** – Challenge of an Arbitrator
- **Article R.35** – Removal of an Arbitrator
- **Article R.36** – Replacement of an Arbitrator
- **Article R.37** – Provisional and Conservatory Measures

Article R.27 – Application of the Rules

Article R.27 provides that the Procedural Rules set out in the Code apply whenever the parties have agreed to refer a sports-related dispute to CAS.

The rule imposes two conditions:

1. The requirement of inclusion of an arbitration clause in a contract or regulations of the parties (or a subsequent arbitration agreement) for Ordinary Arbitration Procedures; or a provision in favour of appeal to CAS 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 for an appeal to CAS for Appeals Arbitration Procedures.¹
2. The delimitation of the scope of disputes that may be referred to CAS. Such disputes may involve matters of principle relating to sports or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport.

NOTE:

- i. *The legal basis of Article R.27 is the Swiss Private International Law Act (PILA), which applies to all arbitral tribunals having their seat in Switzerland, when at least one of the parties, at the time the arbitration agreement was signed, was neither domiciled nor habitually resident in Switzerland.*
- ii. *Article R.27 refers to the Procedural Rules of CAS but does not specify which version of the rules is applicable in case of subsequent modification of the Code. The latest amendments to the Code came into effect on 1 January 2017 and apply to all procedures initiated after that date.*
- iii. *The principle of **Kompetenz-Kompetenz**² means that it is up to the arbitral tribunal to decide whether the arbitral clause is binding and whether the submitted dispute lies within its jurisdiction or within the jurisdiction of the state courts. This doctrine has been expressly added to the Code in Articles R.39 and R.55.*

¹ Article R.27 refers to the application of the Procedural Rules of the Code and not to the law of the merits of the dispute. Articles R.45 and R.58 provide specific rules to the law applicable to the merits of Ordinary and Appeal Arbitration Procedures respectively (Case 4A_640/210 SFT)

² Article 186(1) PILA

Article R.28 – Seat of the Arbitration

All arbitrations governed by the Code have their seat in Lausanne, Switzerland, even if the presiding arbitrator or (if the panel has not yet been appointed) the President of the relevant division should decide to hold the hearing at another venue.

Therefore, the *lex arbitri* (law of the arbitration proceedings), applicable to all CAS arbitrations, regardless of where the hearing physically takes place, is Swiss law, and more specifically, Chapter 12 of the Swiss Private International Law Act (PILA), which governs international arbitration in Switzerland.³

NOTE:

- i. *Article R.28 applies to both Ordinary and Appeal Arbitration Procedures and to all Ad Hoc Divisions of CAS irrespective of the place the major sporting events are held.*
- ii. *The determination of the seat of the arbitration is important because it defines the applicable procedural legislation for the arbitration and determines the state courts competent to decide any appeal against the arbitral award.*
- iii. *For arbitrations before CAS, the applicable legislation for international arbitrations is PILA and according to Articles 190 and 191 PILA, any appeal from a CAS award is made to the Swiss Federal Tribunal.*
- iv. *The seat of the arbitration determines the mandatory rules that have to be applied. Arbitrations before CAS have to respect mandatory rules of Swiss law but also have to take into consideration mandatory foreign laws where this is justified.⁴*
- v. *The seat of CAS in Lausanne impacts upon the jurisdiction of the Panel or the Divisional President if no Panel has been formed, to order provisional measures.⁵*
- vi. *CAS Ad Hoc Divisions have jurisdiction to order provisional measures pursuant to Article 183 PILA regardless of where the sporting tournament takes place.*

3 Article 177(1) PILA

4 CAS 2008/A/1485

5 Article 183 PILA

Article R.29 – Language of the Arbitration

The parties are free to choose one of the two working languages of CAS (French and English) as the language of the arbitration. The fact that a language is the official language, before a lower instance, is not decisive for applying such a language before the CAS.

If the parties cannot agree, the President of the Panel or (if not yet appointed), the President of the relevant division, determines the language of the proceedings, giving consideration to the language in which the appealed decision was drafted, but also the language of the disputed contract. In coming to a decision, the non-violation of the equality of the parties' right to a fair hearing must be observed.

The parties may request the use of another language if the Panel and the CAS Court Office agree. This may, however, lead to costs being incurred for translations or interpretation for the other parties and the court.

If a hearing is to be held, the Panel may allow a party to use a language other than that chosen for the arbitration, on condition that it provides, at its own cost, interpretation into and from the official language of the arbitration.⁶

The Panel may request that all documents submitted in a language other than the chosen language of the proceedings be filed together with a certified translation.

NOTE:

- i. *It is important to choose the language at the outset of the proceedings, as it facilitates the constitution of the Panel and a subsequent change of operative language may give rise to a change in its constitution. The use of a different language is conditional upon the agreement of the Panel and the agreement of CAS. The appointed arbitrators must all agree and must be able to conduct the arbitration in the adopted language and be able to draft the final award in the same language without the assistance of translators/ interpreters.*
- ii. *The choice of language can entail significant translation costs, as well as a significant loss of time. The chosen language often reflects the legal tradition of the country concerned.*
- iii. *English and French are the languages of the text of the Code. In case of any discrepancy, the French version shall prevail.⁷*
- iv. *CAS procedures have mostly been conducted – apart from English and French – in Spanish, German and Italian.*

⁶ Amendment effective 1 January 2016

⁷ Article R.69

- v. *The Panel may allow flexibility, if it has a good command of another language other than the official language of the proceeding. Likewise, the parties may be allowed to bring their documents in another language, without incurring the cost of translation or can express themselves orally in another language.*
- vi. *The Panel has the right to request production of certified translations of all documents that are not in the language of the procedure, otherwise the Panel can decline to consider them.*
- vii. *Counsel for the parties are not permitted to act as interpreter during oral testimony, to avoid undue influence of the witnesses.*

Article R.30 – Representation and Assistance

The parties are free to choose their representatives to advise them and assist them in the proceedings. However, individuals who are on the CAS list of arbitrators may not act as counsel for a party before CAS⁸.

Only officially appointed representatives are deemed able to receive communications or accept service of communications in the proceedings.

NOTE:

- i. *Representatives need not be a lawyer or a person licensed to practice law; e.g. an athlete can be represented by his or her coach, a friend, a teammate, a legal guardian or an official of a federation. Sports entities are often represented by a Club president, in-house counsel, external counsel or by representatives of the federation.*
- ii. *Communication of the names and addresses, email addresses, telephone numbers and facsimile addresses of the parties and their representatives must be made to the CAS Court Office, to the other parties and to the Panel at the outset of the proceedings.*
- iii. *The number of representatives is unlimited, but only one representative should be appointed for the exchange of communications between CAS and the parties, to avoid any confusion about the precise date and time of notification of documents. There is no limit in the representation of parties at the hearing.*
- iv. *It is mandatory that a representative must be properly authorised to represent a party to the proceedings evidenced by filing a **Power of Attorney** with the CAS Court Office. Any change in representation must be notified to the CAS Court Office and a new Power of Attorney duly filed.*

- v. *Notifications served on representatives are taken to be, and should be understood to be, as if served on the represented party. All time limits fixed under the Code, therefore, apply to appointed representatives as they would to the parties.*
- vi. *In cases where athletes (but not clubs or corporate or legal entities) do not have the financial means to be represented by a person licensed to practice law, they may file a request for financial aid with the CAS to be represented by pro bono lawyers.⁹ Specific Guidelines for the grant of financial aid were published in 2013.¹⁰ The decision, on application, is taken by the ICAS President and is not subject to appeal. Financial aid may cover the cost of the procedure and the successful applicant will be released from paying the advance of costs. The applicant may be granted a lump sum to cover travel and accommodation costs and the costs of witnesses or experts or pro bono lawyers. The administrative fee of CHF 1,000, payable at the outset of the proceedings, remains payable, but will be refunded if the application is successful.*
- vii. *Where a party granted financial aid is ordered to pay legal costs at the end of a hearing, the CAS will waive the claim, but financial aid does not cover any contribution towards the legal fees ordered to be paid to the prevailing party, which must be paid by the beneficiary of financial aid. If a party granted financial assistance is successful in his or her claim or appeal, the losing party will be ordered to pay the CAS for the costs of the proceedings.*

9 Article S.6(1) CAS Statutes

10 Legal Aid Guidelines (2013)

Article R.31 – Notifications and Communications

All notifications and communications from the CAS or from an arbitration panel to the parties are made through the CAS Court Office.

Awards, orders or other decisions are notified by CAS by any means that allow for proof of receipt.

The Request for Arbitration, Statement of Appeal and any other written submissions, printed or saved on digital medium **must be filed by courier** at the CAS Court Office in as many copies as the parties and arbitrators, with an additional copy for CAS. Copies sent by fax in advance are only deemed filed, when filed by courier, within the first subsequent business day of the relevant time limit.¹¹

Electronic filing is permissible by uploading documents onto the CAS server. Detailed guidelines have been published on the CAS website. It is only possible to activate the e-filing service after opening the arbitration proceedings with the CAS Court Office and after allocation of a case number.

Exhibits to the parties' submissions may be sent to the CAS Court Office by email. The contact details for the CAS Court Office are:

The Court of Arbitration for Sport

Château de Bèthusy Avenue de Beaumont, 2 CH-1012 Lausanne, Switzerland

T (41 21) 613 50 00

F (41 21) 613 50 01

E info@tas-cas.org

Decentralised Offices:

Oceania

Level 28, Deutsche Bank Place Corner Hunter & Phillip Streets AUS – Sydney NSW 2000

T (61 2) 9230 4873, (61 2) 9230 4456, (61 2) 9230 4441

F (61 2) 9230 5333

North America

International Centre for Dispute Resolution (ICDR) American Arbitration Association (AAA)

120 Broadway, 21st Floor

US – New York, NY 10271

T (1 212) 716 39 31

F (1 646) 663 30 80

All communications from the parties to the CAS Court Office or to the panel are to be sent by email, facsimile or by courier.

¹¹ Amendment with effect from 1 January 2016

Written submissions, such as Requests for Arbitration or Statements of Appeal, must be filed with sufficient copies for all the other parties and the arbitrators, with an extra copy for CAS.

Exhibits to the written submissions can also be sent to the CAS Court Office by email. The CAS Court Office may then forward them by email.

NOTE:

- i. *Article R.31 does not specify which communications fall within its scope, but it can be reasonably assumed that it covers the Request for Arbitration, the Statement of Appeal and all written submissions, and also the answer and any counterclaims (only applicable in Ordinary Arbitration Procedures) and all other pleadings, letters, emails and faxes exchanged between the parties and the CAS Court Office.*
- ii. *Under the former rule, written submissions had to be filed within the relevant time limit. The amendment made to the rule, with effect from 1 January 2016, introduced the “courier grace period”, which affords the parties to fully utilize the time limits provided by the Code when preparing their submissions.*
- iii. *While the CAS Court Office may notify awards, orders or other decisions to the parties “**by any means permitting proof of receipt**”, communications from parties addressed to the CAS Court Office or the Panel are more strictly regulated. The CAS Court Office remains the central point for all communications and no direct contact between the parties or the Panel is permitted.*
- iv. *When notified to the parties, CAS awards should be in writing, dated and signed by the Panel (or by the President of the Panel).¹²*
- v. *The CAS Court Office sends all notifications to the parties or parties’ representatives addresses provided at the outset of the proceedings, principally those shown in the Request for Arbitration/Statement of Appeal being the first document at the initiation of the proceedings. Any change of address or contact details must be notified by the parties to the CAS Court Office.*

¹² Article R.46(1) and Article R.59(1)

Article R.32 – Time Limits

The time limits provided for in the Code commence or start running **one day** after receipt of notification from the CAS Court Office.

Deadlines are met as long as the submission in question is sent out before midnight on the last day of the time limit in the location of the party's domicile, or if they are represented by lawyers, of the domicile of their main legal representatives.¹³

Official holidays and non-business days are included in the calculation of time limits. However, if the last day of the deadline is an official holiday or a non-business day in the country where the document was sent,¹⁴ the time limit expires on the next business day.¹⁵

As a rule, the President of the Panel or, if not appointed yet, the President of the Division, may extend time limits if a party can advance justified grounds for an extension and if the request for extension is submitted **before** the original time limit has expired.

An initial extension of time of a maximum of five days may be granted by the CAS Secretary General.

No extension may be granted for a Statement of Appeal. Failure to file the Statement of Appeal within the stipulated time limit results in the appeal being deemed inadmissible.

Upon a justified request, a pending arbitration may also be suspended for a limited time.

NOTE:

- i. *“Justified grounds” can include the complexity of the case, the need to consult an expert or due the absence/illness or other professional obligations of the legal representative or the parties.¹⁶ But it must be shown that the extension will not prejudice the other party or adversely impact on the scheduled hearing date before the CAS.*
- ii. *If a request for an extension is made, the CAS Court Office will contact the other party or parties and seek their agreement, and in the absence of an answer, will consider such silence tacit acceptance and will grant the extension.*

13 Amended with effect from January 2017 to include the relevant time limit in the domicile of the party's main legal representative if the party is legally represented

14 Amended with effect from 1 January 2017. The previous term “notification” was changed to “document”

15 Official Holidays is defined to include any local holidays in the city seat of a party (CAS 2014/A/3489 & 3490)

16 CAS 2009/A/1915, CAS 2011/A/2621 and CAS 2011/A/2625

- iii. *Either the President of the Panel, or if not yet appointed the President of the Division, may extend time, but only after consultation with the parties. Requests for extensions of time must be made in good faith and will be granted providing they do not excessively delay the procedure or offend the principle of proportionality.*
- iv. *To facilitate efficiency, the CAS Court Office is empowered to grant a first extension of five days without submitting the request to the President of the Panel or Divisional President.*
- v. *The suspension of a pending arbitration will only be granted on submission of justified grounds and will ordinarily only be granted pending determination of a request for financial aid or in circumstances when the parties actively attempt settlement or conciliation.*

Article R.33 – Independence and Qualification of Arbitrators

Arbitrators may only be chosen from the published CAS list.

This list is compiled by ICAS and contains a minimum of 150 arbitrators, all of whom must:

- Be legally qualified
- Have experience of sports law or international arbitration and a good general knowledge of sports and sport events
- Be fluent in the language of the proceedings and available to expeditiously complete the arbitration
- Be and remain independent from the parties and any circumstances that might affect this independence must be disclosed immediately by the arbitrator

NOTE:

- i. *The list of arbitrators is available on the CAS website and currently holds about 350 names representing 71 countries. There is a General List and a specialised Football List populated by those with specific knowledge of football matters.*
- ii. *Each arbitrator is appointed for a renewable period of four years.*
- iii. *With 29 arbitrators, the US is the best represented country on the list, followed by Australia, with 21 arbitrators, and Switzerland with 20.*

- iv. *The list is “closed” to ensure adjudication by specialist arbitrators. Although there is some criticism of this closed list, the system has consistently been approved by the Swiss Federal Supreme Court, which acknowledges that a closed list fosters the development of a large group of arbitrators specialising in sports matters, which results in quicker and more consistent decisions.*
- v. *Arbitrators are required to sign a form of Acceptance of Appointment and Statement of Independence as a condition of appointment, confirming their commitment to exercise their function personally and with objectivity and independence. The standard applied to determine Independence and Impartiality follows the IBA (Guidelines on Conflicts of Interest in International Arbitration) 2014.*
- vi. *Arbitrators appointed to CAS are not allowed to represent parties as counsel before CAS in either arbitration or mediation hearings.¹⁷*

Article R.34 – Challenge of an Arbitrator

A CAS arbitrator must at all times remain impartial and independent of the parties. Once an arbitrator is appointed to sit in a CAS arbitration proceeding, he or she is required to sign a declaration whereby he or she pledges to exercise his or her “functions personally with total objectivity, independence and impartiality and in conformity with the provisions of this Code”.¹⁸

If circumstances give rise to legitimate doubts as to the independence of an arbitrator, the parties may challenge the arbitrator within seven days after the ground for the challenge has become known. The challenge is made to the ICAS Board.

As a rule, the ICAS Board is competent to decide on challenges. It may, however, decide to forward the case to the ICAS itself.

Before a reasoned decision is rendered, the other party, the challenged arbitrator and the other arbitrators will be invited to comment on the issues raised by the challenging party.

If ICAS upholds the challenge against an arbitrator, that arbitrator will step down and another one will be appointed following the usual appointment procedure. If ICAS rejects the challenge against an arbitrator, the interested party may submit the matter to the Federal Tribunal; however, the ICAS decision may not be directly appealed to the Federal Tribunal. Rather, the CAS proceedings go ahead and eventually, if the award is unfavourable, the interested party may challenge the whole award before the Federal Tribunal invoking the first ground for annulment provided by Article 190.2 PILA (“if a sole arbitrator was designated irregularly or the arbitral tribunal was constituted irregularly”).

Article R.34 of the CAS Rules expressly provides that the decision on the challenge may be published.

¹⁷ Article S.18 of the Code

¹⁸ Article S.18 of the Code

NOTE:

- i. *The short seven-day time limit is particularly important because the Federal Tribunal has repeatedly stated that, in accordance with the principle of good faith and the prohibition of abuse of rights set forth in Article 2 of the Swiss Civil Code, a challenge against an arbitrator for lack of independence or impartiality is admissible only if the grounds of challenge were timely submitted during the arbitration proceedings.*
- ii. *Article 180.1 PILA provides: “An arbitrator may be challenged:*
 - a. *if he does not possess the qualifications agreed upon by the parties;*
 - b. *if there exist grounds for challenge in the arbitration rules adopted by the parties; or*
 - c. *if the circumstances permit legitimate doubts about his independence”.*
- iii. *Article R.34 of the Code permits a party to challenge the appointment of an arbitrator to ICAS only where “the circumstances give rise to legitimate doubts over his independence or over his impartiality”. In CAS, the requirements of independence and impartiality may be jointly treated as a combined concept.*
- iv. *In order to verify the independence and impartiality of arbitrators, the Federal Tribunal has underlined the relevance of the IBA Guidelines on Conflicts of Interest in International Arbitration. The guidelines are not binding **per se** but do constitute a widely accepted standard in the international arbitration community.*
- v. *The IBA Guidelines set forth some General Standards and include three illustrative lists of specific situations that may or may not give rise to justifiable doubts, from an objective point of view, as to the arbitrator’s impartiality and independence.*
 - (i) *A “**red list**”, setting out an inventory of situations of conflicts of interest where an arbitrator is required to recuse him or herself (although, in some situations, the requirement is waivable by the parties)*
 - (ii) *An “**orange list**”, setting forth situations where an arbitrator should disclose the potential conflict but is not supposed to automatically resign*
 - (iii) *A “**green list**”, indicating situations where there appears to be no conflict of interest and, thus, where no disclosure is required*
- vi. *ICAS has made it clear that in the assessment of an arbitrator’s independence and impartiality the nationality or domicile are in principle irrelevant; but that the arbitrator’s independence and impartiality must be assessed according to the specific circumstances of the case and “not on the basis of general and subjective assumptions which are not objectively verified”.*

- vii. *Lack of independence can be proven where a direct link between the challenged arbitrator and one of the parties involved in the dispute exists. This link can be for example an economic dependency (employment relationship, etc.), or a family or personal link.*
- viii. *If ICAS upholds the challenge against an arbitrator, that arbitrator will step down and another one will be appointed following the usual appointment procedure. If ICAS rejects the challenge against an arbitrator, the interested party may submit the matter to the Swiss Federal Tribunal; however, the ICAS decision may not be directly appealed to the Federal Tribunal, which has confirmed that it has no jurisdiction to hear challenges against an ICAS decision on a challenge to an arbitrator.*
- ix. *Challenged decisions may only be reviewed in the context of a petition to set aside an award for improper constitution of the tribunal, under Article 190(2)(a) PILA.*

Article R.35 – Removal of an Arbitrator

As of 1 January 2012, Article R.35 of the CAS Rules provides that ICAS can remove an arbitrator from a Panel, if the arbitrator fails to fulfill his or her duties under the CAS Code within a reasonable time, whether because he or she refuses to do so or because the arbitrator is prevented from doing so.

ICAS exercises this authority through the ICAS Board.

The parties, the arbitrator to be removed and the other members of the panel may file written submissions regarding the removal.

Subsequently, ICAS or the ICAS Board will render a reasoned decision on the matter.

NOTE:

- i. *ICAS' right to remove an arbitrator is rarely exercised. The circumstances are probably limited to a situation where an arbitrator is unable to fulfill his or her duties for health reasons or within a reasonable time.*

Article R.36 – Replacement of an Arbitrator

An arbitrator who resigns, dies, is challenged or removed is to be replaced. The replacement process will follow the rules applicable to the appointment of an arbitrator.

It follows that the replacement arbitrator must also be chosen by the nominating party from the published CAS list and must also fulfill the requirements of Article R.33 of the CAS Rules.

If the arbitration proceedings are already in progress at that point, they shall be continued from where they stand, unless the parties agree otherwise.

NOTE:

- i. *There is no provision in the Code permitting an arbitrator to unilaterally terminate the arbitral contract by simple notice and at any time, without having justifiable or important reasons. The Code does not provide a list of valid reasons and it is likely that any such request would be interpreted restrictively.*
- ii. *Where an arbitrator is replaced, the continuation of the proceedings will largely depend on the parties. In absence of agreement the Panel will decide, taking account of all relevant factors. Generally, the proceedings will continue without repetition; although, this will largely depend on the actual stage the proceedings have reached. The situation is more problematic, if the arbitrator is replaced after the hearing has taken place. The requirement to satisfy the right to be heard, under Swiss Procedural Law, makes it difficult for an arbitrator appointed after the hearing to effectively determine the case based on the written submissions and the recording of the hearing. In practice, CAS consults the parties.*
- iii. *In the case of the death of an arbitrator after the hearing, but before the handing down of the award, agreement of the parties is sought as to the nomination of a replacement arbitrator who is integrated into the Panel at the stage of deliberation. The newly appointed arbitrator is provided the audio record of the hearing and determines if he or she is able to complete the duties of the deceased arbitrator without the case being re-heard. The parties have to evaluate the advantages and disadvantages of repetition of the hearing, particularly the cost implications.*
- iv. *Article R.36 was amended with effect from 1 January 2016 to provide clarification of the effect of failure to appoint a replacement arbitrator as follows:*

*“In the event of resignation, death, removal or successful challenge of an arbitrator, such arbitrator shall be replaced in accordance with the provisions applicable to her/his appointment. **If, within the time limit fixed by the CAS Court Office, the Claimant/Appellant does not appoint an arbitrator to replace the arbitrator it had initially appointed, the arbitration shall not be initiated or, in the event it has been already initiated, shall be terminated.** Unless otherwise agreed by the parties or otherwise decided by the Panel, the proceedings shall continue without repetition of any aspect thereof prior to the replacement.” (emphasis added)*

Article R.37 – Provisional and Conservatory Measures

CAS has powers to grant interim measures to safeguard the parties' rights pending proceedings providing it has prima facie jurisdiction over a specific case.¹⁹

A similar provision applies in the Ad Hoc Divisions.²⁰

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

The President of the relevant Division or, the President of the Panel, if the Panel has been constituted, is responsible for ordering provisional or conservatory measures.

A request for provisional measures is available in both the Ordinary Arbitration and Appeal Arbitration Divisions and is inherently connected to the request for arbitration/appeal to CAS. Any order will be automatically annulled, if the applicant does not file a Request for Arbitration/Statement of Appeal within the time limits.²¹

The enforcement of a monetary award is automatically stayed on filing an appeal; however, lodging an appeal does not automatically stay disciplinary sanctions and if appropriate provisional or conservatory measures should be sought.

By agreeing to submit their dispute to the CAS Arbitration Procedure, the parties waive their right to apply to state courts for provisional or conservatory measures.

The respondent to an application for interim measures is usually granted a maximum of 10 days to comment on the request for interim measures.

In urgent cases, the President of the relevant Division or the President of the Panel may make an order for interim measures on an ex parte basis, based merely on the application for interim measures, provided that the other party is subsequently heard.

When deciding whether or not to grant the requested interim measures, the CAS will generally have to consider whether:

- The CAS has jurisdiction
- The relief is necessary to protect the applicant from irreparable harm
- There is a likelihood of success on the merits of the claim
- The interests of the applicant outweigh those of the other party

¹⁹ Jurisdiction is finally established by the Panel when constituted. If the application is made prior to the issue of proceedings, the Divisional President must establish that the CAS prima facie jurisdiction to grant the relief

²⁰ Article 14 CAS Ad Hoc Division Rules

²¹ 10 days from filing the request for provisional measures for Ordinary Proceedings. 21 days for filing a Statement of Appeal pursuant to Article R.47

Intervention by the state courts may be required for the enforcement of interim measures (*Article 183(2) PILA*).

The granting of such measures can be made conditional on the provision of security for costs.

NOTE:

- i. *The most commonly sought form of order is for a stay of the appealed decision, in either doping or disciplinary suspension proceedings or to the payment of a specific amount by a date certain.*
- ii. *An order of provisional measures cannot be challenged in the Swiss Federal Tribunal as the nature of the order is merely “provisional”, but can be revoked upon the request of the other party if the circumstances change.²²*
- iii. *The application is made by filing a request with the CAS Court Office, which should contain brief reasons, establishing **prima facie**, that CAS has jurisdiction and that the three conditions have been met and proof of payment of the CAS Court fee. The fee is payable once only and a second fee is not payable on filing a request or appeal with CAS.*
- iv. *Request for provisional and conservatory measures can be made by both applicants/ appellant and respondents.*

7. Special Provisions Relating to the Ordinary Arbitration Procedure

The Ordinary Arbitration Procedure governs sports-related first-instance disputes.

As these disputes are often of a commercial nature, the applicable provisions provide for classic arbitration proceedings.

The rules relating to the Ordinary Arbitration Procedure are set out in Articles R.38 to R.46 of the Code, as well as the general provisions in Articles R.27 to R.37.

Article R.38 – Request for Arbitration

The claimant initiates the arbitration proceedings by filing a **Request for Arbitration** with the CAS Court Office.

Article R.38 of the Code provides that the Request for Arbitration must state the following:

- Name and full address (including telephone, facsimile and email address) of the respondent²³
- A short statement of facts, legal argument and a summary of the issue to be decided²⁴
- The prayers for relief
- A copy of the document containing the arbitration agreement or providing for arbitration pursuant to the Code
- Any information regarding the number of arbitrators, in particular if the arbitration agreement provides for it, and the name and address of the arbitrator chosen from the CAS list

If these requirements are not met, the CAS Court Office will grant a single short extension of time. If the claimant fails to improve its submission within the extended time-limit, the request for arbitration is deemed to be withdrawn.

Upon submission of the request for arbitration, the claimant has to pay the CAS Court Office a fee of CHF 1,000. CAS will not proceed unless payment of this fee is made.

23 Although Article R.38 is silent on the point, the claimant should also file a Power of Attorney if representatives are instructed

24 It is possible to file the Statement of Claim at initiation of the procedure as a time saving exercise

Payment of the court fee can be made by:

a. Electronic transfer to the following account:

Bank name:	Credit Suisse AG
Name of the beneficiary:	Fondation Conseil International de l'Arbitrage en matière de Sport (CIAS)
Bank address:	Rue du Lion d'Or 5-7, Case postale 5722, CH-1002 Lausanne, Switzerland
Account number:	384033-71
Swift:	CRESCHZZ80A
IBAN:	CH71 0483 5038 4033 7100 0

b. Cheque:

Made payable to the **International Council of Arbitration for Sport**

c. In Cash

NOTE:

- i. *The claimant should file sufficient copies of the request for each party, each arbitrator plus an additional copy for the court.*
- ii. *The claimant must specify the number of arbitrators in the request (unless it is specified in the arbitration agreement), and if the arbitration agreement provides for three arbitrators, the claimant must nominate an arbitrator from the list of CAS arbitrators.*
- iii. *Although there is no requirement to appoint the operative language of the procedure, the claimant can express his or her view at this time.*
- iv. *Payment of the Court Office fee is a formal requirement and evidence of payment of the Court Office fee is usually provided by filing a copy of the bank mandate or instruction. The fee is non-refundable if the arbitration procedure is withdrawn. Alternatively, the fee can be paid by cheque made payable to the **"International Council of Arbitration for Sport"** at the time of filing the request, or by cash.*
- v. *Financial aid is available for parties to Ordinary Arbitrations but the Court Office fee must be paid in advance, which is reimbursed if financial aid is granted.*

- vi. *If the mandatory requirements of Article R.38 are not fulfilled, the CAS Court Office will normally afford the claimant a short extension of time of usually five days, to rectify or complete the request. If this is not done, the request will not be transmitted to the respondent.*
- vii. *Amendment to the request may be made until submission of the statement of claim. The amendments may include the addition or substitution of a party or parties and the introduction of new claims. New claims cannot be introduced after filing of the statement of claim without consent of the other party or parties.*

Article R.39 – Initiation of the Arbitration by CAS and Answer – CAS Jurisdiction

Unless it is clear that there is no arbitration agreement permitting the CAS to hear the dispute, the CAS Court Office will communicate the Request for Arbitration to the respondent and invite both parties to address the law applicable to the merits.

Any doubt as to the validity of the arbitration clause will be determined by the Panel.

The CAS Court Office will also set the respondent a deadline for providing information, including the choice of operative language of the procedure and regarding its choice of arbitrator; although, the respondent may request that a deadline is not set until after the claimant has paid the Advance on Costs.

The CAS Court Office will also direct the respondent to file an answer, which shall include:

- A brief statement of defence
- Any challenge to jurisdiction
- Any counterclaim

Article R.39 of the CAS Rules expressly provides for the *Kompetenz-Kompetenz* of the Panels.

Accordingly, a Panel has the authority to decide on its jurisdiction, irrespective of whether legal action between the same parties and relating to the same subject matter is already pending before a state court or another arbitral tribunal.²⁵

If CAS' jurisdiction is disputed, the parties will be asked to address the issue of jurisdiction in written submissions. The Panel's subsequent decision on jurisdiction can be rendered in an interim award or in the award on the merits.

If the Panel renders an interim award on jurisdiction, that award may be challenged to the Swiss Federal Tribunal under Article 190(3) PILA.

²⁵ If a party submits its claim to a state court in circumstances where there is an arbitration agreement in favour of CAS, the state court should decline its jurisdiction unless the arbitration clause is null and void. If the state court admits jurisdiction, its decision will be binding on CAS and has a res judicata effect

Article R.39 of the Code also provides for the possible consolidation of proceedings before CAS. If a request for arbitration refers to an arbitration agreement and to facts that are already the subject of a pending Ordinary Arbitration Procedure, the two proceedings can be consolidated after consultation with the parties.

NOTE:

- i. *The time limit for filing the answer ordinarily set by the court is about 20 days, although there is no fixed time limit. It is open to the respondent to apply for an extension of time but the request should be made before expiration of the set time limit.*
- ii. *The respondent should file the answer before midnight at the place where the respondent is located on the last day the time limit expires.²⁶*
- iii. *Failure to file the answer within the time limit set by the CAS Court Office does not prevent the CAS from continuing the proceedings. If the answer is filed late, it will not be added to the file without the consent of the claimant and the procedure will be determined on matters raised in the statement of claim alone.*
- iv. *The same time limit will apply to any third party joined to the action by the respondent.*
- v. *If a counterclaim is filed by the respondent in the answer, the CAS Court Office will fix a time limit for filing of an answer by the claimant.*
- vi. *Counterclaims are only permitted in Ordinary Arbitration Procedures. Amendment to Article R.55 of the Code in 2010, withdrew the admissibility of counterclaims in Appeal Arbitration Procedure. This was occasioned by direction of the Swiss Federal Tribunal, which considered the admissibility of counterclaims adversely impacted on the strict time limit afforded to parties to Appeal Arbitration proceedings. If a respondent to an appeal wishes to pursue claims not in issue in the Statement of Appeal, it must issue separate appeal proceedings. Ordinarily, an order will be made that the two appeals will be heard together.*
- vii. *The Advance of Costs is an administrative issue dealt with by the CAS Court Office and represents the anticipated likely cost of the proceedings. This can be reviewed by the CAS Court Office if the requested payment is deemed insufficient at any time throughout the proceedings up to and including the handing down of the award. Failure to pay the advance of costs will result in the Arbitration being deemed withdrawn.*
- viii. *Any counterclaim filed by the respondent will only be validated by payment by the respondent of his or her share of the Advance of Costs.*

Article R.40 – Formation of the Panel

The Code allows for Panels to be constituted of one or three arbitrators.

Where the number of arbitrators is not provided for in the arbitration agreement, the President of the Division determines the number on the basis of the amount in dispute and the complexity of the case. The President of the Division may then 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.²⁷

If a sole arbitrator is appointed, he or she is to be selected by the parties from the CAS list within the 15-day time limit set by the CAS Court Office on receipt of the request for arbitration. If the parties fail to reach agreement, the President of the Division will appoint the sole arbitrator.

If three arbitrators are to be appointed, one is nominated by the claimant and another by the respondent.²⁸ If a party fails to nominate an arbitrator, the President of the Division will do so instead. The two nominated arbitrators then appoint the President of the Panel. If the two party-appointed arbitrators fail to nominate the President of the Panel within the time limit set by the CAS Court Office, the President of the Division will make the appointment.

As soon as the members of the Panel have been confirmed and the Advance on Costs under Article R.64.2 of the CAS Rules has been paid, the Panel receives the case file from the CAS Court Office. If necessary, an independent *ad hoc* clerk may be appointed to assist the Panel.

NOTE:

- i. *An ad hoc clerk, who must be independent of the parties, assists the Panel at the hearing and in the preparation of the technical non-operative part of the awards, under the instruction and control of the President of the Panel. An ad hoc clerk is neither supposed, nor allowed, to assume the role of an arbitrator, but is required to complete a declaration of independence, although given his or her limited role, the requirements are not as strict as for arbitrators. The challenge procedure in Article R.34 does not apply to ad hoc clerks.*
- ii. *The ad hoc clerk's fees are included in the arbitration costs and are fixed by the CAS Secretary General based on estimates of time submitted by the clerk. The hourly fee is normally in the range CHF 150-200 depending on the complexity of the matter and qualification of the clerk.*

²⁷ Amended with effect from 1 January 2017

²⁸ Article R.40.1

Article R.41 – Multiparty Arbitration

a. Article R.41 – Plurality of Claimants/Respondents

This provision applies to all arbitrations where there is a plurality of claimants or respondents (with or without opposing interests) and to cases where third parties are joined to the procedure.

Unlike in the state courts, only in exceptional circumstances is the joinder and/or intervention of against the will of third parties permitted, as this would offend the consensual nature of the arbitration process.

Irrespective of the number of claimants and respondents named in the request for arbitration, the constitution of the Panel follows, in principle, the rules provided for in Article R.40 of the CAS Rules, unless the parties agree otherwise.

If the case is to be brought before a panel of three arbitrators, the multiple claimants or multiple respondents (as the case may be) jointly nominate one arbitrator. If they fail to agree, the President of the Division appoints the arbitrator in their place. The two appointed arbitrators then agree on the President of the Panel. If there are multiple parties with differing interests, the co-arbitrators are appointed in accordance with the agreement between the parties or, in the absence of agreement, by the President of the Division.

b. Article R.41.2 – Joinder

The participation of a third party is possible only if the party is bound by the arbitration agreement or if all parties agree in writing. In sports disputes this is ordinarily possible since all interested parties are usually bound by the same arbitration agreement.

If a respondent wants to join a third party to the proceedings, the third party must be mentioned in the answer to the request for arbitration. The respondent must also submit an additional copy of its answer to the CAS Court Office, which will be communicated to that third party.

The CAS Court Office sets the third party a deadline to state its position with regard to its participation in the proceedings and to submit a response in accordance with Article R.39 of the Code. The CAS Court Office will also set a deadline to provide the claimant with an opportunity to respond to the requested joinder.

c. Article R.41.3 – Intervention

If a third party wishes to intervene in the arbitration proceedings of its own accord, it must submit a reasoned request for permission to CAS. The request must be filed within 10 days of having knowledge of the arbitration proceedings and before the hearing or, if no hearing takes place, before the evidentiary proceedings are closed.

A copy of the third party's application is then communicated to the parties, together with a deadline for commenting on the intervenor's participation and to file, as far as applicable, an answer complying with Article R.39 of the Code.

Frequently, federations such as the International Olympic Committee or World Anti-Doping Agency (WADA) may be provided through their regulations with the right to intervene or to file an appeal; however, this is only a right and not an obligation.

It is not possible to join FIFA to the proceedings as a third party if its involvement, as competent adjudication body, is limited to resolution of a dispute, between two parties and there is no substantive claim against it. Criticism of a decision is not sufficient and if the parties wish to challenge the decision, their proper recourse is to bring a claim against it.

In practice, the CAS Court Office offers FIFA the opportunity of participating in CAS proceedings, but it is not obliged to do so. Such cases are usually of a contractual nature where FIFA has acted as a first instance decision maker.

d. Article R.41.4 – Joint Provisions on Joinder and Intervention

A third party may only be joined to or intervene in arbitration proceedings if it is either bound by the arbitration agreement or if there is a subsequent written agreement between the third party and the original parties.

NOTE:

- i. *A category of claim that is not regulated by the Code is cross-claims, i.e. a claim filed by one respondent to the arbitral proceedings against another respondent. The admissibility of such claims will be determined by the wording of the arbitration clause.*
- ii. *There is provision in Article R.41.4 enabling the Panel to permit the filing of **Amicus Curiae** briefs. Amicus Curiae is an independent brief from a “friend of the court” to enable the court to receive legal information that it could not otherwise obtain. The concept is common in jurisdictions other than the UK. In some cases, the Amicus Curiae is a federation that wishes to provide information to the Panel on interpretation of the rules and statutes. The Panel gives directions on the admissibility of the briefs and provides an explanation in the award on any reliance placed upon it.*

Article R.42 – Conciliation

Article R.42 provides that the President of the Division can seek to resolve the dispute through conciliation before forwarding the file to the Panel. Thereafter, it is possible for the Panel to seek conciliation between the parties at any time until the rendering of the award. If the parties reach a settlement, it may be embodied in a consent award, which has *res judicata* effect.

Conciliation is a method of dispute resolution (similar to mediation) through specific proposals given by the Panel to the parties, which may be accepted or rejected. Conciliation starts within the framework of arbitration proceedings and may result in a consent award.

Mediation takes place under a separate set of Mediation Rules and the final agreement reached is not award, capable of enforcement under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958).

In cases where parties do not manage to reach agreement, the Panel continues the arbitration proceedings and issues a final award.

NOTE:

- i. *In consent awards, it is the usual practice of the parties to agree to share the costs of the procedure. The Panel must include a ruling on the costs and if there is no specific agreement the Panel will normally make an order that the costs should be borne equally by the parties.*

Article R.43 – Confidentiality

A principal characteristic of arbitration is confidentiality.

All CAS arbitrators, as well as the parties, are subject to a general duty of confidentiality and no facts or other information from the proceedings may be divulged, unless the CAS gives permission.

Awards resulting from an Ordinary Arbitration Procedure are only made public if the parties agree or if the President of the Ordinary Arbitration Division decides that they should be published. This will only happen if there are grounds that justify publication and/or if there is a general interest for the public.

The publication of an award may, in particular, be desirable because the award in question could serve to develop a *lex sportiva* or because there is a justified public interest in knowing about the case.

NOTE:

- i. *In practice, it is difficult to obtain the agreement of the parties to publish awards, since the losing party rarely agrees.*
- ii. *The rationale for confidentiality is that Ordinary Arbitration Procedures are associated with sports disputes of a commercial nature and confidentiality is upheld in line with the practice adopted in commercial arbitration. Appeal Arbitration Proceedings are **sui generis** in character and often concern issues of a disciplinary nature that are in the public domain before the appeal is lodged. Article R.59 provides that the award will be published unless both parties agree to keep it confidential.*

Article R.44 – Procedure Before the Panel

Ordinary Arbitration Procedure before the CAS usually comprises one written stage and one hearing which ordinarily lasts no longer than one day.

The rules relating to written submissions are set out in Article R.44.1 as follows:

- The President of the Panel will give directions regarding the parties' written submissions once the case file has been communicated to the Panel. The parties will normally file a statement of claim and a statement of defence. The time limits are flexible and will ordinarily be 20-30 days, with the possibility of an extension, if a reasoned request is made. The statement of claim and defence, may be supplemented, where necessary, with a reply and a rejoinder.
- The parties may include in their statement of claim or defence claims that have not been addressed in the request for arbitration or in the answer to the request. Thereafter, any new claims may only be raised with the consent of the other party.
- If the respondent makes a counterclaim or jurisdictional objection, the CAS Court Office will fix a time limit for the claimant to reply.
- All documentary evidence on which a party intends to rely must be filed at the same time as the submissions, as the parties are not permitted to produce further documentary evidence after the exchange of written submissions, unless they agree or the Panel grants leave to do so.
- Submissions must include the names of witnesses and experts whom the parties intend to call, as well as short summaries of their evidence and, for experts, their area of expertise. Witness statements must also be submitted with the parties' written briefs.
- If the claimant fails to submit a statement of claim, the Panel will consider the request for arbitration to be withdrawn. If the respondent fails to submit a statement of defence, the Panel may continue the proceedings and issue an award.

- There is no absolute obligation to hold a hearing, but in the vast majority of cases, the Panel will order that a hearing takes place normally before close of pleadings, particularly if one of the parties has requested it, to ensure that the parties' right to be heard is not violated.

The conduct of the hearing is set out in Article R.44.2 as follows:

- The conduct of the hearing is the responsibility of the President of the Panel and generally, it is up to the Panel to decide the specific procedural rules that will apply. After consultation with the parties, the President will fix the hearing date and make directions regarding the hearing. There will normally be only one hearing at which the parties, the witnesses and the experts are heard.
- The hearing comprises eight stages:
 - i. Opening of the hearing
 - ii. Preliminary remarks by the parties
 - iii. Hearing of witnesses
 - iv. Hearing of experts
 - v. Examination of the parties
 - vi. Closing of the evidentiary proceedings
 - vii. Closing statements and the deliberation of the panel
 - viii. Deliberation

Once the hearing is closed, the parties may not submit any further written pleadings unless the Panel permits them to do so. The submission of Skeleton Arguments is not permitted.

The Panel may expedite the hearing with the consent of the parties.²⁹

The hearing is held in private, unless the parties specifically agree that it should be public.

Only witnesses who have been identified in the parties' written submissions can be called to testify at the hearing. The hearing of a witness or expert evidence can be conducted via video-conference or by telephone.

The President of the Panel will caution all witnesses, experts and interpreters to tell the truth, subject to the sanction of perjury. It is the President's responsibility to ensure that all statements are within the limits of the parties' previous written submissions. If a witness fails to attend the hearing, having been duly summoned, the hearing will continue in the witness' absence.

If the parties agree and a written witness statement has been filed, witnesses can be exempted from attending the hearing. The Panel may also limit the appearance or testimony of a witness or expert if it considers their evidence irrelevant. It is a party's responsibility to guarantee its witnesses' availability and to cover the costs of their appearance.

²⁹ Article R.44.4

Any person appearing before the Panel may, at the cost of the party calling them, be assisted by an interpreter.

The rules relating to evidence adduced in Ordinary Procedures are set out in Article R.44.3 as follows:

- At the request of a party, the Panel may order the other party to produce documents that are under its control. To obtain such an order, the party requesting the production of documents must show that the documents are both:
 - Likely to exist
 - Relevant to the proceedings

The Panel may order the production of further documentary, witness or expert evidence and may admit the use of illegally obtained evidence, depending on the circumstances after applying the balance of interest test.³⁰

- The Panel has no power to compel a third party to produce documents or provide information.
- The Panel may also decide to appoint additional experts or witnesses, but if it does so, their appointment and the terms of their engagement must be discussed with the parties.
- All CAS hearings are audio-recorded but no transcript is prepared unless specifically requested, but only at the cost of the requesting party.

NOTE:

- i. *It is up to the Panel to decide on the admissibility of evidence but any party's request to admit evidence should be raised during the proceedings.*
- ii. *A Panel can of its own motion call for an independent expert opinion on the applicable law to address legal issues according to that law. Any opinion so obtained should be disclosed to the parties who are invited to comment upon it within a specified time period.*
- iii. *A Panel can also order the appointment of an expert for the authentication of documents and signatures.*
- iv. *The wrong evaluation of the evidence does not violate the right to be heard, but disregard of an allegation or fact could lead to such and may result in an appeal to the Swiss Federal Tribunal.³¹*

³⁰ CAS 2010/A/2267

³¹ CAS 2013/A/3296 3294

- v. Rule 44.1 was amended with effect from 1 January 2016 to read: “The proceedings before the Panel comprise written submissions and, **in principle**, an oral hearing” (emphasis added). It is not uncommon however that in an effort to contain cost, the parties request that the Panel forego a hearing and to decide the case on the basis of the parties written submissions. It is open to the Panel to override this request.
- vi. In rare cases, the Panel can determine that it is unnecessary to schedule a hearing, even if requested, and may elect to do so if there is no evidence to consider, no witness to hear or it is apparent when the party requesting the hearing is doing so as a tactic to delay the inevitable outcome of an appeal. However, this is an unusual expedient as the Panel risks the possibility of appeal to the Swiss Federal Tribunal for failing to respect the parties’ right to be heard.

Article R.45 – Law Applicable to the Merits

The rules provide for the freedom of the parties to choose the substantive law of their choice. The choice of law does not refer to a specific law but to “rules of law”, meaning that the parties can elect to have the matter determined by general principles of law or by the application of the regulations of a particular federation.

The choice of law may be established in the contract or may be tacit or indirect, but evidence of a tacit choice must be clear and unequivocal. Circumstances such as the place of the arbitration, the place of residence, the nationality of the parties or the choice of a procedural law do not constitute a choice of law for determination of the dispute.

In default of agreement between the parties, the Panel shall decide the dispute according to Swiss law.³²

Where in doubt, the Panel may issue a preliminary award on the applicable law.

If authorised by the parties, the panel can decide **ex aequo et bono** (that is, according to general equitable principles, rather than the strict rule of law).

32 This provision differs from rules relating to appeal procedures where in the absence of a choice of law made by the parties the Panel will apply “the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled”

Article R.46 – Award

The award is to be made by a majority decision of the Panel or, if there is no majority, by the President of the Panel. The award must be in writing, reasoned, dated and signed. The President's signature is sufficient for the purpose of notification; although, if he refuses to sign the award, the signature of the two co-arbitrators (in the case of a three-arbitrator panel) is sufficient.

All arbitrators have a duty to participate in the deliberation; however, CAS does not recognise dissenting opinions and opinions expressed in deliberations are not considered to be part of the voting of the ultimate decision. Dissenting opinions are not notified to the parties, although the award can record that decision was taken on a majority basis, rather than unanimously.

The fact that a CAS award is final and binding on notification to the parties does not mean that it has ***stare decisis*** effect and is binding upon subsequent Panels. The Panel will take into account the CAS case law, but Panels are not bound to follow the decisions of previous CAS Panels.

Before the award is signed, it is submitted to the CAS Secretary General for review. The CAS Secretary General may make corrections of form and may also notify the panel of fundamental issues of principle, for instance if an award shows discrepancies from existing CAS precedents. The rule does not give the Secretary General the authority to request amendment of the award.

In urgent cases, the operative part of the award is issued first, followed by the full reasoned decision in due course, but it is only the operative part that can be challenged.

The date of notification of the reasoned award triggers the time limit to file a motion to challenge or set aside the award. A motion to set aside must be filed by courier within 30 days of the date of notification. The deadline cannot be extended.

Appeals to the Swiss Federal Tribunal (SFT) must be drafted in French, German or Italian (the national languages of Switzerland) notwithstanding that the award may have been drafted in another language.

Challenges to Awards

Unless the parties have waived their right to challenge the award, a CAS award can be challenged before the Federal Supreme Court.

Under Swiss law, the grounds for setting aside an international arbitration award are limited and are applied restrictively.

Under Article 190 PILA, the only grounds for setting aside an award are:

- Improper appointment of an arbitrator (*Article 190(2)(a)*)
- Wrongful acceptance or denial of jurisdiction by the arbitral tribunal (*Article 190(2)(b)*)
- **Infra** and **ultra petita** decisions (decisions where the tribunal has either failed to deal with all the issues or exceeded its powers) (*Article 190(2)(c)*)
- Violation of the right to equal treatment or the right to be heard (*Article 190(2)(d)*)
- Breach of public policy (*Article 190(2)(e)*)

Challenges can only be made to the SFT, as the seat of the CAS is in Switzerland. The SFT does not review the merits of the award, but only examines whether the arguments are well-founded.

An award issued by the Ordinary Arbitration Division cannot be challenged by a request for setting aside, if the parties do not have their domicile, habitual residence or business establishment in Switzerland and if they have expressly excluded all setting aside proceedings in the arbitration agreement or in a subsequent agreement.

This provision corresponds to Article 192(1) PILA, according to which the parties may waive the right to file an application to set aside an award, provided that neither party has its domicile, habitual residence or place of business in Switzerland.

NOTE:

- In practice, the award does not address the issue of the arbitration costs, which are determined after notification of the award. The Panel determines which party shall bear the costs or in which proportion.³³*
- The final paragraph of Article R.46 was amended with effect from 1 January 2016 to read:*

*"The award, notified by the CAS Court Office, shall be final and binding on the parties **subject to recourse available in certain circumstances pursuant to Swiss Law within 30 days from notification of the original award.**" (emphasis added)*

This is not a new rule.

³³ Article R.64.5

8. Special Provisions Relating to the Appeal Arbitration Procedure

The rules regarding the Appeals Arbitration Procedure are contained in Articles R.47 to R.59 of the Code and the general provisions in Articles R.27 to R.37.

These rules generally apply where the CAS is called upon to resolve disputes arising out of decisions of the disciplinary tribunals or similar bodies of federations and other sports bodies.

Article R.47 – Appeal

An appeal can be lodged with the CAS Appeals Division if the statutes or regulations of the sports-related body that rendered the decision under appeal or a specific submission agreement provide for it, and provided that all legal remedies available to the appellant under those statutes or that submission agreement have been exhausted prior to the appeal.³⁴

An appeal may be filed against a CAS award rendered by a CAS Panel acting as first-instance tribunal if such appeal is provided for by the rules applicable to the first instance proceedings.

NOTE:

- i. *In general a “communication” is qualified as a decision if it contains a ruling intending to affect the legal state of the addressee of the decision or other parties.³⁵ A simple communication lacking this intent and failing to affect the legal status of the addressee cannot qualify as a decision. However, the lack of a decision in a communication can be considered a decision if it affects the legal status of the addressee and if the conditions of denial of justice are fulfilled.*
- ii. *A letter containing a clear statement of the resolution of disciplinary proceedings against an athlete or having the effect of resolving a matter with regard to all interested parties qualifies as a decision.³⁶*
- iii. *A decision of a judicial body of a federation not to open disciplinary proceedings against a third party constitutes an appealable decision.³⁷*

34 The SFT defines the term “decision” as an act of individual sovereignty addressed to an individual, by which a relation of concrete administrative law, forming or stating a legal situation, is resolved in an obligatory and restraining manner. The effects must be directly binding both with respect to the authority as to the party who received the decision

35 CAS 2012/A/2750

36 CAS 2004/A/748

37 CAS 2004/A/659

- iv. *A negative decision such as where a federation considers that it does not have jurisdiction to entertain a case is a decision.*³⁸
- v. *A letter that does not contain a formal decision but merely proffers an opinion of an informative character is not a decision.*³⁹
- vi. *To have jurisdiction to decide an appeal, the statutes or regulations of the sports body that issued the decision must expressly recognise the CAS as an arbitral body or appeal and a direct reference to CAS must be contained in the statutes or regulations.*
- vii. *The FIFA Statutes alone do not constitute a basis for arbitration, **per se**, but instead are an instruction to introduce a rule providing for CAS arbitration. The Statutes do not contain mandatory provisions obliging national federations to provide for an appeal to CAS and no appeal will lie unless the provision is expressly incorporated into a national federation's statutes.*

Article R.48 – Statement of Appeal

The following content is mandatory for the Statement of Appeal:

- Name and full address of respondent
- A copy of the decision under appeal
- The appellant's prayer for relief
- The nomination of the arbitrator chosen by the appellant from the CAS list (except where the parties have agreed to a sole arbitrator)
- Any application to stay the enforcement of the decision under appeal, together with the reasons for such stay
- A copy of the applicable provision or agreement providing for appeal to the CAS

If the Statement of Appeal is incomplete, the appellant is given a short extension of time by the CAS Court Office to correct or complete it.

After filing the Statement of Appeal, the appellant must pay a fee of CHF 1,000 to the CAS Court Office, without which the CAS will not proceed.

³⁸ CAS 2011/A/2343

³⁹ CAS 2008/A/1633

Payment of the Court fee can be made by:

a. Electronic transfer to the following account:

Bank name:	Credit Suisse AG
Name of the beneficiary:	Fondation Conseil International de l'Arbitrage en matière de Sport (CIAS)
Bank address:	Rue du Lion d'Or 5-7, Case postale 5722, CH-1002 Lausanne, Switzerland
Account number:	384033-71
Swift:	CRESCHZZ80A
IBAN:	CH71 0483 5038 4033 7100 0

b. Cheque:

Made payable to the **International Council of Arbitration for Sport.**

c. In Cash

It is possible under Article R.51 of the Code to file a comprehensive Statement of Appeal, which will be considered as the Appeal Brief, providing the appellant expressly confirms this within 10 days of filing the Statement of Appeal.

In cases where the Statement of Appeal contains an application to stay the enforcement of the decision under appeal, the President of the Appeals Arbitration Division or (after the file has been transmitted to the Panel) the President of the Panel decides on the requested stay of enforcement.

Parties may apply to CAS for interim measures (*See Article R.37*).

When deciding on a request for interim measures, CAS generally considers whether:

- The measure is useful to protect the applicant from irreparable harm
- There is a likelihood of success on the merits of the appeal
- The interests of the applicant outweigh those of the counterparty and of third parties

However, by agreeing to submit a dispute to the CAS Appeals Arbitration Procedure, the parties expressly waive their right to request interim measures from a state court.

NOTE:

- i. *The appellant should file sufficient copies of the Statement of Appeal for each party, each arbitrator and an additional copy for the court.*
- ii. *The decision appealed against should be submitted in either English or French. If the decision has been drafted in another language, a certified copy should be provided.*
- iii. *Under Article R.48, there is no right to add additional claims after filing the Statement of Appeal, however the right to introduce new submissions in exceptional circumstances may be authorised by the President of the Panel pursuant to Article R.56.*
- iv. *The appellant must nominate an arbitrator from the list of CAS arbitrators. The standard rule is for a Panel of three arbitrators (Article R.50) unless the arbitration agreement opts for a sole arbitrator or the Divisional President so decides. The respondent should appoint his or her arbitrator within 10 days from receipt of the Statement of Appeal.*
- v. *Unlike under English law, decisions including an award of monetary damages or compensation are automatically stayed on filing a Statement of Appeal.*
- vi. *Although there is no requirement to appoint the operative language of the procedure, the appellant can express his or her view at the time of filing the Statement of Appeal.*
- vii. *Payment of the Court Office fee is a formal requirement and evidence of payment of the Court Office fee is usually provided by filing a copy of the bank mandate or instruction. The fee is non-refundable if the arbitration procedure is withdrawn.*
- viii. *Financial aid is available for parties to Appeal Arbitrations but the Court Office fee must be paid in advance, which is reimbursed if financial aid is granted.*
- ix. *If the mandatory requirements of Article R.48 are not fulfilled the CAS Court Office will normally afford the claimant a short extension of time of usually five days to rectify or complete the request. If this is not done, the Statement of Appeal will not be transmitted to the respondent.*

Article R.49 – Time Limit for Appeal

The Statement of Appeal must be filed within 21 days from the notification of the reasoned decision under appeal, unless the statutes or regulations of the sports-related body or federation concerned or a previous agreement provide for a specific deadline.

The existence of a specific provision for the calculation of time limits in the rules of a federation always prevails as a ***lex specialis***.

In the event that the appeal is filed after the expiration of the appropriate time limit, the Divisional President will not initiate the procedure.

If the rules of a federation provide that only the operative part of the decision is issued, the parties have the right to seek the grounds of the decision within 10 days and the time limit to appeal will start after 10 days.

If an appeal is filed late, it will be considered as withdrawn even if the respondent does not object to the late filing. Non-respect of the preclusive nature of the time limit results in losing the right to file an appeal.

Article R.50 – Number of Arbitrators

If the appellant fails to establish in the Statement of Appeal that the parties have agreed to submit the appeal to a sole arbitrator, appeals are ordinarily submitted to a panel of three arbitrators unless, the parties agree to the appointment of a sole arbitrator or the President of the Panel, after taking account of the circumstances, directs otherwise. The circumstances may include whether or not the respondent pays its share of the advance of costs within the time fixed by the CAS Court Office.⁴⁰

In specific circumstances, a sole arbitrator may be appointed.

The appointment of the arbitrators proceeds in accordance with Article R.40 of the CAS Rules, except that, in appeal proceedings, the presiding arbitrator is always chosen by the President of the Appeals Arbitration Division.

An ad hoc clerk may be appointed to assist the panel.

Where two or more cases involve the same issues, the President of the Division may invite the parties to agree to refer the cases to the same panel of arbitrators and failing agreement the President will decide.

NOTE:

- i. *There is specific provision in Article R.50 that failure to pay a share of the advance of costs by the respondent may influence a decision of the President of the Division to submit the appeal to a sole arbitrator.*

⁴⁰ Amended with effect from 1 January 2017

Article R.51 – Appeal Brief

After the Statement of Appeal has been filed, the appellant has 10 days to file an appeal brief. The appellant may amend his or her requests for relief until the appeal brief is filed, which must address the facts and legal arguments giving rise to the appeal, and the appellant should produce the exhibits on which it relies.

The appellant may inform the CAS Court Office that he or she intends to rely on the Statement of Appeal as the appeal brief.

Once the answer of the respondent is filed, it is no longer possible to raise new requests for relief/ amend requests unless both parties agree and the President decides on the basis of exceptional circumstances.

The appeal brief must address preliminary matters such as CAS jurisdiction and admissibility and contain the names of witnesses or experts, a summary of their expected testimony and, in the case of experts, their area of expertise.

The appeal brief should also specify any other evidentiary requests made by the appellant.

Witness statements must be filed with the appeal brief, unless the presiding arbitrator decides otherwise.

NOTE:

- i. *It is up to the Panel to decide on the admissibility of the evidence. Incorrect evaluation of the evidence does not lead to a violation of the parties' right to be heard; however, a complete disregard of an allegation or fact could lead to such a violation and could ground an appeal to the Swiss Federal Tribunal.*

Article R.52 – Initiation of the Arbitration by the CAS

Unless it is obvious that there is no arbitration agreement referring the dispute to CAS, that the agreement is not related to the dispute at stake, or that the internal legal remedies available to the appellant have clearly not been exhausted, the CAS Court Office communicates the Statement of Appeal to the respondent and the President of the Division proceeds with the constitution of the Panel, thereby, effectively initiating the procedure.⁴¹

The CAS Court Office will also send a copy of the Statement of Appeal and appeal brief to the body that issued the appealed decision, for information purposes, and invites that body to intervene in the proceedings if it wishes to do so.

⁴¹ Amended with effect from 1 January 2016

The CAS Court Office may publicly announce the initiation of any appeals arbitration procedure and, at a later stage and where applicable, the composition of the arbitral panel and the hearing date unless the parties agree otherwise.⁴²

Any continuing doubt about the existence of the arbitration agreement and whether the CAS has jurisdiction to hear the appeal will be determined at a later stage by the Divisional President (if there is a request for provisional measures) or ultimately by the Panel. The determination of the court's jurisdiction may be set out in an interlocutory or preliminary award on jurisdiction or in the final award in which the merits of the case are addressed.

Subject to the agreement of the parties, the President of the Appeals Arbitration Division or, if already appointed, the Panel, can expedite the proceedings and determine the rules for such an expedited procedure.

In cases where the Statement of Appeal contains an application to stay the enforcement of the decision under appeal, the President of the Appeals Arbitration Division (after the file has been transmitted to the Panel) or the President of the Panel, decides on the requested stay of enforcement.

The parties may also apply for interim measures adopting the general principles set out in Article R.37 of the Code.

By agreeing to submit a dispute to the CAS Appeals Arbitration Procedure, the parties expressly waive their right to request interim measures from a state court.

The President of the Panel or the President of the Division has the discretion after inviting submissions from the parties, to consolidate proceedings when a party files a Statement of Appeal in connection with a decision that is the subject of a pending appeal before the CAS.

NOTE:

i. *Article R.52 was amended with effect from 1 January 2016 to read as follows:*

*"Unless it appears from the outset that there is clearly no arbitration agreement referring to CAS that the agreement is clearly not related to the dispute at stake **or that the internal legal remedies available to the Appellant have clearly not been exhausted**, CAS shall take all appropriate actions to set the arbitration in motion."*
(emphasis added)

ii. *The consolidation provision in Article R.52 is different to the provision set out in Article R.50, which provides for two similar cases to be heard by the same Panel. In those circumstances, the objective is cost saving and efficiency but the cases will be treated separately.*

⁴² Amended with effect from 1 January 2017

- iii. *In practical terms, the consolidation of two or more procedures leads to a merging of the case reference numbers so that they become a single unique procedure. Prior to consolidation the parties must pay a separate advance of costs. If one appellant fails to pay its share of costs, the procedure related to its own case will be terminated, but this will not impact on the other case or cases. Likewise, if a party withdraws, the ultimate CAS award in the consolidated procedure will have no effect upon it, as CAS will no longer have jurisdiction over the withdrawn appeal.*
- iv. *With effect from 1 January 2017, the rule was amended to permit the court to publicly announce the initiation of an appeal and to identify the composition of the arbitral panel and the hearing date. Although awards in appeals cases are published, the amendment extends the principle of transparency to the date of initiation of the procedure.*

Article R.53 – Nomination of Arbitrator by the Respondent

If the appellant fails to establish in the Statement of Appeal that the parties have agreed to submit the appeal to a sole arbitrator, or the President of the Division considers that the appeal should be submitted to a sole arbitrator, appeals are submitted to a Panel of three arbitrators.

Where the appeal is heard by a panel of three arbitrators, the respondent must nominate an arbitrator from the CAS arbitrator list within 10 days of receipt of the Statement of Appeal. In default of nomination, the President of the Division will appoint an arbitrator on behalf of the respondent.

In circumstances where there are multiple respondents to an appeal, they are required to appoint a single common arbitrator. If the multiple respondents cannot agree, then the appointment is made by the Divisional President.

Article R.54 – Appointment of the Sole Arbitrator or of the President and Confirmation of the Arbitrators by CAS

Both a sole arbitrator and the President of the Panel are appointed by the President of the Division when the Statement of Appeal is filed or as soon as the parties have agreed on the number of arbitrators.

In the case of a Panel of three arbitrators, the President of the Division will appoint the President of the Panel following the nomination of the arbitrator by the respondent and after consultation with the two appointed arbitrators.

Confirmation of appointment of the sole arbitrator or President of the Panel will trigger the time limit of seven days for a challenge to the arbitrator according to Article R.34.

The seven-day time limit for a challenge of the appointment of the party appointed arbitrators commences from the date the parties are put on notice of the appointment.

The CAS Court Office serves Notice of Formation of the Panel and thereafter transfers the file to the arbitrators unless none of the parties has paid the advance of costs in accordance with Article R.64.2 of the Code.

On transfer of the file, the CAS Court Office draws the attention of the Panel to any procedural issues and seeks directions for orders on evidentiary measures. The CAS Court Office also notifies the Panel of the date upon which the award should be filed and seeks the opinion of the Panel on the necessity of holding a hearing and seeks the arbitrators' availability for hearing dates.

Article R.55 – Answer of the Respondent: CAS Jurisdiction

Unlike in Ordinary Arbitration Procedures, where the time limit for filing an answer is fixed by the President of the Panel, in Appeal Arbitration Procedures, the respondent is required to submit its answer to the appeal within 20 days from receipt of the appeal brief.

An extension of time for filing may be obtained on justified grounds from the President of the Panel or the President of the Division. The respondent may request that the deadline for its answer only be fixed after the appellant has paid the advance on costs.

The same time limits apply in the event that the respondent seeks to join a third party to the procedure.

The answer must contain the following:

- A statement of defence
- Any challenges to jurisdiction
- Any evidence on which the respondent wishes to rely
- The names of any witnesses and experts, a summary of their expected testimony and, in the case of experts, their area of expertise
- Any other evidentiary requests
- Any witness statements

The respondent should file sufficient copies of the answer for each party, the arbitrators and one for the CAS Court Office. The answer should be filed by courier and registered post.

There is no right to lodge a counterclaim. This follows a direction issued by the Swiss Federal Tribunal. If a respondent wishes to lodge a counterclaim, it must issue fresh arbitration proceedings and seek consolidation of the actions.⁴³

The Panel can proceed with the arbitration and deliver an award, even if the respondent fails to file an answer within the time limit.

Any challenge to the jurisdiction of CAS by the respondent will be dealt with as a preliminary issue. If no challenge is made by the respondent, the jurisdiction of CAS will be deemed as having been accepted and no later right of challenge will be permitted. Submission of a defence implies acceptance that CAS has jurisdiction to determine the appeal.

The Panel will rule on its own jurisdiction (**Kompetenz-Kompetenz**). This provision corresponds to Article R.39, which is applicable to the Ordinary Arbitration Procedure. The decision of the Panel can be notified separately in a preliminary award on jurisdiction.

NOTE:

- i. *The Panel's ruling on jurisdiction is made irrespective of any legal action pending before a state court or other arbitral tribunal. If a party submits its claim to a state court notwithstanding the existence of an arbitration agreement in favour of CAS, the state court should decline its jurisdiction unless the arbitration clause is null and void. If the state court accepts jurisdiction despite the arbitration clause, the decision will be binding on the arbitral tribunal and has res judicata effect.*
- ii. *Suspension of the procedure should only be made on substantive grounds that exist if parties can prove that suspension is necessary to protect its rights and that the continuation of the proceedings would cause serious harm.*
- iii. *The possibility of a state court issuing a decision different from the CAS is not considered to be a substantive ground. The possibility of contradictory decisions exists in all parallel proceedings involving a civil and arbitral institution and otherwise the arbitral procedure would always end up being suspended.*

Article R.56 – Appeal and Answer Complete: Conciliation

It is not possible to supplement or amend the parties' submissions after filing of the appeal brief and the answer, unless the parties agree otherwise or the President of the Panel agrees to admit them on the basis of exceptional circumstances.

There is no provision in the Code for the parties to submit skeleton arguments.

At any stage in CAS proceedings, it is open to the Panel to resolve the dispute by agreement or settlement. Terms of settlement can be agreed in a Consent Award.

NOTE:

- i. *The term "exceptional circumstances" is not defined in the rule. In practice, Panels tend to dismiss new requests if they are unsubstantiated or the parties fail to produce explanation for the late filing. Submissions that may assist the Panel in clarifying issues already present in the proceedings will normally be admitted.*
- ii. *Decisions of the Panel not to admit additional submissions or evidence cannot be reviewed by the Swiss Federal Tribunal on the basis of violation of the "right to be heard", but in coming to any decision, the Panel must respect the principle of equality of the parties in adversarial proceedings.*
- iii. *As a costs and time saving exercise, settlement of disputes involving breach of contract or employment-related issues is generally encouraged by Panels and it is common practice for the President of the Panel to afford the parties' time to discuss possible settlement before commencement of a hearing.*
- iv. *Settlement of disciplinary cases, particularly doping matters, are more problematic, as consistency of application of the disciplinary rules, to ensure that all athletes are treated equally militates against individual settlement agreements. The Swiss Federal Tribunal has however confirmed that plea bargaining does not offend public policy and in principle it is possible.*

In doping-related cases, however, an athlete may agree to terms of settlement through the imposition of a sanction as a means of reducing procedural costs.

Article R.57 – Scope of Panel’s Review: Hearing

Upon transfer of the file, the President of the Panel will give directions for the hearing and will also ordinarily request access to the file of the lower instance sports-body whose decision is being appealed to ensure an understanding of the circumstances of how the appealed decision was made.

At the hearing, the President will give direction for examination of the parties, witnesses and experts and for oral arguments. It is common practice for the Panel to undertake questioning of the parties witnesses and experts, such questioning is ordinarily undertaken by the President of the Panel, although he or she may invite his or her colleagues to undertake their own questioning.

If the Panel considers that it has sufficient information, it may dispense with an oral hearing; but if one or both of the parties expressly request that a hearing takes place, it will usually direct that a hearing is scheduled.

If it decides to hold a hearing and a summoned party fails to appear, the Panel may decide to nevertheless proceed with the hearing. The absent parties’ right to be heard in such circumstances is not violated.

Any hearing will be held in private, unless the parties agree otherwise.

The hearing, which is generally undertaken in one day, is normally divided into the following eight stages:

- i. Opening of the hearing
- ii. Preliminary remarks of the parties, comprising a summary of the main points in issue
- iii. Hearing of the witnesses
- iv. Hearing of experts
- v. Examination of the parties
- vi. Close of evidentiary proceedings
- vii. Closing submissions
- viii. Deliberation of the Panel

Once the hearing is closed, no further evidence or submissions can be filed by the parties, unless ordered by the Panel.

Article R.57 grants the Panel power to carry out a full review of the facts and the law. Therefore, the appeals procedure is a *de novo* procedure, which allows the Panel to render a new decision to replace or annul the previous one or refer the case back for a new ruling to the lower instance body.

Notwithstanding the full power of review, the rule gives discretion to a Panel to exclude evidence presented by the parties that was available to them or could reasonably have been discovered by them before the challenged decision was rendered.

NOTE:

- i. *The enhanced level of review and the de novo trial ensures that appeal to the CAS provides the first opportunity for the parties to bring their case before an independent arbitral body, to deal with any criticism that the dispute resolution or disciplinary bodies of sports' organisations are not truly independent or to remedy any procedural defect in the hearing below.*
- ii. *A de novo hearing is "a completely fresh hearing of the dispute between the parties, any allegation of denial of natural justice or any defect or procedural error even in violation of the principle of due process which may have occurred at first instance whether within the sporting body or by the Ordinary Division CAS Panel, will be cured by the arbitration proceedings before the Appeal Panel and the Appeal Panel is therefore not required to consider any such allegations".⁴⁴*
- iii. *The right to exclude evidence presented by the parties that was available to them or could reasonably have been discovered by them before the challenged decision was rendered, therefore, apparently contradicts the Panel's right to hear the case de novo. The rationale is to avoid evidence being submitted in an abusive way or being retained by the parties in bad faith. The power to exclude evidence is, therefore, exercised with restraint.*
- iv. *The right to exclude evidence inversely permits the right to admit evidence and, thus, conflicts with the drafting of Article R.56, which seeks to limit the admissibility of new evidence.*
- v. *On deliberation, there is a full discretion available to the Panel to choose from the different options open to it in the rule. The Panel can annul and replace the decision, or partially uphold the appeal by amending the decision, or annul the decision and refer the case back to the lower instance body for it to issue a new decision.⁴⁵*
- vi. *The power to remit cases back is normally reserved to disciplinary or doping cases where imposed sanctions require to be reviewed.*
- vi. *Where the Panel decides to refer the case back to the lower instance, it has the right to issue directions/instructions on how the lower instance should rule on the matter.*

44 CAS 2008/A/1574

45 CAS 2014/A/3665

Article R.58 – Law Applicable to the Merits

The Panel must decide the dispute on the applicable regulations and subsidiarily, the rules of law chosen by the parties. The intention of the rule is to emphasise that the applicable regulations take primacy.

Where there is no choice of law, it shall apply the law of the country in which the sports-related body whose decision is under appeal has its registered seat.

Alternatively, the Panel may choose to apply the rules of law it deems appropriate, in which case, the Panel has to give reasons for its choice.

As many sports federations and bodies have their seat in Switzerland, Swiss law is often applicable to the merits.

Where foreign law is applied, it is standard practice for this to be evidenced by an expert report. The Panel can order the parties to file their own reports or if agreed between the parties, a single joint report can be prepared.

NOTE:

- i. *The law is applicable to merits and not to the procedure. In cases of doubt, an issue should be qualified as an issue of substance and not an issue of procedure. Issues of substance include evidence, claims, the burden of proof the standing to sue or be sued; whereas issues of standard of proof, costs and fees are procedural.*
- ii. *The application of the law of the country where the body issuing the decision is domiciled is analogous to the rules of private international law rules applicable to contracts where, absent a choice of law clause, the contract is deemed governed by the country that is most closely connected to it.*
- iii. *The choice of law by the parties does not refer to a specific law, but to “rules of law”, meaning the parties are not bound to select a specific state law but can opt for non-state rules or regulations, such as those of a sporting federation.*
- iv. *To give effect to the principle of equality, it is the frequent practice of Panels to adopt the provision that they may choose to apply the rules of law which they deems appropriate in preference to a chosen national law, which may give rise to inconsistent awards. In such circumstances, the Panel has to give reasons for its decision.*

Article R.59 – Award

Awards shall be rendered by majority decision or, if no majority decision can be reached, by the President of the Panel alone.

The award must be in writing, reasoned, dated and signed. The President of the Panel's signature is sufficient.

Like awards resulting from Ordinary Arbitration Procedures, awards issued pursuant to the rules of the Appeals Arbitration Procedure are subject to review by the CAS Secretary General, who may notify the Panel of corrections of form and point out fundamental issues of principle such as discrepancies from established CAS case law.

The Panel must notify the parties of the operative part of the award within three months after the transfer of the file to the Panel, although, the limit may be extended by the President of the Appeals Arbitration Division upon request of the President of the Panel, and subsequently issue the full reasoned award at a later date.

A copy of the operative part of the award, if any, and of the full award shall be communicated to the authority or sports body that has rendered the challenged decision, if that body is not a party to the proceedings.⁴⁶

The Panel may notify the operative part of the award and issue the full reasoned award at a later date.

Dissenting opinions are neither recognised by CAS, nor notified to the parties.

The award is final and binding on the parties, subject to a successful challenge.

Awards are made public and may form the basis of a press release, unless the parties agree that they should remain confidential.

NOTE:

- i. *The time limit for issue of the operative part of the award is three months from the date the file was transferred to the Panel; however, invariably, this time limit is not complied with and the Divisional President may extend the time limit upon a reasoned request from the President of the Panel.*
- ii. *The finality of the award means that upon notification the parties may only apply to set it aside rather than appeal against the award to a true court of appeal. Challenges are made to the Swiss Federal Tribunal.*
- iii. *The final and binding nature of the award means that it has res judicata effect and can be enforced under Article V paragraph 1(e) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958).*

⁴⁶ Amended with effect from 1 January 2017

- iv. *The challenge of an award of the Appeals Arbitration Division follows the rules applicable to the challenge of an award rendered under the Ordinary Arbitration Procedure.*
- v. *Article R.59 was amended with effect from 1 January 2016, to reflect the provision of the amended Article R.46 namely:*

*"The award, notified by the CAS Court Office, shall be final and binding on the parties **subject to recourse available in certain circumstances pursuant to Swiss Law within 30 days from notification of the original award.**" (emphasis added)*

This is not a new rule.

Articles R.60-62 – Special Provisions Applicable to Consultation Proceedings

Consultation proceedings were abolished by ICAS in 2012 and Articles R.60-62 were accordingly abrogated.

9. General Provisions Applying to Both Ordinary and Appeal Arbitration Procedures

Article R.63 – Interpretation

No later than 45 days after notification of the award, a party may apply to CAS for the interpretation of an award issued in both Ordinary or Appeal Procedures, if the operative part of the award is unclear, incomplete, ambiguous or elements are self-contradictory, contrary to the reasons or if the award contains clerical errors or mathematical miscalculations.

The President of the Division will determine whether there are grounds for interpretation and if so, will submit the request to the Panel.

The Panel shall rule on the request within one month following submission of the request.

NOTE:

- i. *Only parties to the proceedings have standing to apply for interpretation.*
- ii. *All types of award can be interpreted to the extent that they qualify as awards and include preliminary awards on jurisdiction or partial awards.*
- iii. *Interpretation applies only to the operative part of the award, save to the extent that the reasons become an integral part of the award, as this is the only part of the award that can be appealed before the Swiss Federal Tribunal and it does not modify the award or affect its res judicata status.*
- iv. *If the Panel accepts that interpretation is appropriate, it shall issue a “Decision on Request for Interpretation” providing the clarification requested.*

10. Costs of the Arbitration Proceedings

The rules on costs are set out in Articles R.64 to R.66 of the Code.

These rules apply to the Ordinary Arbitration Procedure and the Appeals Arbitration Procedure.

Article R.64 – Costs of the Arbitration Proceedings – General

With the exception of disciplinary cases, the general rule is that the parties bear the costs of the arbitration proceedings and all associated costs and expenses.

The costs include the fees of the arbitrators, the costs of an *ad hoc* clerk if employed, administrative costs of the CAS Court Office, the CAS Court Office fee and the parties' own costs, including witnesses, experts and interpreters.

The final account is calculated by the CAS Court Office, but the Panel hearing the procedure determines which party shall bear the cost and in what proportion.

A non-refundable filing fee of CHF 1,000, is payable by a claimant/appellant for all requests for arbitration, without which CAS will not proceed. This sum is always retained by CAS unless the arbitration is not initiated.

Apart from the fixed filing fee, the administrative costs of CAS and the arbitrators' fees are calculated according to a fee scale referable to the value of matter in dispute which is determined on the basis of the requests in the statement of claim or appeal brief or on the basis of the counterclaim if this is higher than the disputed amount in the claim.

As it is more difficult to obtain payment of costs after an award has been rendered, the CAS Court Office makes a determination of the likely costs of the procedure, known as the "advance of costs", which is in effect a deposit payable before any work is undertaken.

The advance of costs is payable by the parties in equal shares; however, in appeal arbitrations, in the event that the respondent fails to make payment of its share, the appellant is invited to make payment of the unpaid share. If that payment is not made the appeal is deemed withdrawn. The advance of costs already paid by the parties is not reimbursed by CAS with the exception of the portion that exceeds the total amount of the arbitration costs.⁴⁷

The costs are reviewed throughout the procedure and the same rules apply to any additional request for advance of costs: non-payment will result in the arbitration being deemed withdrawn.

Allocation of the costs is determined by the Panel at the end of the arbitration and, as a general rule, the losing party will bear the costs of the procedure.

The Panel will also decide, without any specific request from the parties⁴⁸, if the losing party should make any contribution toward the legal fees and costs of the prevailing party.

⁴⁷ Amended with effect from 1 January 2017

⁴⁸ Amended with effect from 1 January 2017

The rules make clear that the prevailing party will not receive full reimbursement of all costs. In cases of withdrawal of an appeal, the appellant bears the costs of the other party or parties.

NOTE:

- i. In determining any contribution toward the legal fees and costs of the prevailing party, the Panel will only take account of the conduct of the parties in the arbitration proceedings and will not take account of any conduct that may have contributed to the dispute.*

Article R.65 – Appeals Against Decisions Issued by International Federations in Disciplinary Matters

In appeal, proceedings against decisions that are of an exclusively disciplinary nature, rendered by an international federation or sports body, the proceedings are free. The fees and cost of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS, are borne by CAS.

Ordinary Arbitration Procedures are never free.

A non-refundable filing fee of CHF 1,000, is payable by the appellant, without which CAS will not proceed. This sum is always retained by CAS unless the arbitration is not initiated.

The cost-free proceedings relate only to the fees and expenses of the arbitrators, the ad hoc clerk if appointed, and the CAS Court Office fees and expenses. The parties must still pay for the costs of their own witnesses, experts and interpreters; although, financial aid is available if the conditions are met.

In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution toward its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters.⁴⁹

11. Miscellaneous Provisions

Article R.67 – Transitional Provisions and Entry into Force of the CAS Rules

The rules are applicable to all procedures initiated by CAS as from 1 January 2017. Procedures pending on 1 January 2017 remain subject to the rules in force before 1 January 2017 unless both parties request the application of the rules applicable after 1 January 2017.

Article R.68 – Disclaimer Regarding the Work of CAS Arbitrators, CAS Mediators, ICAS and its Members, CAS and its Employees

CAS Arbitrators, CAS Mediators, ICAS and its Members, CAS and its Employees are not liable to any party for any act or omission in connection with any CAS Proceedings, unless such acts or omissions relate to intentional wrongdoing or gross negligence.

Article R.69 – Authentic Version of the CAS Rules

The Code is published in the two official languages of the CAS, English and French. In the case of any discrepancy between the two languages, the French version will prevail.

Article R.70 – Amendment of the CAS Procedural Rules

The Procedural Rules may be amended pursuant to Article S.8 by a majority of two-thirds of the ICAS members.

Contact Us

We'd be delighted to speak with you about any queries you might have. Feel free to contact any of the individuals below:



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