Arbitration Court for ESports (ACES)

How to conduct arbitral proceedings under the WESA Arbitration Rules
I. What is arbitration?

- **Arbitration** is a mechanism for the *resolution of disputes* and similar to normal state court proceedings.
- The decision at the end (the so-called *arbitral award*) is *similar to a court judgment*.
- There is *no appeal* against the decision, so a final decision can be received *quicker* than in state court proceedings.
- You can *propose an arbitrator* who has *specific know how* regarding the current dispute.
- The proceedings and the outcome are *confidential*.
- Contrary to many state court proceedings, you can with the consent of the arbitrator(s) make use of *electronic communication* in the proceedings.
II. What to do if a dispute occurs

- Is there still room for negotiations with the other side? If yes, first consider discussing and negotiating the dispute with the other side.

- If negotiations fail or are not feasible, consider starting arbitration proceedings (see below III.). If you want to start arbitration proceedings under the WESA Arbitration Rules, you should check whether the WESA Arbitration Rules apply to your dispute. This is the case if the dispute is related to your rights and duties following from WESA regulations and contracts that include a clause referring disputes to arbitration under the WESA Arbitration Rules.

- Consult a lawyer in order to check whether a time barring of your claim is imminent.

- Also determine whether you urgently need a preliminary decision which conserves the current status or provides for provisional measures; if urgent measures are necessary, you can request an Emergency Arbitrator to decide on a request for provisional measures (see below VIII.).

- As arbitration proceedings follow certain rules and might be quite complex, we recommend consulting a specialized lawyer for your representation in the arbitration proceedings.
III. How to initiate arbitration proceedings

- First, you should find out whether one or three arbitrators have to decide the current dispute:
  - If there is no specific agreement between the parties, the dispute is decided by **THREE** arbitrator;
  - The parties can however agree on proceedings by **ONE** arbitrator (the so-called **Sole Arbitrator**). If the basis of the dispute is a contract between the parties, they can already agree in the contract on arbitration by one arbitrator. However, they can also make such an agreement later when the dispute occurs.

- For starting the arbitration proceedings, a **NOTICE OF ARBITRATION** must be drafted. It should contain:
  - the **name** in full, **address** and other **contact details** of each party;
  - the **name** in full, **address** and other **contact details** of any person(s) representing you in the arbitration proceedings;
  - a **description of the nature and circumstances** of the dispute and of the **basis of the claim** (for example a provision in a contract or of a WESA Regulation);
  - a **statement of the relief sought** (that is, the requested outcome) and, if a payment is requested, the amount of the payment; if the claim is not related to a payment, an estimate of the value of this claim, if possible;
  - if the dispute will be decided by **THREE** arbitrators, **proof of the agreement between the parties on three arbitrators** and a **nomination of one arbitrator**; you are free to choose the person of the arbitrator, but it must be a person which is impartial and
independent of all participants; the person does not have to be a jurist, but it might make sense to nominate someone who has an understanding of arbitration proceedings and of the legal issues in dispute;

- if the dispute will be decided by ONE arbitrator, a proposal regarding the person of this arbitrator; the person must be a jurist and should be able to speak and work in the language of the arbitration (English, if the parties have not agreed otherwise).

- You can also make proposals for or comment on the place of arbitration, language of arbitration and/or applicable law on the merits (that is, the subject matter) of the case. The place of arbitration inter alia determines which additional arbitration laws apply to the proceedings (e.g. if the place of arbitration is in Germany, German arbitration law is applied in addition to the WESA Arbitration Rules).

- You should attach any documents or information that might be relevant for the resolution of the dispute.
IV. How to react to a Notice of Arbitration

- If you are the receiver of a Notice of Arbitration (the so-called Respondent), you will have **30 days to send an Answer** to the Notice of Arbitration to the person who sent the Notice of Arbitration (the so-called Claimant).

- The Answer should contain:
  - your **name** in full, **address** and other **contact details**;
  - the **name** in full, **address** and other **contact details** of any person(s) representing you in the arbitration proceedings;
  - your comments on the **nature and circumstances** of the dispute and on the **basis of the claim** (for example a provision in a contract or of a WESA Regulation) stated by the Claimant;
  - your response to the **relief sought** (that is, the outcome requested by the Claimant);
  - if the dispute will be decided by **THREE arbitrators**, a **nomination of one arbitrator**; you are free to choose the person of the arbitrator, but it must be a person which is impartial and independent of all participants; the person does not have to be a jurist, but it might make sense to nominate someone who has an understanding of arbitration proceedings and of the legal issues in dispute;
  - if the dispute will be decided by **ONE arbitrator**, a **proposal regarding the person of this arbitrator**; the person must be a jurist and should be able to speak and work in the language of the arbitration (English, if the parties have not agreed otherwise).

- You can also make **proposals** for or **comment** on the **place of arbitration**, **language of arbitration** and/or **applicable law on the merits (that is, the subject matter) of the case**. The place of arbitration **inter alia** determines which additional arbitration laws apply to the proceedings (e.g. if the place of arbitration is in Germany, German arbitration law is applied in addition to the WESA Arbitration Rules).

- You should attach **any documents or information** that might be relevant for the resolution of the dispute.

- If in your view you have a **counterclaim** against the Claimant, you can include your counterclaim into the Answer, provided that your counterclaim is based on the **same contract or regulation** or on a contract or regulation which also contains a **reference to the WESA Arbitration Rules**. The counterclaim should include the following information:
  - a **description of the nature and circumstances** of the dispute and of the **basis of the counterclaim** (for example a provision in a contract or of a WESA Regulation);
- a **statement of the relief sought** (that is, the requested outcome) and, if a payment is requested, the amount of the payment; if the claim is not related to a payment, an estimate of the value of this claim, if possible;

- copies of **any relevant agreements** and, in particular, of the **arbitration agreement(s)** related to the counterclaim.

- You should attach **any further documents or information** that might be relevant for the resolution of the dispute.
V. What to do if there are multiple parties on either side

- If there are several claimants and/or several respondents, all claimants together and/or all respondents together have to make a proposal for the Sole Arbitrator (in case of one arbitrator) or choose one of the arbitrators (in case of three arbitrators).
• If there are already arbitration proceedings going on and you would like to **join the proceedings** (either as another claimant on claimant's or as another respondent on respondent's side), you can submit a request to join to the arbitrator(s).

• You can only join if you are also bound by an **arbitration agreement** according to the WESA Arbitration Rules or if the other parties **agree** to your joinder.

• A joinder is **only possible if** the parties have not submitted their first round of written submissions yet. The **decision** if you are allowed to join is made by **the arbitrator(s)**.
VI. What happens if an arbitrator cannot be agreed on?

- If the parties are not able to agree on a Sole Arbitrator or if in case of a 3-member-tribunal the two arbitrators nominated by the parties are not able to agree on a third arbitrator, each party can apply to the responsible state court to make the choice instead.

- The responsible state court is determined by the place of arbitration. The place of arbitration can be agreed by the parties. If there is no such agreement, the default place of arbitration is Zurich, Switzerland.
VII. The next steps

- After the Arbitral Tribunal/Sole Arbitrator has been appointed, the Arbitral Tribunal/Sole Arbitrator will usually discuss with the parties the next steps and request from them the payment of an advance of the arbitrator's fees and expenses.

- The advance on the fees and expenses usually includes the expected entire fee(s) and expenses and is paid in equal shares by the parties.

- The fees of the arbitrator(s) can be seen in the Annex A to the WESA Arbitration Rules. They are lump sums based on the amount in dispute.

- The final decision on who has to bear the costs of the proceedings will be taken by the arbitrator(s) in the final award.

- Please be aware that the proceedings are confidential. So you should not disclose any facts or other information related to the arbitration proceedings to persons who are not participating in the proceedings. The award is also confidential, unless the parties agree otherwise.
VIII. How to provide a request for urgent measures to an Emergency Arbitrator

- If there is a dispute and you need a preliminary urgent decision in order to protect your claim or rights, you can ask the arbitrator(s) for a decision on so-called interim measures. This might be for example helpful if the other side tries to remove all its assets or if you want to stop the other side from a certain action as long as the arbitration proceedings are not finished yet.

- If the Arbitral Tribunal/Sole Arbitrator has not been nominated yet and you need interim measures, you can ask an Emergency Arbitrator to decide on your request. On the WESA website there will be contact details to which you can send your request for interim measures.

- The request for interim measures should in principle contain the same information as a Notice of Arbitration (see above). You should in particular state why you deem your right(s) violated and why a preliminary urgent decision is necessary.

- After the Emergency Arbitrator has received your request for interim measures, he/she will determine the next steps.

- It is possible that the Emergency Arbitrator will at the beginning ask you for a preliminary advance on his/her fees in the amount of EUR 1,000.

- In case of a request for interim measures, the other side has the right to ask you to also start the main arbitration proceedings. If you do not start the main proceedings within 14 days from the receipt of the other side's request to do so, a decision on interim measures will lose its legal effect.
IX. How much are the fees of the arbitrator(s)?

- The arbitrator(s) receive a fee that is calculated in relation to the amount in dispute. They further receive a reimbursement of their reasonable expenses related to the conduct of the arbitration proceedings.

- In case of **THREE** arbitrator, the fees are as follows (rounded net amounts):

<table>
<thead>
<tr>
<th>If the amount in dispute is</th>
<th>the approximate total fees for all three arbitrators are</th>
</tr>
</thead>
<tbody>
<tr>
<td>EUR 10,000</td>
<td>EUR 5,100</td>
</tr>
<tr>
<td>EUR 100,000</td>
<td>EUR 14,025</td>
</tr>
<tr>
<td>EUR 1,000,000</td>
<td>EUR 63,525</td>
</tr>
<tr>
<td>EUR 10,000,000</td>
<td>EUR 195,525</td>
</tr>
</tbody>
</table>

- In case of **ONE** arbitrator, the fee is as follows (**rounded net amounts**):

<table>
<thead>
<tr>
<th>If the amount in dispute is</th>
<th>the approximate fee for the arbitrator is</th>
</tr>
</thead>
<tbody>
<tr>
<td>EUR 10,000</td>
<td>EUR 1,900</td>
</tr>
<tr>
<td>EUR 100,000</td>
<td>EUR 5,525</td>
</tr>
<tr>
<td>EUR 1,000,000</td>
<td>EUR 25,025</td>
</tr>
<tr>
<td>EUR 10,000,000</td>
<td>EUR 77,025</td>
</tr>
</tbody>
</table>

- At the beginning of the arbitration proceedings the arbitrator(s) will ask the parties for an advance on their expected fees and expenses.

- In the final decision the arbitrator(s) will decide which of the parties has to bear the (entire or partial) costs. The general principle is that the losing party has to bear the costs. If the claim is only partially successful, the parties have to share the costs in relation to the ratio of winning and losing.

- **Example 1:** Party A wants to have EUR 10,000 from party B. In the final decision the arbitrator(s) decide that party B has to pay this entire amount to party A. In that case Party B also has to bear the entire costs of the arbitration proceedings.
• **Example 2:** Party A wants to have EUR 10,000 from party B. In the final decision the arbitrator(s) decide that party B has to pay only a partial amount of EUR 8,000 to party A. In that case party A has to pay 20% and party B 80% of the costs of the arbitration proceedings.

• In case of **anti-doping proceedings** the arbitrator(s) receive the following fees:
  o In case of **THREE** arbitrators: EUR 3,100 for all three arbitrators and in addition EUR 400 for each additional hearing day, if there is more than one hearing day;
  o In case of **ONE** arbitrator: EUR 1,000 and in addition EUR 400 for each hearing day.