

***South African Institute for
Drug-Free Sport***



**Operational Standard for Appeal Hearings
for Anti-Doping cases under the South African Institute
for Drug-free Sport Anti-Doping Rules**

Table of Contents

INTRODUCTION	2
1. Preliminary Procedures and appointment of the Appeal Panel to adjudicate on hearings flowing from an Independent Doping Hearing Panel (“IDHP”)	2
2. Time for Filing Appeals	3
3. Application for Condonation for late filing of Appeal	4
4. Hearing “In Writing”	5
5. Virtual Hearings.....	5
6. Application to Lead New Evidence	5
7. House Keeping Rules.....	6
8. Possible Grounds of Appeal against the Finding of an IDHP (1 st Instance Hearing).....	6
8.1 Procedural unfairness before the Tribunal	6
8.2 Basic Rules which should have been adhered to:	7
9. Determining when a hearing was procedurally unfair	8
10. Hearing held in the Absence of the Athlete/Other Person	8
11. Impartiality	9
12. Representation	10
13. Multiple parties.....	10
14. Notice of Set Down	10
15. Filing of the Parties’ respective Written Submissions unless otherwise directed by the Chairperson:	10
16. Proceedings of the Appeal Hearing	11
16.1 Procedure	11
16.2 Discussion between Appeal Panel members	11
16.3 Other Procedural Requirements.....	11
17. The Leading of Evidence at the Appeal stage	12
18. Decision of the Appeal Panel	13
19. Notices and Domicilium.....	13
20. Increasing the Sanction on Appeal	13

Operational Standard for Appeal Hearings for Anti-Doping hearings heard in terms of the South African Institute for Drug-Free Sport (“SAIDS”) Anti-Doping Rules (“ADR”)¹.

IN ACCORDANCE WITH ARTICLE 13 OF THE SAIDS ADR

Decisions made under the World Anti-Doping Agency Code (the “**WADC**”)² or SAIDS ADR may be appealed as set forth below in Articles 13.2 through 13.7 thereof, or as otherwise provided in SAIDS ADR, the Code or the International Standards³. Such decisions shall remain in effect while under appeal unless the appellate body orders otherwise.

Appeals that involve **International Level Athletes**⁴ or cases arising from participation in international events shall be heard by the Court of Arbitration for Sport (“**CAS**”)⁵.

Implied in the right to appeal must be the right to be informed of the right to appeal and the procedure to be followed to have one’s appeal adjudicated.

The right to appeal also implies the right to a fair hearing in accordance with the rules of natural justice which includes the *audi alteram partem rule*⁶.

INTRODUCTION

This document shall serve as a working document to guide the Appeal Panel on the General Procedural Rules for Appeals.

1. Preliminary Procedures and appointment of the Appeal Panel to adjudicate on hearings flowing from an Independent Doping Hearing Panel (“IDHP”)

- 1.1. An *Athlete*⁷ or *Other Person*⁸, well as other parties having a right to appeal under Article 13.2.3 of the SAIDS ADR are notified of their right to appeal in the decision eligible for appeal under Article 13.2 and 13.4 of the SAIDS ADR.
- 1.2. When a notice for an appeal is received from a party eligible to appeal in terms of Article 13.2, the Appellant must pay an appeal fee of three thousand Rand (R 3, 000.00) composed of the filing fee of one thousand Rand (R 1, 000.00), plus a hearing fee of two thousand Rand (R 2, 000.00) within seven (7) days of receipt of such request from SAIDS, which will be accompanied by an

¹ Every word that is capitalised but not defined herein, has the meaning ascribed to it under the WADC, as the context may indicate.

² means the World Anti-Doping Code which is a set of rules and regulations established by WADA. The WADC is the core document that harmonizes anti-doping policies, rules, and regulations across sports and countries worldwide.

³ means a standard adopted by WADA in support of the Code. Compliance with an International Standard (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard were performed properly. International Standards shall include any Technical Documents issued pursuant to the International Standard.

⁴ means athletes who compete in sport at the international level, as defined by each international federation, consistent with the International Standard for Testing and Investigations. The international federation is free to determine the criteria it will use to classify Athletes as International-Level Athletes.

⁵ means the Court of Arbitration for Sport is an International quasi-judicial body that specializes in resolving sports -related disputes through arbitration. CAS is a prominent institution in the world of sports, ensuring that disputes are resolved fairly and consistently across international borders.

⁶ means that each party is entitled to a fair hearing and given the opportunity to respond to evidence against them.

⁷ means any person who competes in sport at the international level as defined by each International Federation or the national level as defined by each national anti-doping organization. And anti-doping organization has discretion to apply anti-doping rules to an athlete who is neither an international level athlete nor a national level athlete, and thus to bring them within the definition of athlete. For further clarification please refer to extended comments on this meaning in the World Anti-Doping Code.

⁸ means a natural Person or an organization or other entity.

invoice (unless the Appellant is SAIDS). Proof of payment must be supplied to SAIDS and the Registrar.

- 1.3. SAIDS will request the Registrar⁹ to appoint the Appeals Panel to hear the Athlete's appeal of the ruling from the IDHP in respect of an anti-doping rule violation. The appointed members of the Appeals Panel shall have had no prior involvement with the case.
- 1.4. The Registrar shall appoint an Appeal Panel consisting of a minimum of three (3) members to hear the Appeal of which at least one must be a legal practitioner who will act as chairperson for the Appeal Panel.
- 1.5. Both parties, as well as the Appeal Panel shall be provided with a hearing bundle, which is to be compiled and couriered and sent electronically to all parties and the Panel no later than ten (10) days before the Appeal hearing. This time period may be altered in appropriate circumstances.
- 1.6. All parties inclusive of the Appeal Panel must indicate dates of availabilities as soon as reasonably possible to the Registrar.
- 1.7. Upon the appointment of the Appeal Panel, the Registrar shall notify its composition to the Appellant and Respondent, and determine a suitable date to set the matter down for an appeal hearing.
- 1.8. If payment for the appeal is not received within seven (7) days of when the invoice was sent to the Appellant and/or the Notice of Appeal was not filed within the twenty-one (21) days of receipt of the written decision, the Appellant is required to submit an application for condonation¹⁰ together with a Notice of Appeal indicating the reasons for the late filing.
- 1.9. The Chairperson of the Appeals Board shall make a written decision, with reasons on condonation and whether the appeal should proceed.

2. Time for Filing Appeals

Appeals Under Article 13.2.2

- 2.1. The time limit to file an appeal to the SAIDS's Appeal Board shall be twenty-one (21) days from the date of receipt of the decision by the appealing party.
- 2.2. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal, but which was not a party to the proceedings having led to the decision subject to appeal:

⁹ The Registrar plays an administrative role to provide support to the Appeals Board and is an independent legal practitioner. The Registrar will, *inter alia*, conduct the appointment of panel members to serve on hearings of first instance and appeal hearings, receive applications made for appeals, and facilitate availability of parties for a hearing date/s.

¹⁰ means a process whereby a person is required to make an application to condone the fact that he/she has failed to refer their dispute timeously and now they are asking for the action of excusing their failure to comply (pardon) with the timeframes prescribed for the referral of their dispute be heard.

- 2.2.1. Within fifteen (15) days from notice of the decision, such party/ies shall have the right to request a copy of the full case file pertaining to the decision from the *Anti-Doping Organization*¹¹ that had *Results Management*¹² authority;
- 2.2.2. If such a request is made within the fifteen (15) day period, the party making such request shall have twenty-one (21) days from receipt of the file to file an appeal to the National Anti-Doping Appeal Panel.
- 2.3. The above notwithstanding, the filing deadline for an appeal filed by WADA shall be the later of¹³:
 - 2.3.1. Twenty-one (21) days after the last day on which any other party having a right to appeal could have appealed, or
 - 2.3.2. Twenty-one (21) days after WADA's receipt of the complete file relating to the decision.

3. Application for Condonation for late filing of Appeal

- 3.1. If an Appeal is referred outside the time periods prescribed by the SAIDS ADR, the referring party needs to apply for condonation to the Chairperson of the Appeals Board. These rules require the Applicant to bring an application on affidavit (sworn statement), explaining why the referral is late and why the Chairperson of the Appeals Board should allow the Appeal to continue.
- 3.2. The **Application for Condonation** should contain submissions on the following:
 - 3.2.1. The degree of lateness: the Applicant must indicate the number of days the referral for appeal is late;
 - 3.2.2. The reason for lateness: the Applicant needs to explain why the dispute was referred late by explaining the steps taken prior to referring the Appeal to the SAIDS Appeal Board;
 - 3.2.3. The prejudice that will be suffered by the Applying party if condonation is refused. Prejudice must be detailed in full, it is not sufficient to state merely that prejudice will be suffered;
 - 3.2.4. The Applicant's prospects of success should the Application for Condonation be granted. Prospects of Success must be detailed fully, including an explanation of how an Appeal Panel would reach a different decision than that of the IDHP;
 - 3.2.5. The Applicant will be obliged to make their submissions in the form of a sworn affidavit, duly commissioned before a commissioner of oaths. An application that is not made on sworn affidavit will be referred back to the Applicant for compliance with this rule;

¹¹ means WADA or a Signatory that is responsible for adopting rules for initiating, implementing or enforcing any part of the Doping Control process. This includes, for example, the International Olympic Committee, the International Paralympic Committee, other Major Event Organizations that conduct Testing at their Events, International Federations, and National Anti-Doping Organizations.

¹² means the process encompassing the timeframe between notification as per Article 5 of the *International Standard for Results Management*, or in certain cases (e.g., *Atypical Finding*, *Athlete Biological Passport*, *Whereabouts Failure*), such pre-notification steps expressly provided for in Article 5 of the *International Standard for Results Management*, through the charge until the final resolution of the matter, including the end of the hearing process at first instance or on appeal (if an appeal was lodged).

¹³ As per Article 13.2.3.5 of the WADC and Article 13.6.2 of SAIDS ADR.

- 3.2.6. The Applicant must serve a copy of the application on the other party. The other party has the opportunity to oppose the application on its credibility of the sworn testimony leading to the application for condonation and must be submitted to the Registrar in writing within five (5) days;
- 3.2.7. The Chairperson of the SAIDS Appeal Board or another person designated by the Chairperson will consider whether or not to grant the condonation. This is done by considering the application on the basis of the sworn statement served. Importance of the matter and prospects of success are factors the Chairperson will need to take into consideration;
- 3.2.8. The Chairperson will record in writing his/her decision and explain why condonation was granted or refused. This decision cannot be appealed; and
- 3.2.9. The Registrar will transmit the decision to the parties.

4. Hearing “In Writing”

- 4.1. Depending on the circumstances of a case, the parties may agree to conduct a hearing “in writing”, based on written submissions, without the need for an oral hearing:
 - 4.1.1. Any such request must be made in the Appellant’s Notice of Appeal and/or the Respondent’s response, or otherwise in writing to the Appeal Panel;
 - 4.1.2. Such a request must expressly state the reasons for why a hearing should be conducted without the need for an oral hearing;
 - 4.1.3. Both parties must agree to this request; and
 - 4.1.4. The Appeal Panel shall proceed to render a decision on the written submissions submitted.

5. Virtual Hearings

- 5.1. In accordance with Article 8.1 of the SAIDS ADR, parties may jointly elect to have their hearing held through a virtual hearing. The parties and the Panel shall be guided by the virtual hearings operational manual.

6. Application to Lead New Evidence¹⁴

- 6.1. The Appellant must clearly indicate whether they intend on calling any new witnesses or adducing any new evidence in the appeal proceedings, and provide reasons thereof in the Notice of Appeal.

¹⁴ Refer to below Section 15 - The Leading of Evidence at Appeal Stage.

- 6.2. The proceedings of the Appeal shall respect the principles described in Articles 8, 9 and 10 of the WADC International Standard for Results Management (“ISRM”).
- 6.3. The Appellant shall present their case and the Respondent party or parties shall present their case(s) in reply.
- 6.4. If any party or their representative fail to attend a hearing after notification, the hearing may nevertheless proceed.

7. House Keeping Rules

- 7.1. Subject to the provisions of the SAIDS ADR and the ISRM, the Appeal Panel shall have the power and necessary authority to regulate the procedures of the hearing:
 - 7.1.1. The Appeal Panel, appointed by the Registrar to hear any appeal, has the power, at its absolute discretion, to appoint an expert sports physician from a pool of medical experts approved by the SAIDS Appeal Board, to provide expertise or to assist and advise the Appeal Panel on matters in an appeal that require the specific attention of a medical expert;
 - 7.1.2. Each member upon appointment shall disclose to the Chairperson any circumstances likely to affect impartiality¹⁵ with respect to any of the parties; and
 - 7.1.3. Relevant International Federations, National Federations¹⁶, National Olympic Committees and WADA each have a right to attend the hearings of the Appeal as an observer.

8. Possible Grounds of Appeal against the Finding of an IDHP (1st Instance Hearing)

8.1. Procedural unfairness before the Tribunal

- 8.1.1. An Appeal (or part of an appeal) could seek to challenge the fairness of the hearing before the tribunal on the basis of what might be considered an unfair procedure that could have taken place at the hearing of first instance before an IDHP. For example: hearsay evidence having been admitted as acceptable and given evidentiary value, without a witness having been called to provide testimony;
- 8.1.2. Appeal proceedings must comply with the guidelines provided in the WADC ISRM, however deviation from the ISRM does not invalidate the anti-doping rule violation;
- 8.1.3. Appeal Hearings shall not automatically be considered de novo¹⁷. In cases where both parties have access to the testimony of all witnesses, it shall not be necessary to conduct

¹⁵ is a principle of justice holding that, decisions should be based on objective criteria, rather than on the basis of bias, prejudice, or preferring the benefit to one person over another for improper reasons.

¹⁶ means a national or regional entity in South Africa which is a member of or is recognized by an International Federation as the entity governing the International Federation's sport in that nation or region in South Africa.

¹⁷ is the Latin term for "anew," "from the beginning," or "afresh".

a de novo hearing and re-examine all witnesses. Only in cases where no proper record of the original hearing may be available, the Athlete's appeal may be treated as a hearing *de novo*;

- 8.1.4. Where there is transcribed record of the 1st instance of the hearing, the athlete must be given access to it. The costs of such transcription shall be borne by equally by both parties;
- 8.1.5. In some cases, Athletes appeal because they regard the original hearing as irregular: an Athlete is entitled to both a fair hearing and fair appeal. The test is whether the Athlete has suffered prejudice. An Athlete must detail why they believe a hearing was irregular, it is not sufficient to merely state it was irregular;
- 8.1.6. In cases of de novo appeal proceedings, the substantive and procedural issues are re-canvassed, all deficiencies are then corrected in the same sense that the finding of the Appeal Panel replaces the earlier proceedings in totality;
- 8.1.7. But, where an Appeal is restricted to procedural issues and the appropriateness of the sanction, it will not cure a serious irregularity in the earlier proceedings; and
- 8.1.8. If it is established on Appeal that the original hearing was procedurally irregular, the proper course of action to take is to rehear the matter in the appeal given that an Appeal Panel cannot remit the matter for a rehearing under the WADC.

8.2. Basic Rules which should have been adhered to:

- 8.2.1. In considering any Procedural Irregularities, the Appeal Panel would need to consider (particularly if the *Athlete/Other Person* had been unrepresented before the IDHP, or is not represented at the Appeal stage) whether the *Athlete/Other Person* had been:
 - 8.2.1.1. Informed of the charge "sufficiently", particularly to understand the nature and content of the charge against him/her;
 - 8.2.1.2. Informed of the consequences of the conviction on the charge;
 - 8.2.1.3. Informed of their rights under the applicable rules, the WADC and the ISRM or code of conduct such as;
 - 8.2.1.4. The right to be heard before a finding on the merits of the charge is made;
 - 8.2.1.5. The right to be informed of a sanction before a sanction is imposed;
 - 8.2.1.6. The right to present evidence;
 - 8.2.1.7. The right to challenge the evidence presented by SAIDS, through cross-examination of witnesses; and
 - 8.2.1.8. The right to sufficient time to prepare.
- 8.2.2. Informed of the implication of certain provisions of the applicable set of Rules (whether SAIDS, WADA, the relevant sporting federation, for example in the case of a rugby player, Regulation 21 (Anti-doping) of the World Rugby in respect of:
 - 8.2.2.1. Onus;
 - 8.2.2.2. Duty to begin;

- 8.2.2.3. Strict liability¹⁸; and
- 8.2.2.4. That which the Athlete/Player needs to prove(disprove) that there had been no serious or material procedural irregularities.

8.3. **Determining when a hearing was procedurally unfair**

- 8.3.1. In order determine whether the Appellant had a procedurally unfair hearing, the Appeal Panel must consider whether irregularities were committed by the IDHP in the hearing of first instance;
- 8.3.2. The question ultimately is what legal effect the irregularity in question had on the proceedings. For example: if hearsay evidence was admitted without objection at the time and that evidence was found to be supported/corroborated evidence from other sources in respect of a peripheral matter it should not have an impact on the correctness of the outcome or the process which led to that outcome;
- 8.3.3. An irregularity does not per se result in an unfair hearing necessitating the setting aside of the finding on appeal. It must be shown that the finding and sanction was tainted by the irregularity, that the Appellant had been prejudiced thereby; and
- 8.3.4. Whether or not prejudice resulted is really a question that can be determined only by having regard to:
 - 8.3.4.1. The whole hearing;
 - 8.3.4.2. The way in which it was conducted by the tribunal;
 - 8.3.4.3. The ability, as shown during the course of the hearing, of the Athlete/Other person to represent him or herself adequately; and
 - 8.3.4.4. Whether the evidence adduced in its totality led justifiably to the outcome.

9. **Hearing held in the Absence of the Athlete/Other Person**

- 9.1. The Appeal Panel is entitled to proceed with a hearing in the Athlete's or Other Person's absence if that Athlete or Other Person refuses to attend or participate in hearing without good cause, or if the Athlete/Other Person has disappeared and his/her whereabouts are unknown, after a reasonable attempt has been made to locate and bring the notice of the hearing to their attention.
- 9.2. If the *Athlete/Other Person* requests a postponement because it is difficult for them to attend, or to prepare a case more fully, the Appeal Panel should grant the request if the Athlete/Other Person gives plausible reasons.
- 9.3. Should the hearing proceed, it would be important to present evidence and have the Appeal Panel make a written finding on the evidence so presented.

¹⁸ is the rule which provides that under Article 2.1 and Article 2.2, it is not necessary that intent, *Fault*, negligence, or knowing *Use* on the *Athlete's* part be demonstrated by the *Anti-Doping Organization* in order to establish an anti-doping rule violation.

- 9.4. The *Athlete/Other Person* must also be able to understand the proceedings and be aware of the consequences should he/she not attend the hearing.
- 9.5. The Chairperson should ensure that technical points are fully explained to the *Athlete/Other Person* and that the *Athlete/Other Person* understands the charge.
- 9.6. In particular, the Chairperson should ensure that a plea of guilty or not guilty in fact represents the true position of the *Athlete/Other Person*.

10. Impartiality

- 10.1. The Appeal Panel must have, and keep, an open mind throughout the proceedings. This does not mean that they must refrain from adopting an 'interventionist' approach when appropriate. Probing witnesses or *Athletes/Other Persons* to get to the bottom of issues does not in itself indicate bias, provided this is done even-handedly.
- 10.2. The rule against bias emanates from administrative law. This requires that chairpersons at an anti-doping hearings not only be impartial, but also that there should be no grounds for even suspecting that their decisions might be influenced by extraneous factors, even if this is in fact not the case.
- 10.3. Similar considerations apply in employment law, which requires that chairpersons should not have been involved in the incident which gave rise to the hearing, or have any possible personal interest in the outcome of the dispute, or have been involved in trapping the *Athlete* or *Other Person* or otherwise have harboured a demonstrable suspicion against him/her.
- 10.4. If the *Athlete* or *Other Person* or *Party* have reason to doubt that the Chairperson is impartial, they may apply for the Chairpersons recusal. A Chairperson is duty bound to consider an application for recusal, but not necessarily to grant it.
- 10.5. An unsubstantiated allegation of bias is not itself sufficient to warrant recusal, however insulting the terms of the application may be.
- 10.6. Parties who withdraw from the proceedings after recusal application are dismissed do so at their peril; if the recusal application is subsequently found to have been unwarranted, the *Party* in the matter will be held to have waived their rights to a hearing in their presence.
- 10.7. The *Party's* right to be heard by an impartial hearing Chairperson does not imply that such persons are entitled to have a hand in the choice of Chairperson. That right resides with the Registrar.
- 10.8. Failure to recuse oneself could give rise to an application in *res media* for the High Court to interdict the continuation of the hearing.

11. Representation

- 11.1. A reason often given in support of requests for postponement is that a particular representative is not available.
- 11.2. Although an *Athlete/Other Person* charged with an anti-doping offence does not have the right to a preferred chosen representative if others are available, Appeal Panel should not unreasonably refuse such requests.
- 11.3. Accused *Athletes/Other Persons* are entitled to be represented or assisted by a 'friend' or fellow Athlete or legal representative or an official from his/her sporting body at an anti-doping hearing.
- 11.4. The WADC and the ISRM also confirms the right to be represented by counsel at the *Athlete or Other Person's* own expense.
- 11.5. SAIDS shall generally inform accused *Athlete/Other Persons* of their right to be represented.
- 11.6. If the *Athlete/Other Person* declines to appoint a representative, however, SAIDS is under no obligation to provide one.

12. Multiple Parties

- 12.1. Where two or more *Athletes/Other Persons* are charged with participation in the same offence, they may be heard together unless the evidence of one may incriminate the others. If a Chairperson is told or senses that this may be the case, a separation of the hearing should be ordered.
- 12.2. In cases of mass misconduct, where dozens or perhaps hundreds of *Athletes/Other Persons* were involved, collective hearings are permissible, provided that each *Athlete/Other Person* is given a fair opportunity to state a case, should they wish to do so.

13. Notice of Set Down

- 13.1. The Notice of Set Down will confirm the date and venue of the hearing as well as a set order of procedure, including the days allocated for each party to file their Heads of Argument respectively.

14. Filing of the Parties' respective Written Submissions unless otherwise directed by the Chairperson

- 14.1. The Appellant must file their Heads of Argument twenty (20) days before the date on which the appeal hearing is set down to take place, which may include the following as a guideline:
 - 14.1.1. Briefly stating the facts and legal arguments giving rise to the appeal;
 - 14.1.2. All exhibits/annexures clearly listed and numbered; and

14.1.3. Evidence he/she intends to rely on.

14.2. If the Appellant intends to submit new evidence, this must first be dealt with as directed in this procedure manual.

14.3. The Respondent must file their Heads of Argument in reply to the Appellant ten (10) days before the appeal hearing date which may include but not limited to the following matters:

14.3.1. Statement of defence;

14.3.2. Any defence of lack of jurisdiction;

14.3.3. Any exhibits or specification of other evidence upon which Respondent intends to rely; and

14.3.4. Names of any new witnesses, including a brief summary of their expected testimony or witness statement, if any unless the Chairperson decides otherwise.

15. Proceedings of the Appeal Hearing

15.1. Procedure

15.1.1. The appeal hearing must be conducted in accordance with the procedure set out in the WADC, the ISRM and in accordance with the rules of natural justice, subject to the person presiding over the appeal can determine the further conduct of the hearing – including whether an appeal hearing may be public, in which event, good cause for such a public hearing must be shown (refer to paragraph 8.8 ISRM).

15.2. Discussion between Appeal Panel members

15.2.1. After having heard argument (or evidence if that is to be presented) in the appeal (or other hearing) the panel members are at liberty, if not encouraged, to exchange their views of the matter; and

15.2.2. That exchange should be on the basis that a draft written finding/outcome would be prepared by one of the members of the panel, the Chairperson should be legally qualified to draft it, with the other members having an opportunity thereafter to settle that draft (make the changes they wish to make). The decision is either by consensus or simple majority.

15.3. Other Procedural Requirements

15.3.1. Subject to the provisions of the SAIDS ADR, the Appeal Chairperson shall have the power to regulate its own procedures;

15.3.2. Each party shall have the right to be represented at a hearing, at their own expense. SAIDS shall not be held responsible for the Athlete/Other Persons, if they have chosen not to appoint a legal representative;

- 15.3.3. Each party shall have the right to an interpreter at the hearing at that party's own expense;
- 15.3.4. Each party to the proceedings has the right to access and present relevant evidence, to submit written and oral submissions, and to call and examine witnesses. It shall be within the Appeal Panel's discretion to accept testimony by teleconference, video call or other means as necessary;
- 15.3.5. Based on the schedules of the parties and the Appeal Panel, the hearings shall take place within sixty (60) days of the Appellant filing the Notice of Appeal. Under exceptional circumstances, this delay may be extended only once for up to thirty (30) days. The Appeal Panel may adjourn a hearing and set a date for the continuation of the hearing within thirty (30) days; and
- 15.3.6. Any failure by any party to comply with any requirement or direction of the Appeal Panel shall not prevent the Appeal Panel from proceeding and such failure may be taken into consideration by the Appeal Panel when making its decision.

16. The Leading of Evidence at the Appeal Stage

- 16.1. The general rule is that the Appeal Panel is not limited in its scope to hear evidence that was not before the Panel of first instance pursuant to Article 13. Such evidence is known colloquially as "fresh evidence" and will only be admitted in limited circumstances. The following are matters the Appeal Panel will consider in exercising its discretion as to whether to admit fresh evidence:
 - 16.1.1. Whether the evidence could have been obtained with reasonable diligence for use before the Panel of first instance;
 - 16.1.2. Whether the evidence is such that, if given it would probably have an important influence on the result of the matter (though it need be decisive); and
 - 16.1.3. Whether the evidence is credible though it need not be incontrovertible.

(The above is subject to the permission of the Appeal Panel whether fresh evidence may be adduced either orally or written).
- 16.2. These rules provide for the following possibilities – the appeal being decided on the record of the proceedings before the tribunal or evidence being led at the appeal hearing itself and the appeal being decided on that basis or a combination of the two.
- 16.3. The Chairperson of the Appeal Board, being the one in charge of determining the procedure to be followed can nevertheless decide not to allow oral evidence, for example if the intention thereof is simply to repeat the evidence which was led before the tribunal.
- 16.4. Normally the Appeal Panel should confine itself solely to the record of proceedings.
- 16.5. New evidence will only be allowed upon good cause shown, and in particular why the evidence was not presented at the time of hearing, because it only recently became available for example, and is material to a proper determination of the appeal.

17. Decision of the Appeal Panel

- 17.1. Within sixty (60) days of the end of the hearing, the Appeal Chairperson shall issue a written, dated and signed decision that respects the principles of Article 9 of the ISRM.
- 17.2. The decision shall notably include the full reasons for the decision and for any period of Ineligibility imposed, including (if applicable) a justification for why the maximum potential sanction was not imposed.
- 17.3. The Appeal Panel shall further be entitled to make an appropriate order as to the payment of costs in each appeal matter, including punitive cost orders where a party has deliberately wasted time and resources of the Appeal Panel in accordance with Article 10.12 of the SAIDS Anti-Doping Rules.
- 17.4. The Appeal Panel cannot defer or make a ruling on a case that it has heard to return to the hearing panel of first instance.
- 17.5. The Appeal Panel may adjourn a hearing and set a date for the continuation of the hearing within thirty (30) days.

18. Notices and Domicilium

- 18.1. The parties choose as their *domicilium citandi et executandi* their respective addresses set out on the formal notices issued for all purposes arising out of or in connection with the anti-doping rule violation.
- 18.2. For the purpose of this appeal processes and procedures the parties primary addresses shall be their email addresses.
- 18.3. Any written notice or communication given in terms of the Appeal actually received by one of the parties from another including by facsimile or email transmission shall be adequate written notice or communication to such Party.
- 18.4. Any notice or communication given in terms of this Appeal shall if posted by prepaid registered post or courier be deemed to be have been received by the addressee on the 8th (eighth) business day following the date of such posting.

19. Increasing the Sanction on Appeal

- 19.1. Where this is expressly permitted by the WADC and SAIDS ADR, an Appeal Panel may increase the sanction on Appeal, but the *Athlete/Other Person* should be warned of the possibility that the sanction may be increased before the hearing commences.
- 19.2. Otherwise, a sanction may not be increased on appeal. Even when an Appeal Panel imposes a lesser sanction, that sanction cannot exceed the maximum permitted by the WADC.

Approved by the Chairperson of SAIDS Appeals Board



Thabiso Kutumela

Ms. Thabiso Kutumela

Effective as from: 9 October 2023