



**PROCEDURAL RULES
GOVERNING PROCEEDINGS BEFORE
AN INDEPENDENT TRIBUNAL
CONVENED UNDER ITF RULES**

Effective 1 January 2019

**PROCEDURAL RULES GOVERNING PROCEEDINGS BEFORE AN INDEPENDENT TRIBUNAL CONVENED
UNDER ITF RULES**

1. INTRODUCTION

- 1.1 The ITF has contracted Sport Resolutions (www.sportresolutions.co.uk) to organise a panel of individuals with the necessary skills and experience (the **Independent Panel** or the **Panel**) from whom independent tribunals (each, an **Independent Tribunal**) may be formed to hear and determine particular matters. Sport Resolutions will act as secretariat to the Panel (working closely with the Panel member who is designated to act as Chairman of the Panel) and to Independent Tribunals appointed from the Panel to hear and determine particular matters. The ITF will compensate Sport Resolutions for its work, and (through Sport Resolutions) will compensate the Panel members for the time they spend on particular matters. However, both Sport Resolutions and the Panel members shall be independent of the ITF, and shall carry out their responsibilities independently and impartially at all times.¹
- 1.2 These rules (the **Procedural Rules**) are effective as from 1 January 2019. Where the ITF Constitution, the Tennis Anti-Doping Programme, the ITF Rules of Tennis, the ITF Davis Cup Regulations, the ITF Billie Jean King Cup Regulations, the ITF Pro Circuit Regulations, the ITF Wheelchair Tennis Regulations, the ITF Wheelchair Tennis Classification Manual, the ITF Junior Circuit Regulations, the ITF Junior Team Competitions Regulations, the ITF Senior Regulations, the ITF Beach Tennis Rules, or any other rules, regulations, code or policies of the ITF, as amended from time to time (together, the **ITF Rules**), confer jurisdiction on the Independent Tribunal to hear and determine a matter (whether as a first instance body, an appeal body or a body exercising supervisory jurisdiction), then (save to the extent otherwise provided in the ITF Rules) the Independent Tribunal will hear and determine the matter in accordance with these Procedural Rules.
- 1.3 These Procedural Rules, and proceedings before the Independent Tribunal generally, are governed by English law. The Independent Tribunal is intended to operate as an arbitral tribunal within the meaning of the Arbitration Act 1996. A person's consent to the ITF Rules conferring jurisdiction over a dispute on the Independent Tribunal constitutes an agreement to arbitrate such dispute before the Independent Tribunal in accordance with these Procedural Rules, and proceedings before the Independent Tribunal constitute arbitration proceedings with a seat or legal place in London, England, to which the Arbitration Act 1996 applies. Subject strictly thereto, and to the provisions of these Procedural Rules specifying how decisions of the Independent Tribunal may be appealed or otherwise challenged, the English courts shall have exclusive jurisdiction over disputes arising out of proceedings before the Independent Tribunal.
- 1.4 Unless the context otherwise requires, words in these Procedural Rules denoting any one gender include all other genders, and words denoting the singular include the plural and *vice versa*.
- 1.5 The Board of Directors of the ITF may amend these Procedural Rules from time to time. Such amendments will come into effect on the date specified by the Board of Directors.

¹ If for any reason the ITF ceases to use Sport Resolutions to provide this service, then these Procedural Rules shall continue to apply with the replacement service provider standing in its place.

2. JURISDICTION AND COMPOSITION OF THE INDEPENDENT TRIBUNAL

- 2.1 The Independent Tribunal has jurisdiction to hear and determine any matter referred to it in respect of which the ITF Rules give it jurisdiction.
- 2.2 Where a matter is referred under the ITF Rules to the Independent Tribunal, the Chairman of the Panel (or his designee) will appoint one or three members of the Panel (as specified in the ITF Rules or otherwise as determined by the Panel Chairman) to sit as the Independent Tribunal in that particular matter. Where three members are appointed, the Panel Chairman (or his designee) will designate one of them (who should be legally qualified) to chair that Independent Tribunal (the **Tribunal Chairman**). The Panel Chairman may choose to appoint himself to sit as the chair or as a member of an Independent Tribunal.
- 2.3 Each member of the Independent Tribunal must (a) have had no prior involvement with the matter in question; and (b) act independently and impartially at all times.
- 2.4 Upon being appointed to an Independent Tribunal, each member must provide a declaration to the parties (via Sport Resolutions), disclosing any facts or circumstances known to them that might call into question their impartiality or independence in the matter in the eyes of a well-informed and fair-minded observer. If any such facts or circumstances arise thereafter, the member must provide an updated declaration to the parties.
- 2.5 Any objection to a member of an Independent Tribunal must be made to the Panel Chairman without delay, and in any event within 14 days of (a) receipt of the written declaration referred to in Article 2.4; or (b) learning by any other means (including any subsequent means) of the facts or circumstances giving rise to the objection. Failure to do so will constitute a waiver of that objection. The Panel Chairman (or his designee) will rule on the objection.
- 2.6 If a member of an Independent Tribunal is unable, unwilling or unfit to hear the matter (whether because of an objection to his independence or impartiality or otherwise), the Panel Chair may, in his absolute discretion, either (a) appoint another Panel member to replace him on the Tribunal; or (b) authorise the remaining Tribunal members to hear the matter alone.
- 2.7 The Panel Chairman (or his designee) has the power, whether on the application of a party or of his own motion:
 - (a) to order consolidation before the same Independent Tribunal of two or more separate proceedings, and/or to order that concurrent hearings be held in relation to such proceedings; and
 - (b) to exercise any of the powers of the Independent Tribunal in relation to urgent matters that require a decision before an Independent Tribunal has been convened.
- 2.8 The mandate and authority of the Independent Tribunal in a particular matter will depend on the nature and scope of the matter in question:

Primary decision-maker

- (a) Where the Independent Tribunal is being asked to hear and determine an allegation that a rule or requirement has been breached, and (if so) to determine the appropriate sanction for that breach, the Panel will hear and determine the allegation in accordance with Articles 3-7 of these Procedural Rules.

- (b) Where the Independent Tribunal is being asked to make a 'first instance' decision or ruling on any other particular issue or matter, i.e., it is the first time the issue or matter has been decided, again the Independent Tribunal will hear and determine the matter in accordance with Articles 3-7 of these Procedural Rules.
- (d) Where a decision that has been made by another person or body on a particular matter is referred to the Independent Tribunal under the ITF Rules for review:

Appellate jurisdiction

- i. If the decision comes before the Independent Tribunal by way of appeal (i.e., one of the parties to the matter exercised a right they had under the ITF Rules to appeal the decision to the Independent Tribunal), then the Independent Tribunal will hear and determine that appeal in accordance with Article 8 of these Procedural Rules.

Supervisory jurisdiction

- ii. If there is no right of appeal against the decision that is being referred to the Independent Tribunal, then the Panel will hear and determine the challenge to that decision in accordance with Articles 3-7 of these Procedural Rules. It will exercise a supervisory jurisdiction only, i.e., it will not decide the challenge based on whether it agrees with the decision on the merits, but instead will only uphold the challenge if the party bringing the challenge satisfies it that:
 - A. the decision is irrational (i.e., it falls outside the range of what a reasonable person might decide), arbitrary or capricious;
 - B. the decision is based on an error of law (i.e., it is contrary to the ITF Rules, properly construed, or to applicable law); or
 - C. the procedure that was followed in reaching the decision was so unfair as to be contrary to natural justice.

3. CONDUCT OF THE PROCEEDINGS

3.1 To commence proceedings before the Independent Tribunal, the relevant party must send a written notice to the Chairman of the Independent Panel (c/o Sport Resolutions), containing or accompanied by the following:

- (a) contact details of the parties;
- (b) a copy of the provision in the ITF Rules conferring jurisdiction on the Independent Tribunal to hear and determine the matter;
- (c) a statement of the party's case;
- (d) any proposals in relation to the conduct or venue of the proceedings, including whether any interim relief is sought and/or whether an expedited time-table is requested; and
- (e) confirmation that a copy of the written notice, together with all enclosures, is being served simultaneously on the other party/parties and on anyone else entitled to such notice under the applicable ITF Rules.

- 3.2 The Independent Tribunal will determine the dispute in accordance with the applicable ITF Rules and these Procedural Rules, with English law applying subsidiarily. Where the applicable ITF Rules and these Procedural Rules conflict, the ITF Rules will prevail.
- 3.3 While the seat of all proceedings before an Independent Tribunal shall be London, England, and hearings before the Independent Tribunal shall also be held in London as a general rule, the Tribunal Chairman may hold hearings elsewhere for good cause shown.
- 3.4 The parties are entitled to be represented by legal counsel and/or any other representative(s) in all proceedings before an Independent Tribunal, at their own expense.
- 3.5 The Independent Tribunal will have all powers necessary for, and incidental to, the discharge of its responsibilities under the applicable ITF Rules and these Procedural Rules, including (without limitation) the power, whether on the application of a party or of its own motion:
- (a) to rule on its own jurisdiction;
 - (b) to appoint an independent expert to assist or advise it on specific issues, with the costs of such expert to be borne as directed by the Independent Tribunal;
 - (c) to expedite or to adjourn, postpone or suspend its proceedings, upon such terms as it shall determine, where fairness so requires;
 - (d) to extend or abbreviate any time-limit set in the ITF Rules or these Procedural Rules, or by the Independent Tribunal itself, save for any limitations period or deadline for filing an appeal;
 - (e) to order any party to make any property, document or other thing in its possession or under its control available for inspection by the Independent Tribunal and/or any other party;
 - (f) to allow one or more third parties to intervene or be joined in the proceedings, to make all appropriate procedural directions in relation to such intervention or joinder, and thereafter to make a single final decision or separate decisions in respect of all parties;
 - (g) to order that certain preliminary and/or potentially dispositive questions (e.g. as to jurisdiction, or as to whether a condition precedent has been met) be heard and determined in advance of any other issues in the matter; and
 - (h) to award interim relief or other conservatory measures on a provisional basis and subject to final determination.
- 3.6 Any procedural rulings may be made by the Tribunal Chairman alone, unless he prefers to have the full Independent Tribunal make the ruling in any particular instance.
- 3.7 As soon as practicable after the Independent Tribunal has been convened in a particular manner, the Tribunal Chairman will issue directions to the parties in relation to the procedure and time-table to be followed in the proceedings. Where he deems appropriate, he may hear from the parties (in person or by telephone or video-conference) prior to issuing such directions. In particular, the directions will:
- (a) fix the date, time and venue of the hearing;

- (b) establish a schedule for the exchange of one or more rounds of written submissions and evidence in advance of the hearing, so that each party understands in advance of the hearing the case that it has to meet; and
- (c) make any appropriate order in relation to the disclosure of relevant documents and/or other materials in the possession or control of any party.

4. HEARINGS

- 4.1 Save for good cause shown by any party, all hearings will be conducted on a private and confidential basis, attended only by the parties to the proceedings and their representatives, witnesses and experts, as well as the representatives of any third party/parties permitted under the applicable ITF Rules to attend in order to participate in and/or to observe the proceedings.
- 4.2 The hearing will be conducted in English. Any party wishing to rely on documents written in another language must provide certified English translations at his/its own cost. Any party who wishes or whose witness wishes to give oral evidence in another language must bring an independent translator to translate that evidence into English, at his/its own cost.
- 4.3 The procedure to be followed at the hearing will be at the discretion of the Tribunal Chairman, provided always that the hearing must be conducted in a fair manner, with a reasonable opportunity provided for each party to present evidence (including the right to call and to question witnesses/experts), and present his case to the Independent Tribunal. The Independent Tribunal will have discretion as to whether to receive evidence from witnesses/experts in person, by telephone, by video conference, or in writing, and may question a witness/expert and control the questioning of a witness/expert by a party.
- 4.4 Unless the Independent Tribunal orders that parties may make submissions in writing only, all parties should attend hearings in person, along with any representative(s). The non-attendance of any party and/or his/its representative(s) at the hearing, after due notice has been given, will not prevent the Independent Tribunal from proceeding with the hearing in his/its absence, whether or not written submissions have been made by or on behalf of that party.
- 4.5 Once the parties have completed their respective submissions, the Independent Tribunal will retire to deliberate in private. The Independent Tribunal will make its decision unanimously or by majority. No Tribunal member may abstain.

5. BURDEN AND STANDARD OF PROOF

- 5.1 Unless otherwise specified in the applicable ITF Rules, the burden of proof shall be on the party asserting the claim or fact in issue, and the standard of proof to be met shall be the balance of probabilities.

6. EVIDENCE

- 6.1 No formal rules as to admissibility of evidence shall apply. Facts may be established by any reliable means.
- 6.2 A person is bound by and may not dispute facts determined by a court or tribunal of competent jurisdiction in a decision in proceedings to which he was a party that is not the subject of a pending appeal.

6.3 Where a party refuses to appear at a hearing to answer questions, or appears but refuses to answer a question, the Independent Tribunal may infer that the answer(s) would be adverse to that party.

7. DECISIONS

7.1 The Independent Tribunal will announce its decision to the parties in a written, reasoned decision, dated and signed by at least the Tribunal Chairman, as soon as practicable after the hearing. A copy of the decision will also be sent to any other person/entity that has a right of appeal against the decision.

7.2 Unless the ITF Rules provide otherwise, the ITF may publish the decision on the ITF's website and/or otherwise as it sees fit, but otherwise the proceedings shall be confidential and no Tribunal member, party, third party observer, witness, or other participant in the proceedings or recipient of the decision may disclose any facts or other information relating to the proceedings.

7.3 The Independent Tribunal may award such relief as it sees fit, including declaratory and/or injunctive relief, and/or a monetary award. Where the Tribunal decides that a breach of the ITF Rules has been established, then (subject to any specific sanctioning provisions set out in those rules) the Independent Tribunal may impose such sanctions as it deems appropriate (any of which may be suspended), including (without limitation):

- (a) a caution, reprimand and/or warning as to future conduct;
- (b) a fine (which, unless otherwise specified, shall be payable within 30 days);
- (c) a compensation payment;
- (d) disqualification of results, with all resulting consequences, including forfeiture of any related medals, titles, ranking points, and/or prize money;
- (e) disqualification/expulsion from competitions or events,
- (f) a specified period of ineligibility from participating in any aspect of tennis and/or in any activities organised, controlled, recognised and/or sanctioned by the ITF.

7.4 Where the Independent Tribunal finds that an argument advanced by a party was frivolous or otherwise entirely without merit, the Independent Tribunal may award costs against that party. Otherwise, however, each of the parties will bear its own costs (legal, expert, and otherwise), and the ITF will bear the costs of convening the Independent Tribunal.

7.5 Decisions of Independent Tribunals shall be final and binding on all parties, and may not be challenged or appealed other than strictly as set out in Article 9 of these Procedural Rules. All parties waive irrevocably any right to any other form of appeal, review or recourse by or in any court or judicial authority, insofar as such waiver may validly be made. For the avoidance of doubt, such a waiver extends to any rights that would otherwise arise under sections 45 or 69 of the Arbitration Act 1996.

8. PROCEEDINGS BEFORE AN INDEPENDENT TRIBUNAL SITTING AS AN APPEAL PANEL

8.1 Where the ITF Rules provide that a decision may be appealed to the Independent Tribunal, the Panel Chairman shall convene an Independent Tribunal in accordance with Article 2.2 of these

Procedural Rules to hear and determine that appeal, sitting not as a first instance body but as an appeal body.

- 8.2 Save where they are contradicted or pre-empted by provisions of this Article 8, all of the other Articles of these Procedural Rules will apply in appeal proceedings before the Independent Tribunal, *mutatis mutandis* (i.e. with any amendments deemed to have been made that are necessary to take account of the different context).
- 8.3 Unless otherwise specified in the applicable ITF Rules, notice of the appeal must be filed with the Chairman of the Independent Panel and with the other party or parties to the appeal no more than twenty-one (21) days after the date that the appealing party receives the decision in question. The notice of appeal must specify the decision being appealed, the provision in the ITF Rules conferring jurisdiction on the Independent Tribunal to hear the appeal, the grounds of appeal, the contact details of the other party or parties to the appeal, and whether any interim relief is sought and/or an expedited time-table is requested.
- 8.4 The decision being appealed will remain in full force and effect pending determination of the appeal unless the Independent Tribunal orders otherwise.
- 8.5 The Independent Tribunal will have full power to hear the matter under appeal *de novo*, as if it were deciding the matter as the first instance decision-maker. It will have all of the powers that the actual first instance decision-maker would have had under the applicable ITF Rules in relation to the facts as found by the Independent Tribunal on appeal. Where it sees fit, however, the Independent Tribunal may remit the matter to the first instance decision-maker for re-hearing.

9. APPEALS FROM DECISIONS OF THE INDEPENDENT TRIBUNAL

- 9.1 The following decisions of the Independent Tribunal may not be appealed:
 - 9.1.1 A preliminary or procedural ruling by the Panel Chairman pursuant to Article 2.5, or by the Independent Tribunal sitting as a first instance body, may not be appealed unless (i) it is dispositive (i.e., it amounts to a final resolution of the matter); or (ii) it is subsequently incorporated into a final decision.
 - 9.1.2 Decisions of the Independent Tribunal sitting as an appeal body shall be final and binding on all parties. Neither this Article 9 nor any other right of appeal shall apply to them. All parties waive irrevocably any right to any form of appeal, review or recourse by or in any court or judicial authority in respect of such decisions, insofar as such waiver may validly be made. For the avoidance of doubt, such a waiver extends to any rights that would otherwise arise under sections 45 or 69 of the Arbitration Act 1996.
- 9.2 Save as set out in Article 9.1, a decision of the Independent Tribunal may be appealed by a party to the proceedings before the Independent Tribunal (and/or by any other person given a right of appeal under the ITF Rules) to the Court of Arbitration for Sport (the **CAS**) in accordance with this Article 9.
- 9.3 The deadline for filing an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision in question by the appealing party. The decision being appealed will remain in full force and effect pending determination of the appeal unless the CAS orders otherwise.
- 9.4 The CAS Code of Sports-related Arbitration will apply to the proceedings, which will be determined in accordance with the applicable ITF Rules, with English law applying subsidiarily.

The language of the proceedings shall be English, and unless the parties agree otherwise the CAS Panel will be a three-person panel.

- 9.5 The CAS award resolving the appeal will be final and binding on all parties, and no party will have a right of appeal against that award. All parties waive irrevocably any right to any form of appeal, review or recourse by or in any court or judicial authority in respect of such award, insofar as such waiver may validly be made. For the avoidance of doubt, such a waiver extends to any rights that would otherwise arise under sections 45 or 69 of the Arbitration Act 1996 and to any rights of challenge arising under Swiss law that are capable of waiver.
- 9.6 The ITF may publish the CAS award on the ITF's website and/or otherwise as it sees fit, but otherwise the CAS proceedings shall be confidential and no CAS Panel member, party, third party observer, witness, or other participant in the proceedings or recipient of the decision may disclose any facts or other information relating to the proceedings.

10. MISCELLANEOUS

- 10.1 Any notice or other communication required to be given by a party pursuant to these Procedural Rules must be given in writing and must be sent by first class post or transmitted by email. If sent by first class post, the notice or other communication will be deemed to have been given on the first day (other than a Saturday or Sunday) on which banks are open for business in London (a **Working Day**) after the day it is sent. If transmitted by email before 5pm (London time) on a Working Day, the notice or other communication will be deemed to have been given on that Working Day. If transmitted by email on a non-Working Day, or at or after 5pm (London time) on a Working Day, the notice or other communication will be deemed to have been given on the next Working Day.
- 10.2 A party's last-known residence or place of business or email will be a valid address for the purpose of any notice or other communication unless notification of a change to such address has been communicated to all parties and to the Panel Chairman or the Tribunal Chairman.
- 10.3 Any period of time specified in these Procedural Rules will begin to run on the day following the day when a notice or other communication is given. Non-Working Days occurring during the period are included in calculating the running of that period, save that if the period, so calculated, ends on a non-Working Day, then it will be deemed to end on the next Working Day.
- 10.4 Where a matter arises that is not otherwise provided for in the applicable ITF Rules or in these Procedural Rules, the Panel Chairman or (if an Independent Tribunal has been convened) the Tribunal Chairman will resolve it as he sees fit.
- 10.5 Any deviation from any provision of these Procedural Rules and/or any irregularity, omission, technicality or other defect in the procedures followed by the Panel Chairman or by any Independent Tribunal will not invalidate any finding, procedure or decision unless it is shown to render the proceedings unreliable or to have caused a miscarriage of justice.
- 10.6 Neither the Panel Chairman, nor the members of the Independent Tribunal, nor any expert appointed to assist an Independent Tribunal, will be liable to any party for any act or omission unless it is actuated by malice or bad faith.

Approved: 18 December 2018

Effective: 1 January 2019