

### **Disciplinary Commission**

#### Establishing the Commission - New Regulation 8.15

A submission from the Executive Committee

#### Purpose or Objective 1

To establish a specialist commission to deal with disciplinary matters within ISAF.

#### Proposal 1

Insert new Regulation 8.15:

#### **Disciplinary Commission**

8.15 Disciplinary Commission

#### ***Constituting the Commission***

- 8.15.1 The Disciplinary Commission has been established by the Executive Committee in accordance with Regulation 8 in order to carry out ISAF's disciplinary functions under the Racing Rules of Sailing and the ISAF Regulations.
- 8.15.2 Regulation 8.2 does not apply to the appointment or removal of members of the Commission. Council shall appoint the Chairman, Vice-Chairman and members of the Commission on the nomination of the Executive Committee for a specific term. The membership of the Commission shall include a sufficient number of legally qualified members to enable it to discharge its functions.
- 8.15.3 Notwithstanding Regulation 8.2, Council may remove a member of the Commission for good cause.
- 8.15.4 Reserved for future use
- 8.15.5 Reserved for future use

#### ***Terms of Reference***

- 8.15.6 The Commission shall independently exercise the functions allocated to it. Regulation 8.5 does not apply to the Commission, but it shall report to the Executive Committee on how it has carried out its functions.
- 8.15.7 The Commission shall adopt and publish its own rules of procedure to govern its meetings, hearings and operations. The Commission shall publish its decisions unless it believes it is inappropriate to do so.
- 8.15.8 The Disciplinary Commission shall:
- (a) exercise ISAF's disciplinary functions under the Racing Rules of Sailing and the ISAF Regulations (where those functions are allocated to it by ISAF Regulation and in particular Regulations 19, 35, 36 and Appendix 5);
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- (b) publish guidance on dealing with misconduct and discipline in the sport of sailing and guidelines for sanctions for misconduct;
- (c) ensure ISAF's disciplinary procedures are fit for purpose and kept up to date, reflecting best practice across other Olympic sports;
- (d) operate in a transparent and fair manner;
- (e) issue advice and guidance to MNAs and ISAF Race Officials on the investigation and hearing of misconduct cases;
- (f) promote fair sailing and the principles of sportsmanship; and
- (g) when requested to do so, advise other ISAF bodies and committees on disciplinary matters.

### Current Position

1. At present, there is no body responsible for dealing with reports to ISAF under RRS 69. This means the Executive Committee, as the body under the Constitution responsible for dealing with 'operational issues' must deal with cases referred to ISAF.
2. There are no regulation or rules within ISAF as to how RRS 69 cases are to be dealt with.

### Reasons

1. Disciplinary cases, especially involving competitors, require specialist knowledge and experience. Disciplinary cases often need to be dealt with quickly, in between the quarterly meetings of the Executive Committee.
2. Disciplinary decisions by ISAF should be taken by an independent body, separate from the Executive Committee. This will strengthen ISAF's position in the event of challenge by an aggrieved competitor or official and will also promote good governance.
3. The composition of the Commission and its appointment mechanism follows the model for the Ethics Commission already approved by Council.
4. These proposals were presented in draft to the 2012 Annual Conference for feedback and comment. The Race Officials Committee, Constitution Committee and Racing Rules Committee approved the documents in principle and any detailed feedback has been incorporated into the documents.

### Purpose or Objective 2

If Council approves the establishment of the Disciplinary Commission (Submission M00-13), to make consequential amendments to other Regulations.

### Proposal 2

Amend the following Regulations as follows:

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**32. RACE OFFICIALS PERFORMANCE**

- 32.8 Where formal action is to be taken, the Chairman of the Race Officials Committee shall ~~either~~ appoint a panel of three people to investigate the report ~~or act as a petitioner to the Executive Committee in accordance with Regulation 35.1.~~ The panel, if appointed, shall include two members who will be members of the Race Officials Committee or its sub-committees and may include one member of other ISAF committees and sub-committees if appropriate.
- 32.9 The panel shall investigate the report and recommend to the ~~Chairman~~ **Chairmen** of the Race Officials Committee and all its Sub-committees either that no further action is taken, or that sanctions shall be imposed ~~or that that matter shall be referred to the Executive Committee,~~ **or that a report be made to the Secretary General for referral to the Disciplinary Commission under Regulation 35.** The Race Official concerned shall be informed of the investigation at its inception and the complaints concerned shall be supplied with all relevant documents. He shall be entitled to answer the allegations in writing or before the panel as he elects. If sanctions are recommended they shall be specified. The ~~Chairman~~ **Chairmen** of the Race Officials Committee and its Sub-Committees ~~chairmen~~ shall confirm the recommendation or decide that the sanction to be imposed shall be less than that recommended. On confirmation the Chairman shall report the decision to the Executive Committee.
- 32.11 If the recommendation is that the appointment be terminated, the matter will be referred to the Executive Committee which shall be the only body with authority to terminate an appointment ~~and shall treat the recommendation as a grievance under regulation 35.~~
- 32.12 ~~Except where Regulation 32.11 applies, the~~ **A** Race Official can appeal against any sanction, **except a referral to the Disciplinary Commission,** imposed under Regulation 32 to the ISAF Review Board

**36. ETHICS*****Report***

- 36.9 The report of the Ethics Commission shall be sent to the Secretary General, who shall refer it to the Executive Committee. The Executive Committee shall consider the report and may then refer the case to ~~a Hearing Committee~~ **the Disciplinary Commission** under Regulation 35. If the Complaint concerns a member of the Executive Committee, the report shall instead be referred to Council.
- 36.10 After the conclusion of any case, the report of the Ethics Commission and the decision of the Executive Committee shall be published and brought to the attention of Council.

***Sanctions***

- 36.11 The sanctions that may be applied by ~~a Hearing Committee~~ **the Disciplinary Commission** or the Review Board for a breach of the Code shall be set out in the Code itself.
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## APPENDIX 5 – BETTING & ANTI CORRPUTION CODE

2.3 Each Participant submits to the exclusive jurisdiction of any Hearing Panel convened under these Rules to hear and determine charges brought by **ISAF** ~~[the International Federation]~~ and to the exclusive jurisdiction of CAS to ~~determine any appeal from a Hearing Panel decision.~~

7.2.1 The Hearing Panel shall **be the Disciplinary Commission acting in accordance with its established procedures.** ~~be appointed by the ISAF in accordance with the principles set out in Rule 7.1 below, under Regulation 35 the members of the Hearing Panel shall have had no prior involvement with the case and shall not, unless otherwise agreed between the parties, be from the same country as the Participant alleged to have violated these Rules.~~

### RIGHT OF APPEAL

9.1 The following decisions made under these Rules may be appealed either by the International Sailing Federation or the Participant who is the subject of the decision exclusively to **the Review Board** ~~CAS~~ in accordance with this Rule:

- (a) a decision that a charge of breach of these Rules should be dismissed on procedural or jurisdictional grounds;
- (b) a decision that a Violation has been committed;
- (c) a decision that no Violation has been committed;
- (d) a decision to impose a Sanction, including a Sanction that is not in accordance with these Rules;
- (e) a decision not to impose a Sanction;
- (f) any other decision that is considered to be erroneous or procedurally unsound.

9.2 The time for filing an appeal to **the Review Board** ~~CAS~~ shall be twenty-one days (21) from the date of receipt of the decision by the appealing party.

9.3 Any decision and any Sanctions imposed shall remain in effect while subject to the appeal process, unless **the Review Board** ~~CAS~~ directs otherwise.

~~9.4 The decision of CAS shall be final and binding on all parties and on all National Federations and there shall be no right of appeal from the CAS decision. No claim may be brought in any other court, tribunal or via any other dispute resolution procedure or mechanism.~~

### Current Position

As above.

### Reasons

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If Council approves the creation of a Disciplinary Commission, then the above Regulations will need amending in order to transfer the disciplinary functions above to the Commission and to fit in with its functions.

These proposals were presented in draft to the 2012 Annual Conference for feedback and comment. The Race Officials Committee, Constitution Committee and Racing Rules Committee approved the documents in principle and any detailed feedback has been incorporated into the documents.