

# Arbitration Rules applicable to the CAS Anti-Doping Division

## Asian Games Hangzhou 2022

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### Preamble

These Arbitration Rules have been established for the 19<sup>th</sup> Asian Games (AG) Hangzhou 2022 in order to provide for the resolution by arbitration of all alleged anti-doping rule violations related to the Asian Games, based on the Introduction and Article 8 of the OCA 2023 Anti-Doping Rules applicable to the 19<sup>th</sup> Hangzhou Asian Games 2022, and insofar as they arise upon the occasion of Hangzhou Asian Games 2022 or during a period of four days preceding the Opening Ceremony of the Asian Games. Such disputes shall be referred to the CAS Anti-Doping Division (the “CAS ADD”) in accordance with the OCA 2023 Anti-Doping Rules applicable to the 19<sup>th</sup> Hangzhou Asian Games 2022. In addition, if any International Federation has delegated their powers to the CAS ADD to decide whether or not there has been a violation of their own anti-doping rules, as well as any applicable sanction, then these Arbitration Rules shall also apply to such disputes.

### Article 1 Application of the Present Rules and Jurisdiction of the CAS Anti-doping Division

The CAS ADD shall be the first-instance authority to conduct proceedings and to issue decisions when an alleged anti-doping rule violation has been asserted and referred to it under the OCA ADR, and for imposition of any sanctions therefrom whether applied at the Games or thereafter. Accordingly, the CAS ADD has jurisdiction to rule as a first-instance authority in place of the OCA and/or the International Federation concerned.

Decisions rendered by the CAS ADD shall be applied and recognized in accordance with Article 15 WADC.

As from 2016, the CAS ADD shall also have jurisdiction in cases of alleged doping violations linked with any subsequent re-analysis of samples collected on the occasion of the AG.

### Article 2 CAS Anti-Doping Division

The CAS ADD is composed of a President, a Deputy President, arbitrators appearing on a special list and a Court Office, all being appointed by the ICAS Board.

### Article 3 Special List of Arbitrators

The ICAS, acting through its Board, shall draw up the special list of arbitrators, experienced in anti-doping matters, referred to in Article 2.

This special list consists only of arbitrators who appear on the CAS ADD list of arbitrators. None of these arbitrators may act for the regular CAS ad hoc Division during the same edition of the AG, nor thereafter in anti-doping matters connected to the particular edition of the AG.

The special list of arbitrators shall be published prior to the opening of the AG. It may be subsequently modified by the ICAS Board.

### Article 4 Presidency

The ICAS Board shall appoint the President and the Deputy President of the CAS ADD from among the members of the ICAS appointed to ICAS pursuant to Article S4 d) and e) of the Code of Sports-related Arbitration. The President shall be independent from the parties and she/he shall perform the functions conferred upon her/him by the present Rules and all other functions relevant to the proper operation of the CAS ADD. The Deputy President shall be independent from the parties and may substitute for the President at any time if the latter is unable to carry out her/his functions.

### Article 5 Court Office

The CAS shall establish a Court Office of the CAS ADD at the site of the AG. Such office shall be placed under the authority of the CAS Director General. Outside the period of the AG, the Court Office of the CAS ADD is in Lausanne, Switzerland.

## Article 6 Language of Arbitration

The arbitration in each matter brought before the CAS ADD shall be conducted in English or French, as determined by the President or the Deputy President of the CAS ADD.

## Article 7 Seat of Arbitration and Law Governing the Arbitration

The seat of the CAS ADD and of each arbitral Panel is in Lausanne, Switzerland. However, the CAS ADD and each arbitral Panel may carry out all the actions which fall within their mission at the site of the AG or in any other place they deem appropriate.

The arbitration is governed by Chapter 12 of the Swiss Act on Private International Law.

## Article 8 Representation and Assistance

The parties and interested parties, as defined at Article 9 below, may be represented or assisted by persons of their choice insofar as circumstances permit, particularly with regard to the time limit set for any award. The names, addresses, electronic mail addresses and telephone numbers of the persons representing the parties, by which they may be reached for purposes of the arbitration proceedings, shall appear in the application referred to in Article 10 or be submitted at the start of the hearing.

## Article 9 Notifications and Communications

a) All notifications and communications from the CAS ADD (Panel, Presidency or Court Office) shall be transmitted, by delivery to their address at their seat/domicile or at their AG site (during the period of the AG) or at their usual electronic mail address, to the following parties or interested parties:

- the OCA;
- the International Testing Agency (ITA);
- the athlete or any other person involved, as defined in the OCA ADR, or their representative;
- the International Federation(s) (IF(s)) concerned;
- the National Olympic Committee(s) (NOC(s)) concerned;
- the World Anti-Doping Agency (WADA).

In case of urgency, the CAS ADD may also give notifications and communications by telephone and confirm them subsequently in writing, or by electronic mail. In the absence of written confirmation, the communication is nevertheless valid if the addressee had knowledge of it.

b) Notifications and communications from the parties shall be delivered or emailed to the CAS ADD Court Office at the site of the AG or to the main Court Office in Lausanne (outside the period of the AG), with the exception of the application referred to in Article 10, which must be delivered or emailed to the CAS ADD Court Office, which will acknowledge receipt.

## Article 10 Application

An alleged anti-doping rule violation shall be referred to the CAS ADD by way of a written application, in accordance with the OCA ADR.

The application shall include:

- the address and/or electronic address of the athlete or of any other person involved, as defined in the OCA ADR, or their representative, at the site of the AG;
- the addresses and/or electronic addresses of the IF and of the NOC concerned;

- a brief statement of the material facts and legal arguments on which the application is based, including any relevant materials available;
- request for relief and, where applicable, request for provisional measures;
- any appropriate comments on the basis for CAS ADD jurisdiction;
- if the application is filed during the period of the AG, the address of the ITA, or of the responsible authority established by the OCA ADR for results management purposes, at the site of the AG and, where applicable, the electronic mail address at which it can be reached for the purposes of the proceedings and, where applicable, the same information for the person representing the ITA, or the responsible authority established by the OCA ADR for that purpose.

The application shall be written in English.

## Article 11 Appointment of the Panel

Upon receipt of an application, the President or the Deputy President of the CAS ADD shall appoint a Panel composed either of a Sole Arbitrator or of three arbitrators appearing on the special list described in Article 2 of the Rules, taking into account all the circumstances of the case.

If an application is filed which is related to an arbitration already pending before the CAS ADD, the President or the Deputy President of the CAS ADD may assign the second dispute to the Panel appointed to decide the first dispute. In order to decide upon such assignment, the President or the Deputy President of the CAS ADD shall take into account all the circumstances, including the relation between the two cases and the progress already made in the first case.

The CAS ADD Court Office shall convey the application to the appropriate arbitral Panel and inform the parties of the arbitrator(s) appointed.

## Article 12 Independence and Qualifications of the Arbitrators

All arbitrators must have legal training and possess recognized competence with regard to anti-doping matters. They must be independent of the parties and must disclose immediately any circumstance likely to compromise their independence.

They must be available for the CAS ADD at any time during the AG, and also outside the period of the AG if necessary.

No CAS arbitrator may act as counsel for a party or other interested person before the CAS ADD.

## Article 13 Challenge, Disqualification and Removal of Arbitrators

An arbitrator must disqualify herself/himself voluntarily or, failing that, may be challenged by a party if circumstances give rise to legitimate doubts as to her/his independence. The President or the Deputy President of the CAS ADD is competent to decide any challenge requested by a party. She/he shall decide upon the challenge immediately after giving the parties and the arbitrator concerned the opportunity to be heard, insofar as circumstances permit. Any challenge must be brought as soon as the reason for the challenge becomes known, otherwise the party's right to challenge the arbitrator on that basis shall be deemed to have been waived.

Any arbitrator may be removed by the President or the Deputy President of the CAS ADD if she/he is prevented from carrying out the assignment or fails to perform her/his duties in accordance with these Rules.

If an arbitrator disqualifies herself/himself voluntarily or if the President or the Deputy President of the CAS ADD accepts a challenge by a party or removes the arbitrator for any other reason, the President or the Deputy President of the CAS ADD shall immediately appoint a new arbitrator to fill the vacancy.

## Article 14 Provisional Suspensions

The Panel, where already appointed, or otherwise the President or the Deputy President of the CAS ADD may rule on an application for a provisional suspension as defined in the OCA ADR and/or the ADR of the IF concerned. Any provisional suspension imposed by the CAS ADD shall be enforced

by the OCA and/or by the IF concerned, according to the applicable ADR. The parties must be given the opportunity to be heard, in writing or in person, either prior to any decision on an application for a provisional suspension, or on a timely basis after imposition of the provisional suspension, if circumstances do not allow a hearing prior to the decision, in light of the goal that affected parties should not be subject to enforcement of a decision without the opportunity for a hearing, except and then only for the shortest time possible under all the circumstances.

A separate decision on provisional suspension is not necessary when the matter can be decided on the merits and if a hearing can be held prior to the time when the provisional suspension needs to become effective.

## Article 15 Procedure before the Panel

### a. Defense of lack of jurisdiction

Any defense of lack of jurisdiction of the CAS ADD must be raised at the start of the proceedings or, at the latest, at the start of the hearing.

### b. Procedure

The Panel organizes the procedure as it considers appropriate, taking into account the specific needs and circumstances of the case, the interests of the parties, including their right to a fair hearing, and the constraints of speed and efficiency specific to the particular procedure. The Panel shall have full control over the filing of any submissions, the evidentiary proceedings and argument.

### c. Hearing

If a hearing on the merits shall be held, the Panel shall summon the parties to such hearing on very short notice, as soon as all relevant documents have been served on the parties. It shall append a copy of the application to the summons to appear addressed to the athlete or to any other person involved. Unless the Panel decides otherwise in compliance with the sanitary measures in force, the hearing shall be held by video-conference or by telephone conference.

The Panel may also invite the NOC concerned, the IF concerned (if not already involved in the procedure) and/or other persons or entities concerned with the alleged anti-doping rule violation to the hearing who or which may not be parties to the proceedings. A WADA Independent Observer may also attend the hearing.

At the hearing, the Panel shall hear the parties and address any evidentiary matters. The parties shall introduce at the hearing all the evidence they intend to adduce and produce the witnesses, who shall be heard immediately.

If it considers itself to be sufficiently well informed and the athlete or any other person involved waives the holding of a hearing, the Panel may decide not to hold a hearing and to render an award immediately.

### d) Other evidentiary measures

If a party requests an opportunity to introduce additional evidence which, for legitimate reasons, it was not able to produce at the hearing, the Panel may admit such evidence, to the extent necessary to the resolution of the dispute and provided that the additional evidence can be brought within the time limit set to render the final award (see Article 18 below).

The Panel may at any time take any appropriate action with respect to evidence. In particular, it may appoint an expert and order the production of documents, information or any other evidence. It may also decide whether to admit or exclude evidence offered by the parties and assess the weight of evidence. The Panel shall inform the parties accordingly.

### e) Failure to appear or comply with directions

If any party fails to appear at the hearing or to comply with directions issued by the Panel, the latter may nevertheless proceed.

f) Proceedings outside the period of the AG

The proceedings shall be conducted by the same Panel taking into account the existing time constraints and the right of the parties to be heard within a reasonable time.

## Article 16 The Panel's Power to Review

The Panel shall have full power to establish the facts relevant to any decisions to be taken in the proceedings.

## Article 17 Law Applicable

The Panel shall rule on the dispute pursuant to the OCA ADR, the WADC, the rules of the IF concerned, the applicable regulations, Swiss law, and general principles of law.

## Article 18 Time limit to issue the decision

During the period of the AG, the Panel shall give a decision within 24 hours from the conclusion of the hearing or, if no hearing is held, from the conclusion of the evidentiary proceedings, subject to Article 20. In exceptional cases, this time limit may be extended by the President or the Deputy President of the CAS ADD if circumstances so require. Outside the period of the AG, the Panel shall give a decision within a reasonable time.

## Article 19 Decision-making, Form and Communication of the Decision

Unless a Sole Arbitrator has been appointed, decisions are taken by a majority or, in the absence of a majority, by the President of the Panel.

Decisions shall be written, dated and signed by the President of the Panel or by the Sole Arbitrator and, in principle, brief reasons will be stated. Before the award is signed, it shall be reviewed by the President or the Deputy President of the CAS ADD who may make amendments of form and, without affecting the Panel's freedom of decision, may also draw the latter's attention to points of substance.

The award shall be communicated to the parties immediately. The Panel may decide to communicate the operative part of the award, prior to the reasons. The award shall be final from such communication to the email addresses provided to the CAS ADD at the commencement of the proceedings.

If the NOC and/or the IF concerned have not taken part to the proceedings and have not received a copy of the award, this award shall be communicated to them for information purposes.

The confidentiality or publication of awards issued by the CAS ADD shall be determined pursuant to the OCA ADR and/or the ADR of the IF concerned.

## Article 20 Award

a) Final award at the AG or after the AG

Taking into account all the circumstances of the case, including the nature and complexity of the dispute, the urgency of its resolution, the extent of the evidence required and of the legal issues to be resolved, the parties' right to be heard and the state of the record at the end of the evidentiary proceedings, the Panel may make a final award either during the period of the AG or outside the period of the AG. The Panel may also make a partial award during the period of the AG and decide the remaining issues in a final award after the period of the AG.

b) Final award outside the period of the AG

If the Panel does not issue a final award during the period of the AG, the following provisions shall apply:

i) The Panel formed during the AG remains assigned to the resolution of the dispute.

ii) After consultation with the parties, the Panel shall determine the procedural directions applicable to the remaining part of the arbitration.

## Article 21 Enforceability; Appeal

Once notified, the award (partial or final) is enforceable immediately. Any partial or final award may be appealed to the CAS ad hoc Division according to the Arbitration Rules for the AG or, if the CAS ad hoc Division is no longer in operation, to the permanent CAS in Lausanne/Switzerland pursuant to Articles R47ff of the Code of Sports-related Arbitration, no later than 21 days from the notification of the award by email.

## Article 22 Cost-free Nature of the Proceedings

The facilities and services of the CAS ADD, including interpretation services and the provision of the Panel, are free of charge to the parties. The arbitration costs incurred for activities performed outside the period of the Games shall be borne by ICAS. In the event a large part of the activity in the arbitration procedure was performed outside the period of the Games, the Panel may exceptionally grant the prevailing party a contribution towards its legal fees under the conditions provided by Article R64.5 of the Code of Sports-related Arbitration.

## Article 23 Miscellaneous Provisions

The present Rules have been adopted by the ICAS in Lausanne, on 12 May 2017 (amended on 12 September 2023), on the basis of the OCA ADR, issued in application of the WADC, and Articles S6, paragraphs 1, 8 and 10, S8 and S23 of the Code of Sports-related Arbitration. They form an integral part of the Arbitration Rules of the CAS Anti-doping Division.

The present Rules may be amended by the ICAS pursuant to Article S8 of the Code of Sports-related Arbitration.