

**COURT OF ARBITRATION FOR SPORT (CAS)**  
**Ad hoc Division – XVIII Asian Games in Jakarta Palembang 2018**

**CAS AG18/01 Korea Golf Association v Olympic Council of Asia**  
**CAS AG18/02 Indonesia Golf Association v Olympic Council of Asia**  
**CAS AG18/03 Singapore Golf Association v Olympic Council of Asia**  
**CAS AG18/04 Japan Golf Association v Olympic Council of Asia**  
**CAS AG18/05 National Golf Association of the Philippines v Olympic Council of Asia**  
**CAS AG18/06 India Golf Association v Olympic Council of Asia**

**AWARD**

in the arbitration between

**Korea Golf Association**

**Indonesia Golf Association**

**Singapore Golf Association**

**Japan Golf Association**

**National Golf Association of the Philippines**

**India Golf Union**

**Applicants**

**and**

**Olympic Council of Asia**

**Respondent**

**and**

**International Golf Federation**

**Sri Lanka Golf Union**

**Bangladesh Golf Union**

**Macau Golf Union**

**Uzbekistan Golf Federation**

**Interested Parties**

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## **I. INTRODUCTION**

1. Korea Golf Association, Indonesia Golf Association, Singapore Golf Association, Japan Golf Association, National Golf Association of the Philippines and India Golf Union (“Applicants”) bring applications against the Olympic Council of Asia (“Respondent”) by which they challenge a decision by the Respondent of 16 August 2018 which has the effect of extending the eligibility criteria of athletes participating in the sport of golf at the XVIII Asian Games, Jakarta Palembang, 2018 (“18<sup>th</sup> Asian Games”) to include both professional and amateur athletes.

## **II. THE PARTIES**

2. The Applicants are each national sporting associations for the sport of golf.
3. The Respondent is the sole organisation in overall charge of different OCA Games in Asia which includes the 18<sup>th</sup> Asian Games.
4. The first-named Interested Party is an “International Federation” as that term is defined in the Olympic Charter.
5. The other Interested Parties are national sporting associations for the sport of golf from each of the respective nations.

## **III. FACTUAL BACKGROUND**

6. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows.
7. Whilst the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, the Award only refers to the submissions and evidence the Panel considers necessary to explain its reasoning.
8. On 15 February 2018, the Indonesia Asian Games Organising Committee (“INASGOC”) published the “Golf Sport Technical Handbook Ver. 2.0 – February 15, 2018” (“Handbook”) having been approved by INASGOC, the Asia Pacific Golf Federation and the International Golf Federation (“IGF”) in November 2017 and by the Respondent on 15 February 2018. Section III of the Handbook contains the technical information for the sport of golf at the 18<sup>th</sup> Asian Games.
9. As regards eligibility to participate, Schedule III, paragraph 8.1 of the Handbook provides, in part, that athletes selected by National Olympic Committees (“NOCs”) to participate in the golf competition at the 18<sup>th</sup> Asian Games “... *must conform in all respects to the Rules of Amateur Status, as approved by R & A Rules Limited.*” Further, paragraph 8.3 of the Handbook under the heading “Entry Policies” provides, conformably with paragraph 8.1, that each NOC “...*may only enter amateur players...*”

10. Under the heading, “Amendment History” on the front page of the Handbook, there is a notation that the Handbook in its currently published form was “OCA Approved” on 15 February 2018.
11. Mr Nick Shan is the Golf Technical Delegate of the IGF for the 18th Asian Games. Part of Mr Shan’s responsibilities was to undertake athlete eligibility checks to ensure that they complied with the amateur status prescribed by the Handbook. For example, on 17 July 2018, Mr Shan received a request from the “Sport Department” of INASGOC by email to conduct an eligibility test for 3 athletes proposed for selection by the Sri Lanka NOC.
12. On 3 August 2018, Mr Shan provided a response by email to the effect that the athletes the subject of the eligibility test requested on 17 July 2018 were professional golfers and therefore did not meet the eligibility criteria of amateur status. Mr Shan made that determination by consulting the “Official World Golf Ranking” (“OWGR”) website. A number of individuals were copied into that response including representatives of the Respondent. One of those representatives, Mr Matthew Kidson, sent a copy of Mr Shan’s response to Mr Haider Farman, the Director of Asian Games.
13. On 3 August 2018, Mr Haider Farman, responded by email to Mr Kidson (cc to Mr Shan) in which he said “[p]lease inform the NOC in advance for them to know and to replace if they wish.”
14. On 13 August 2018, Mr Shan notified the Sports Department of INASGOC that a number of athletes from Bangladesh, Macau China, and Uzbekistan were ranked as professional golfers and accordingly, did not meet the amateur status required by the Handbook for eligibility to participate in the 18<sup>th</sup> Asian Games. Mr Kidson of the Respondent was one of the persons copied into Mr Shan’s email.
15. Mr Kidson responded to Mr Shan by email later on 13 August 2018. In that response, he referred to an email apparently from Vinod Tiwari of 3 August 2018 (but not adduced in evidence before the Panel) in which Mr Tiwari, the Director, International & NOC Relations, OCA said, “*I have clarified this before also. There is no more amateur and professional discrimination in the OCA Constitution anymore. Like in the Olympic Games even professionals are eligible to participate. You are therefore requested to allow them to participate.*”
16. On 13 August 2018, following the receipt of Mr Tiwari’s email, Mr Shan wrote to Mr Kidson via email in which he noted, in part, that the Handbook had been signed off by him as Technical Delegate in November 2017 and the Respondent had had since that time an opportunity to formally communicate and challenge any regulation or eligibility criteria and that “*we are a matter of days away from the start of the Asian Games and it will be very unprofessional to suggest any change to the entry policy of any sport at this late stage*”. He also referred to Mr Haider’s email of 3 August 2018 (referred to above) and sought confirmation that Sri Lanka, Bangladesh, Macau and Uzbekistan be informed that they were to submit the names of their amateur golfers by Thursday, 16 August 2018.

17. On 14 August 2018, Mr Haider responded to Mr Shan's email of the previous day in which he said, "*[w]ithout going in too much details the OCA Constitution will prevail, where it is never stated the athletes category or age unless it's stated in the IF roles moreover for all final decisions technical and non belong to OCA.*" Mr Tiwari was copied into that email.
18. Mr Tiwari sent an email response to Mr Shan on 14 August 2018 in which he indicated that the Respondent would abide by the OCA Constitution and that "*this states that there will be no difference between professional and amateur athletes.*"
19. After receipt of Mr Haider's email, on 14 August 2018, Mr Shan sent an email to Mr Tiwari in which he reiterated that it was "*totally unacceptable to change the Entry Policy at this late stage since the Technical Handbook was released in November 2017*" and again requested confirmation that the Sri Lanka, Bangladesh, Macau and Uzbekistan NOC's be informed that their players would not be permitted to participate because they did not satisfy the amateur status eligibility requirement.
20. On 15 August 2018, Mr Shan wrote a letter to Mr Harry Warganegara, the Deputy 1 Games Operation of the Organising Committee of INASGOC, in which he repeated his concerns regarding the Respondent's proposed change to the eligibility criteria and requested that he notify the NOCs of Sri Lanka, Bangladesh, Macau and Uzbekistan that their respective professional golfers were not eligible to participate and that they were to submit the names of any amateur golfers by Thursday, 16 August 2018.
21. On 15 August 2018, the IGF wrote to the Director General of the AOC expressing its concerns regarding the proposed change to the eligibility criteria. The IGF asserted that of the 25 NOCs that had submitted entries, 4 had entered athletes that were professional golfers. The IGF submitted that the eligibility requirements in the Handbook should be adhered to not only in the interests of fairness but to also ensure compliance with rule 26.1.6 of the Olympic Charter under which International Federations such as the IGF can assume or delegate responsibility for the control and direction of their sports in international multisport competitions held under the patronage of the IOC. The IGF requested that the Respondent permit Mr Shan as Technical Delegate of the IGF, to resume his responsibilities unimpeded and to enforce the eligibility and entry policies stipulated in sections 8.1 and 8.3 of the Handbook.
22. On 16 August 2018, Mr Haider sent an email to Mr Shan with the subject line, "Re: Asian Games – Golf (Entry Policy)" which reads as follows: "*...with respect to IGF and all OCA and following OCA's Constitution it's decided to approve and register all professional and amateur golfers to participate in the Asian Games, and its final.*" This is the decision of the Respondent the subject of the applications under consideration.

#### **IV. SUMMARY OF THE PROCEEDINGS BEFORE THE CAS**

23. On 17 August 2018, the Korea Golf Federation lodged its application.
24. On 17 August 2018, the Indonesia Golf Federation lodged its application.

25. On 18 August 2018, the Singapore Golf Federation lodged its application.
26. On 19 August 2018, the Japan Golf Federation lodged its application.
27. On 20 August 2018, the National Golf Association of the Philippines lodged its application.
28. On 20 August 2018, the India Golf Union lodged its application.
29. Pursuant to Article 11 of the CAS Arbitration Rules, the President of the Ad hoc Division, Mr. Michael Lenard, appointed Mr Anthony Lo Surdo SC (Australia) (President of the Panel), Mr. Enrico Pedro Ingles y Mendiola (The Philippines) and Mr Jahangir Baglari (I.R. Iran) as arbitrators to hear the present dispute. No party has raised any dispute with relation to the constitution of the Panel.
30. On 19 August 2018, the Panel made procedural directions and issued a summons requiring each of the parties and interested parties to attend a hearing on 20 August 2018. Given the commonality of issues, those procedural directions included the consolidation of the then 4 applications. The additional 2 related matters were also subsequently consolidated.
31. On 20 August 2018 at 21.00 hrs, the parties assembled at the CAS Ad hoc Division hearing room for a hearing on the applications. The Panel was assisted at the hearing by Mr. Antonio De Quesada, counsel to the CAS, as well as the following representatives for the parties:

Applicants in AG18/01-18/03: Mr Nandakumar Rengawathan, Counsel

Applicant in AG18/04: Mr Andy Yamanaka, Japan Golf Federation (by telephone)

Applicant in AG18/05: No appearance

Applicant in AG18/06: Mr Hanan Das, Indian Golf Union

Respondent: Dr Jan Kleiner, Attorney, Kleiner & Cavaliero AG, Zurich, Switzerland.

32. Following the hearing, which concluded at 2:00am, the representatives for each of the parties confirmed that their respective rights to be heard had been fully respected by the Panel and that they had no issue with respect to the way the CAS procedure or hearing was conducted.

#### **IV. SUBMISSIONS OF THE PARTIES**

33. What follows is a summary of the parties' submissions. To the extent that it omits any contentions, the Panel notes that it has considered all of the evidence and arguments submitted by the parties.

##### **A. The Applicants' Submissions and request for relief**

### Submissions

34. The Applicants submitted that paragraph 8.3 of the Handbook sets out the entry policies to which participating NOCs are required to adhere. They assert that the decision of the Respondent of 16 August 2018 to approve and register all professional and amateur golfers to participate in the 18<sup>th</sup> Asian Games (“Decision”) has contravened paragraph 8.3 of the Handbook and, by doing so, has also contravened rule 26.1.6 of the Olympic Charter for International Multisport Competitions (“Olympic Charter”) held under the patronage of the International Olympic Committee (“IOC”).

### Relief Sought

35. The Applicants seek a determination that the decision be annulled and disregarded and that, for the purposes of the 18<sup>th</sup> of Asian Games, the terms set out in the Handbook be adhered to by all participating NOCs.

## **B. The Respondent’s Submissions and request for relief**

### Submissions

#### *Summary of the Respondent’s Submissions*

36. The Respondent’s submissions may be summarised as follows:
- (a) CAS has no jurisdiction to hear the Applications as there is no jurisdictional clause on which the Applicants could rely to bring their applications to the CAS. Further, the Respondent asserts that Article 34 of the Constitution of the OCA does not extend to disputes brought by national sporting associations, such as the Applicants which are not members of the Respondent;
  - (b) the Applications are inadmissible as the Applicants have no standing to sue nor any legitimate legal interest in the case. Further, the applications are inadmissible because the applicants have failed to join as respondents those parties who would be directly affected by the proceedings, namely, the individual athletes which they wish to exclude from participation in the Asian Games;
  - (c) the Applications are without merit because:
    - (i) the Constitution of the OCA, which is the primarily applicable set of rules, provides that there is no discrimination and no differentiation whatsoever between amateur and/or professional athletes; and
    - (ii) there is no proof that any of the athletes in question are professional golf players.

### *Jurisdiction*

37. The Respondent contended that none of the Constitution of the OCA, the Handbook nor the CAS Arbitration Rules for the Asian Games (“CAS Arbitration Rules”) confers jurisdiction on the CAS to decide a dispute between a national sport association, such as the Applicants, and the OCA.
38. The Respondent submitted that the CAS obtains jurisdiction by virtue of the operation of Article 1 of the CAS Arbitration Rules and Article 34 of the Constitution of the OCA. The title to Article 34 of the Constitution of the OCA only extends to disputes “*between OCA/NOC/AF*”, that is, disputes between the OCA, National Olympic Committees and the Asian Continental Federations. It does not extend to disputes by national sports associations which are not members of the OCA.
39. The Respondent further submitted that the by-law to Article 34 of the Constitution of the OCA means that only athletes can bring disputes to the CAS Ad hoc Division and not national sport federations. The Respondent contends that its construction of Article 34 is consistent with the provisions of Article 11 of the Handbook which enables any athlete/NOC to appeal to CAS in the event of a violation of IF/AF Technical Rules or the Constitution of the OCA in the circumstances there prescribed.
40. As there is no arbitral clause on which the Applicants can rely, the Respondent submitted that CAS has no jurisdiction to determine the dispute the subject of the applications.

#### *Admissibility*

41. It is a general principle of law in any jurisdictional system worldwide that a party can bring a dispute to court only if it has standing to sue, and only if it has a sufficient legal interest to do so. The relevant test is whether the legal situation of, in this case, the Applicants would be affected by the outcome of this dispute.
42. The Applicants are each national sports associations. They do not participate in the relevant competitions; only athletes so compete. Therefore, only individual athletes may be affected by the issue in question, that is, whether professional and/or only amateur athletes may compete. National sports associations are not, in a legal sense, directly or indirectly affected by the outcome of the dispute. Their interests remain the same regardless of the outcome of the dispute.
43. The Respondent also submitted that the applications are inadmissible because the Applicants have failed to join as parties the individual athletes who will be directly affected by any determination seeks to exclude one or more of them from competing. It was submitted, by reference to CAS 2011/A/2551, by way of example, that CAS should not take a decision which would have directly affected the legal situation of a third party, without the participation of that third party in the proceedings.

#### *Merits*

44. Article 17 of the CAS Arbitration Rules provides about the present dispute shall be governed “*pursuant to the Constitution of the Council of Asia.*”

45. Articles 52 and 53 of the Constitution of the OCA, which govern the eligibility of athletes to participate in the Asian Games, confirms the well-recognised principle of the Olympic Charter that all athletes have equal rights, that is, both professionals and amateurs have the right to participate in any competition organised by the OCA. Every athlete who meets the eligibility criteria of Articles 52 and 53 must, as a matter of law, be admitted for participation in the Asian Games.
46. This principle, it is submitted by the Respondent, is consistent with and confirmed by the fundamental principles of the Respondent enshrined in Article 2 of its constitution that there shall be no discrimination within the OCA family, based on, colour, religion, politics and, it is said, by extension, on the status of an athlete as amateur or professional. Excluding an athlete on the basis of his or her professional status would constitute a direct breach of the personality rights and human rights of those athletes.
47. The Respondent submitted that the contents of the Handbook are irrelevant because, properly understood, it is subservient to the Constitution of the OCA. The Respondent contended that, in accordance with the principle of the “Hierarchy of Norms”, the Constitution of the OCA is the higher ranked norm which overrides the Handbook which is said is the lower ranked norm.
48. Lastly, the Respondent submitted that the Applicants have failed to discharge their evidentiary burden of proving that the athletes in issue had professional status.

### Relief Sought

49. The Respondent requests that the Panel:
  - (a) determines that it lacks jurisdiction in respect of each of the Applications; and
  - (b) declares inadmissible and/or dismisses each of the Applications.

## **V. DISCUSSION**

### **A. Legal framework**

50. These proceedings are governed by the CAS Arbitration Rules for the Asian Games. They are further governed by Chapter 12 of the Swiss Private International Law Act of 18 December 1987 ("PIL Act"). The PIL Act applies to this arbitration as the result of the location of the seat of the CAS Ad hoc Division in Lausanne, Switzerland, pursuant to Article 7 of the CAS Arbitration Rules. Furthermore, under Article 17 of the CAS Arbitration Rules for the Asian Games, the Panel must decide a dispute “pursuant to the Constitution of the Olympic Council of Asia, the applicable regulations, the general principles of law and the rules of law whose application the Panel deems appropriate.”

### **B. Overview – Issues for Determination**

51. Having regard to the arguments advanced by each of the Applicants, the submissions made by the Respondent and the evidence upon which each of the parties rely, the procedures give rise to the following common issues for determination:
- (a) whether the CAS has jurisdiction in respect of the dispute the subject of the each of the Applications;
  - (b) whether each of the Applications is admissible to arbitration;
  - (c) whether the Applicants each have standing to sue;
  - (d) whether the Applicants, or any of them, has discharged their evidentiary burden of establishing that the athletes nominated by the NOCs of Sri Lanka, Bangladesh, Macau and Uzbekistan, or any of them, are professional athletes;
  - (e) whether paragraphs 8.1 and 8.3 of the Handbook are, properly construed:
    - inconsistent with and in violation of Articles 52 & 53 of the Constitution of the OCA; and
    - subservient to Articles 52 & 53 of the Constitution of the OCA;
  - (f) the effect of the contents of the Handbook having been approved by INASGOC, the Asia Pacific Golf Federation and the IGF (as an IF) in November 2017, by the OCA on 15 February 2018 and notified to NOCs thereafter, including whether and to what extent any prejudice will be suffered by NOCs which complied with the eligibility requirements of the Handbook in selecting athletes for participation at the 18<sup>th</sup> Asian Games.
52. The Panel addresses each of these issues below to the extent required to determine the Applications. In doing so, it has had regard to the submissions made by each of the parties. The Panel will, however, refer to such of those submissions and supporting material as is necessary to dispose of the issues the subject of the Applications.

### **C. Jurisdiction and admissibility**

53. The jurisdiction of the CAS Ad hoc Division arises out of Article 34 of the Constitution of the OCA.
54. Article 1 of the CAS Arbitration Rules provides as follows:

***“Article 1. Application of the Present Rules and Jurisdiction of the Court of Arbitration for Sport (CAS)***

*The purpose of the present Rules is to provide, in the interests of the athletes and of sport, for the resolution by arbitration of any disputes covered by Article 34 of the Constitution of the Olympic Council of Asia, insofar as they arise in the host country of the Asian Games...within a period commencing 2*

*days prior to the Opening Ceremony (4 days for the Asian Summer Games) and ending at the beginning of the Closing Ceremony of such Games.”*

55. Article 1 refers to Article 34 of the Constitution of the OCA (September 2017) which is in the following terms:

***“Settlement of Disputes/Complaints between OCA/NOC/AF***

*1. Every NOCs Member shall be deemed to hold its membership of the OCA on specific condition that it voluntarily surrenders its right of seeking redress against the OCA in any Court of Law;*

*2. There shall be a ‘Arbitration Panel’ proposed by the OCA President and approved by the OCA EB for all unresolved disputes, including relating to validity of a NOC and any other sports organisation recognised by or to the OCA including the Host and Bidding Cities of any Asian Games;*

*3. The OCA President at his discretion shall propose either a sole Arbitrator or an Arbitration Panel for the resolution or decision of any unresolved dispute. The decision of the Arbitration Panel will be reported to the OCA Executive Board and can be appealed to the Arbitration Panel for Sports (CAS) in Lausanne;*

*4. The Terms and Conditions as well as the time frame for the proceedings to be completed will be specified by the OCA President;*

*5. The ‘Arbitration Panel’ will be responsible for investigating complaints raised in relation to the disrespect of ethical principles laid down in the OCA Constitution or Olympic Charter including but not limited to the breach of the code of ethics and conduct. If necessary proposed sanctions will be submitted to the EB for approval.*

***Bye-Law to Article 34***

*The Court of Arbitration for Sports (CAS) in association with the OCA will set up a small working group from CAS that will be present and working alongside the OCA in the Asian Games period only, on the same lines as done during the Olympic Games. The participating athletes can address any issues that they may have directly with CAS, during the Asian Games.”*

56. Each of the Applicants assert that the CAS has jurisdiction *“based on the arbitration clause inserted in the Technical Handbook for the Asian Games.”*
57. The Respondent has challenged both the jurisdiction of the CAS to determine this dispute and its admissibility. The Respondent submitted that the Handbook contains no relevant arbitral clause on which the Applicants can rely.
58. The Handbook contains only one provision which enables an appeal to the CAS, being paragraph 11 Section III. However, that provision only relates to athletes and NOC’s

which can appeal where “...*there is a violation of IF/AF Technical Rules or the OCA Constitution which is not related to reversing the decision of the referee or result.*”

59. The Panel determines that paragraph 11 Section III of the Handbook does not constitute an arbitral clause upon which the Applicants can presently rely to provide the CAS with jurisdiction in these procedures because first, that provision only extends to athletes and a NOC and secondly, the subject matter is limited to circumstances where there is a violation of IF/AF Technical Rules or the OCA Constitution. Neither of those conditions is met in the circumstances of the Applications.
60. The Respondent submitted that Article 34 does not assist the Applicants because, properly construed, it is limited to the settlement of disputes or complaints as between the Respondent, an NOC and an AF. It points to the heading to the Article in support of that contention. It further submits that, in any event, the jurisdiction of the CAS is by virtue of the by-law to Article 34 limited to athletes. For the reasons that follow these submissions should be rejected.
61. The CAS obtains its jurisdiction from Article 34 of the Constitution of the OCA read in conjunction with Article 1 of the CAS Arbitration Rules.
62. Whilst the heading to Article 34 is “***Settlement of Disputes/Complaints between OCA/NOC/AF***”, the preamble to the Constitution of the OCA provides that “[h]eadings are for convenience only and shall not affect the interpretation of this Constitution.” Therefore, the provisions of Article 34 should be construed according to their terms and not restricted by the heading which, as the preamble to the Constitution of the OCA makes plain, is for convenience only.
63. Article 34.2 provides for the establishment of an “*Arbitration Panel...for all unresolved disputes, including relating to the validity of a NOC and any other sports organisation recognised by or to the OCA, including relating to the validity of a NOC and any other sports organisation recognised by or to the OCA...*” The jurisdiction is therefore broad and unfettered to determine “all unresolved disputes” (emphasis added). It is not, as the Respondent contends, limited to the settlement of disputes or complaints as between the OCA/NOC/AF. The word “*including*” does not mean “*limited to*” and therefore the Panel does not need to determine whether or not the Applicants are “sports organisations recognised by or to the OCA”.
64. By virtue of Article 1 of the CAS Arbitration Rules, the function of the “Arbitration Panel” contemplated by Article 34.2 is to be assumed by the CAS in so far as any such dispute may arise in the host country of any of the Asian Games within the prescribed period. The by-law to Article 34 makes tolerably clear that the nature of any “unresolved” disputes which the CAS may determine during the pendency of the Asian Games includes any issues of concern to participating athletes and that those athletes may pursue any such issues with the CAS directly. The by-law does not and cannot fetter the broad power in Article 34.2.
65. Moreover, the by-law to Article 34 provides that the CAS will be present and work alongside the OCA in the Asian Games period only, “...*on the same lines as done during the Olympic Games.*” Rule 61.2 of the Olympic Charter is in the following

terms: “Any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration.” Therefore, the by-law to Article 34 by referring to the work performed by the CAS at the Olympic Games specifically contemplates, in the opinion of the Panel and consistent not only with the import of Article 34.2 of the Constitution of the OAC and Article 1 of the CAS Arbitration Rules, but also with the global spirit of the dispute resolution mechanism at the Olympic Games, that all and any disputes arising on the occasion of, or in connection with, the Asian Games will be exclusively submitted to CAS arbitration for determination.

66. The Panel notes that the question of jurisdiction is not decisive *in casu* in view of the considerations below, especially the developments described in paragraph 77-82. However, based on the analysis in the previous paragraphs, the Panel does not see why it would not have jurisdiction to determine the dispute which is the subject of the Applications. The Panel is not convinced that the OCA appropriately limited the scope of CAS arbitration at the Asian Games to disputes involving exclusively the OCA, the NOCs, the Asian Federations and the athletes, with the risk of having other Games disputes, which have both occurred and/or are foreseeable, submitted to remote dispute resolution forums or even national courts of law.
67. Speaking specifically as to the national associations, such as the Applicants, they are critical components of both the Asian Federation and of the International Federation, all of which compose an important leg of the structure of Olympic and International sport and have functions and roles at the Asian Games. If the goal is to bar national federations (or any other customary components of the international sport structure) from using the CAS ad hoc Division during the Asian Games, then the wording of Article 34 of the Constitution of the OCA could be reviewed to avoid any misunderstanding.
68. Each of the Applications were brought within the time prescribed in Article 1 of the CAS Arbitration Rules for the Asian Games and are, accordingly, admissible to arbitration.

**D. Do the Applicants have standing to sue?**

69. The Respondent submits that the Applicants lack standing because as national sports associations they are not affected by the dispute and accordingly have no interest in its outcome.
70. First, the Applicants have an interest in ensuring that the eligibility criteria including that prescribed by the Handbook is applied uniformly with a view to creating a “level playing field” for all competitors in the sport. That, in and by itself would, in the opinion of the Panel be sufficient to provide the Applicants with standing.
71. Secondly, during the course of the hearing the Panel heard from representatives of the golf sports associations of Japan, Singapore, Korea, Indonesia and India. All spoke of the manner in which their interests would be directly and/or indirectly affected by the Decision the subject of the Applications. In particular, they each spoke of the detriment

that they and the athletes whom they represent would suffer as a consequence of the Decision including the waste of funding that had been invested into developing amateur talent for the Asian Games in their respective countries, the planning that went into selecting athletes based upon the requirements of the Handbook and how that planning would have been altered in the event that the competition had been open to professional athletes.

72. Thirdly, the representatives of the golf sports associations of Japan, Singapore, Korea, Indonesia and India also spoke of the significant disadvantage at which the athletes chosen on the basis of their amateur status would be placed if they were required to compete against professionals.
73. The Respondent further submitted that the Applicants lack standing to sue because they should have joined to the application the individual athletes which they wish to have excluded from the 18<sup>th</sup> Asian Games. This submission, however, misconstrues the nature of the Applications. The Applications do not, in terms, seek to exclude any particular athletes from competition. Further, notice of the Applications was provided to the sporting associations of each of the athletes which may have been affected by the procedures concerned. Accordingly, both the sporting associations and the athletes whom they represent had the opportunity, if they so desired, to attend the hearing and make appropriate submissions.
74. The Panel accordingly finds that the Applicants each have standing to bring the Applications.

**E. Are the athletes nominated by the NOCs of Sri Lanka, Bangladesh, Macau and Uzbekistan, or any of them, professional athletes?**

75. Lying at the heart of the Applications is a concern by each of the Applicants that they and the athletes whom they represent will be significantly disadvantaged by the Decision because the athletes nominated by the NOCs of Sri Lanka, Bangladesh, Macau and Uzbekistan to compete in the golfing competition of the 18<sup>th</sup> Asian Games were of professional rank.
76. The Applicants each relied upon information provided by Mr Shan in forming a view that the athletes in question held professional status. Mr Shan also gave evidence during the course of the hearing in which he said that:
  - (a) he was appointed by the IGF as the Technical Delegate for the 18<sup>th</sup> Asian Games;
  - (b) his role included undertaking checks as to the validity of the status of amateur golfers for the purposes of the application of the eligibility criteria in the Handbook;
  - (c) those checks typically involved the following steps: 1. undertaking a search of the World Cup Amateur Golf Ranking Website; 2. if a proposed athlete's name does not appear on the World Cup Amateur Golf Ranking Website, a search is undertaken of the OWGR Website; and 3. if there is any residual doubt about

an athlete's status, an enquiry would be made of that athlete's national golf association;

- (d) he based his findings as to the status of each of the athletes proposed by the NOCs of Sri Lanka, Bangladesh, Macau and Uzbekistan by engaging in steps 1 and 2 only; and
- (e) subsequent to those findings, he became aware that the OWGR listing of the athlete from Macau was inaccurate. Notwithstanding that fact, Mr Shan did not thereafter undertake enquiries with the national golf associations of the other affected NOCs to determine the accuracy or otherwise of the OWGR listings of the athletes from those affected NOCs.

77. At the hearing, the Panel received the following documentary evidence (in addition to the documents attached to and forming part of the Applications):

- (i) a copy of the OWGR listing for each of the athletes from the NOCs of Sri Lanka, Bangladesh, Macau and Uzbekistan proposed to participate in the 18<sup>th</sup> Asian Games golf competitions;
- (ii) a letter dated 19 August 2018, from the Uzbekistan Golf Federation to the Organising Committee of the 18<sup>th</sup> Asian Games indicating that each of the athletes which the NOC of Uzbekistan had nominated for participation in the 18<sup>th</sup> Asian Games is an amateur. Mr Shan accepted, therefore, that the OWGR listing of the athletes from Uzbekistan as professional was inaccurate;
- (ii) an email from the Bangladesh Golf Federation dated 19 August 2018, indicating that no professional golfers are participating in the 18<sup>th</sup> Asian Games. Mr Shan accepted the accuracy of the contents of this email. He also, therefore, accepted that the OWGR listing of the athletes from the Bangladesh as professional was inaccurate; and
- (iv) a letter from the Asian Tour, dated 20 August 2018, to the Macau Golf Association confirming that the athlete proposed by Macau to compete in the 18<sup>th</sup> Asian Games had competed in the Macau Open 2017 as an amateur. Mr Shan accepted, therefore, that the OWGR listing of the athlete from Macau as professional was inaccurate.

78. Mr Shan accordingly and properly accepted that the IGF had no further issue with the status of the athletes nominated by the NOCs of Uzbekistan, Bangladesh and Macau for participation in the 18<sup>th</sup> Asian Games golfing competitions. That only left the 3 nominated athletes from Sri Lanka in issue.

79. The Respondent submitted that, in the circumstances, the Applicants had failed to discharge their evidentiary onus of establishing that any of the athletes in question held professional status. The Respondent highlights the fact that the OWGR website was found to be inaccurate in respect of the athletes nominated by the NOCs of Uzbekistan, Bangladesh and Macau in support of its proposition that little or no faith can be placed on the contents of that website and that the only manner in which the status of players

could be accurately confirmed was to conduct inquiries of the respective national golf sport associations.

80. In CAS procedures “...any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them .....The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence” (cf. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).
81. The Panel would not have been comfortably satisfied, on the basis of the evidence adduced at the hearing, that the Applicants had discharged their evidentiary obligation of establishing, relevantly for present purposes, that any of the relevant athletes nominated by the Sri Lanka were of professional standing.
82. At the conclusion of the hearing, the Panel directed the Applicants to make an enquiry of the Sri Lanka Golf Association as to the status of the athletes nominated by Sri Lanka to participate at the 18<sup>th</sup> Asian Games. The Panel was informed subsequent to the hearing and in accordance with its direction, that 3 of the athletes nominated by the Sri Lanka NOC each had professional status. The Panel was also subsequently informed that the Sri Lanka NOC had determined to replace the professional golf athletes for the 18<sup>th</sup> Asian Games with amateurs and that the Respondent had agreed to that course.
83. In these circumstances, there is no juridical foundation to further challenge the Decision as to do so would be to engage in a hypothetical exercise. Accordingly, the balance of the issues do not arise for consideration.

## VI. CONCLUSION

84. The Applications shall be dismissed.

## **DECISION**

The Ad hoc Division of the Court of Arbitration for Sport renders the following decision:

1. The Application filed by the Korea Golf Federation on 17 August 2018 is dismissed.
2. The Application filed by the Indonesia Golf Federation on 17 August 2018 is dismissed.
3. The Application filed by the Singapore Golf Federation on 18 August 2018 is dismissed.
4. The Application filed by the Japan Golf Federation on 19 August 2018 is dismissed.
5. The Application filed by the National Golf Association of the Philippines on 20 August 2018 is dismissed.
6. The Application filed by the India Golf Union on 20 August 2018 is dismissed.

Jakarta, 22 August 2018

Operative part of the award: 21 August 2018

### **THE AD HOC DIVISION OF THE COURT OF ARBITRATION FOR SPORT**

Anthony Lo Surdo SC  
President of the Panel

Jahangir Baglari  
Arbitrator

Enrico Pedro Ingles y Mendiola  
Arbitrator