

## ANTI-CORRUPTION CODE FOR PARTICIPANTS

### PROCEDURAL RULES OF CRICKET SOUTH AFRICA

#### Introduction

In circumstances where Cricket South Africa ("CSA") is the *Prosecuting Authority* under the ICC's Anti-Corruption Code for Participants (the "Code"), this document sets out the procedural rules that will apply and will be followed by CSA when carrying out its role under the Code. References to Code Articles are to Articles of the Code (unless otherwise stated) and words in italicized text shall have the meaning ascribed to them in Appendix 1 of the Code or as set out in Appendix 1 to these Procedural Rules.

#### Procedural Rules

##### (a) Investigations and Notices of Charge

1. For the purposes of Code Article 4.6, in its role as the *Prosecuting Authority* CSA's decision on whether a *Participant* has a case to answer and thus should receive a Notice of Charge will be exercised by the Chief Executive Officer of CSA, acting in consultation with the Chair of CSA's *Anti-Corruption Unit* and CSA's *Designated Anti-Corruption Officer*.
2. For the purposes of Code Article 4.7.1, the CSA's decision on whether or not to impose a *Provisional Suspension* on a *Participant* will be exercised by the Chief Executive Officer of CSA, acting in consultation with the Chair of CSA's *Anti-Corruption Unit* and CSA's *Designated Anti-Corruption Officer*.
3. For the purposes of Code Articles 4.7.2 and 4.7.3, any application by a *Participant* to lift their *Provisional Suspension* will be heard and determined by the Chair of the Chair of CSA's *Anti-Corruption Unit* (sitting alone).
4. For the purposes of Code Article 4.8.1, the responsibility for determining whether a *Participant's* deadline for responding to the *Notice of Charge* can be extended lies with CSA's *Designated Anti-Corruption Officer*.
5. For the purposes of Code Article 5, the disciplinary process for hearings falling within the jurisdiction of CSA as *Prosecuting Authority* is as set out below:

##### (b) The Disciplinary Procedure

###### 5.1 Hearings under the *Anti-Corruption Code*

5.1.1 Where CSA alleges that a *Participant* has committed an offence under the *Anti-Corruption Code*, and the *Participant* submits the response required under Article 4.6.6 by the specified deadline, disputing the charge and/or the sanctions to be imposed for such offence under the *Anti-Corruption Code*, the matter shall be referred to CSA's *Designated Anti-Corruption Officer*.

5.1.2 CSA's *Designated Anti-Corruption Officer*, acting in consultation with the Chair of CSA's *Anti-Corruption Unit*, shall appoint three members to form an *Anti-Corruption Tribunal* to hear the case. At least two members of the *Anti-Corruption Tribunal* shall be senior lawyers, one of whom shall sit as the Chair of the *Anti-Corruption Tribunal*. The other member may be a senior lawyer, an ex-player or an experienced former cricket administrator. The appointed members shall be independent of the parties and shall have had no prior involvement with the case.

5.1.3 The Chair of the *Anti-Corruption Tribunal* shall convene a preliminary hearing with CSA and its legal representatives, together with the *Participant* and his/her legal representatives (if any). The preliminary hearing should take place as soon as possible by telephone conference call unless the Chair determines otherwise. The non-participation of the *Participant* or his/her representative at the preliminary hearing, after proper notice of the preliminary hearing has been provided, shall not prevent the Chair of the *Anti-Corruption Tribunal* from proceeding with the preliminary hearing, whether or not any written submissions are made on behalf of the *Participant*. Notice of any orders or directions made at the preliminary hearing will be sent by CSA to the *Participant*, his/her representatives and the domestic cricket association to which the *Participant* is affiliated without unnecessary delay following the conclusion of the preliminary hearing.

5.1.4 The purpose of the preliminary hearing shall be to allow the Chair to address any procedural issues that need to be resolved prior to the hearing date. In particular (but without limitation), the Chair shall:

5.1.4.1 determine the date(s) upon which the full hearing shall be held. Save where the Chair in his or her discretion orders otherwise, the full hearing should ordinarily take place no more than forty (40) days after the date of the preliminary hearing;

5.1.4.2 establish dates reasonably in advance of the date of the full hearing by which:

- (a) CSA shall submit an opening brief with argument on all issues that CSA wishes to raise at the hearing and a written statement from each witness that CSA intends to call at the hearing, setting out a summary of his/her direct evidence, and enclosing copies of the documents that CSA intends to rely on at the hearing;
- (b) the *Participant* shall submit an answering brief, addressing CSA's arguments and setting out argument on the issues that he/she wishes to raise at the hearing, as well as a written statement from each witness that he/she intends to call at the hearing, setting out a summary of that witness's direct evidence, and enclosing copies of the documents that he/she intends to rely on at the hearing; and
- (c) CSA may (at its discretion) submit a reply brief, responding to the answer brief of the *Participant* and providing a witness statement from each rebuttal witness that CSA intends to call at the hearing, setting out a summary of his/her direct evidence, and enclosing copies of any further documents that CSA intends to rely on at the hearing; and

- 5.1.4.3** order such consolidation with other case(s) as the Chair shall deem appropriate. For example, where two or more *Participants* are alleged to have committed offences under the *Anti-Corruption Code*, they may both be dealt with at the same hearing where the proceedings arise out of the same incident or set of facts, or where there is a clear link between separate incidents; and
- 5.1.4.4** make such order as the Chair shall deem appropriate (subject to any principles of applicable national law) in relation to the production of relevant documents and/or other materials between the parties.
- 5.1.5** The *Participant* shall be required to raise at the preliminary hearing any legitimate objection that he/she may have to any of the members of the *Anti-Corruption Tribunal* convened to hear his/her case. Any unjustified delay in raising any such objection shall constitute a waiver of the objection. If any objection is made, the Chair of the *Anti-Corruption Tribunal* shall rule on its legitimacy (or, if the objection relates to the Chair of the *Tribunal*, the Chair of CSA's *Anti-Corruption Unit* shall rule on its legitimacy).
- 5.1.6** If, because of a legitimate objection or for any other reason, a member of the *Anti-Corruption Tribunal* is, or becomes, unwilling or unable to hear the case, then the Chair of CSA's *Anti-Corruption Unit* may, at his/her absolute discretion: (a) appoint a replacement member of the *Anti-Corruption Tribunal*; or (b) authorise the remaining members to hear the case on their own provided that the two remaining members are lawyers.
- 5.1.7** Subject to the discretion of the Chair of the *Anti-Corruption Tribunal* to order otherwise for good cause shown by either party (for example, and notwithstanding clause 5.1.8, where, having due regard to the seriousness of the alleged offence, the costs of attending any hearing are disproportionate to the *Participant's* means and therefore prohibit him/her from having a fair opportunity to present his/her case), or unless otherwise agreed between the parties, hearings before the *Anti-Corruption Tribunal* shall (a) take place at CSA's offices in Johannesburg; and (b) be conducted on a confidential basis.
- 5.1.8** Each of CSA and the *Participant* has the right to be present and to be heard at the hearing and (at his/her or its own expense) to be represented at the hearing by legal counsel of his/her or its own choosing. At the reasonable discretion of the *Anti-Corruption Tribunal*, a representative of the domestic cricket association to which the *Participant* is affiliated may also attend any such hearing (strictly as an observer only, with no right to be heard and subject to confidentiality in accordance with clause 5.1.7 above). Where there is compelling justification for the non-attendance by any party or representative at the hearing, then such party or representative shall be given the opportunity to participate in the hearing by telephone or video conference (if available).
- 5.1.9** Without prejudice to Code Article 3.2.2, the *Participant* may choose not to appear in person at the hearing, but instead may provide a written submission for consideration by the *Anti-Corruption Tribunal*, in which case the *Anti-Corruption Tribunal* shall consider the submission in its deliberations. However, the non-attendance of the *Participant* or his/her representative at the hearing, without compelling justification, after proper notice of the hearing has been provided, shall not prevent the *Anti-Corruption Tribunal* from proceeding with the hearing in his/her absence, whether or not any written submissions are made on his/her behalf. A copy of any such written submission will be sent by CSA to the domestic cricket association to which the *Participant* is affiliated without unnecessary delay after it is received.
- 5.1.10** The procedure to be followed at the hearing (including whether to convene a hearing or, alternatively, to determine the matter (or any part thereof) by way of written submissions alone) shall be at the discretion of the Chair of the *Anti-Corruption Tribunal*, provided that the hearing is conducted in a manner that affords the *Participant* a fair and reasonable opportunity to present evidence (including the right to call and to question witnesses by telephone or videoconference where necessary), address the *Anti-Corruption Tribunal*, and present his/her case.
- 5.1.11** Save where the Chair orders otherwise for good cause shown by either party, the hearing shall be in English, evidence shall be given in English (with the cost of any necessary translation borne by the party offering the evidence), and certified English translations shall be submitted of any non-English documents put before the *Anti-Corruption Tribunal* (with the cost of the translation borne by the party offering the documents). If required by the Chair, CSA shall make arrangements to have the hearing recorded or transcribed (save for the private deliberations of the *Anti-Corruption Tribunal*). The costs of such transcription shall be paid by CSA, subject to any costs-shifting order that the *Anti-Corruption Tribunal* may make further to Article 5.2.4.
- 5.1.12** Notwithstanding any of the other provisions of this *Anti-Corruption Code*, at any time during the proceedings it shall be open to a *Participant* charged with breach(es) of the *Anti-Corruption Code* to admit the breach(es) charged, whether or not in exchange for an agreement with CSA on the appropriate sanction to be imposed upon him/her in order to avoid the need for a hearing before the *Anti-Corruption Tribunal*. Any such discussions between CSA and the *Participant* shall take place on a "without prejudice" basis and in such a manner that they shall not delay or in any other way interfere with the proceedings. Any resulting agreement shall be evidenced in writing, signed by both CSA's Chief Executive Officer and the *Participant*, and shall set out the sanction imposed on the *Participant* for his/her breach of the *Anti-Corruption Code* (the "**Agreed Sanction**"). In determining the Agreed Sanction CSA will have due regard to the range of sanctions set out in Article 6.2 for the offence(s) in question, but it shall not be bound to impose a sanction within that range where it reasonably considers (at its absolute discretion) that there is good reason to depart therefrom. Upon receipt of notice of the Agreed Sanction, the *Anti-Corruption Tribunal* shall discontinue the proceedings on the terms thereof without the need for any further hearing. Instead CSA's Chief Executive Officer (in consultation with the *Designated Anti-Corruption Officer* and the Chair of CSA's *Anti-Corruption Unit*) shall promptly issue a public decision confirming the *Participant's* admission of the offence(s) charged and the imposition of the *Agreed Sanction*. Before issuing that public decision, CSA's Chief Executive Officer will provide notice of it to the domestic cricket association to which the *Participant* is affiliated, on a confidential basis.

## **5.2 Decisions of the *Anti-Corruption Tribunal***

- 5.2.1** The *Anti-Corruption Tribunal* shall announce its decision in writing, with reasons, as soon as possible after, and, in any event, within sixty (60) days of, the conclusion of the hearing. That written decision will set out and explain:

- 5.2.1.1** with reasons, the *Anti-Corruption Tribunal's* findings as to whether any offence(s) under the *Anti-Corruption Code* has/have been committed;

5.2.1.2 with reasons, the *Anti-Corruption Tribunal's* findings as to what sanctions, if any, are to be imposed (including any fine and/or period of *Ineligibility*);

5.2.1.3 with reasons, the date that such period of *Ineligibility* shall commence pursuant to Code Article 6.4; and

5.2.1.4 the rights of appeal described in Code Article 7.

5.2.2 CSA will provide the domestic cricket association to which the *Participant* is affiliated with a full written copy of the findings and decisions of the *Anti-Corruption Tribunal* (including any sanctions imposed by the *Anti-Corruption Tribunal*) at the same time as such decision is provided to the *Participant* and prior to publicly announcing such decision.

5.2.3 The *Anti-Corruption Tribunal* shall have discretion to announce the substance of its decision to the parties prior to the issue of the written reasoned decision referred to in Article 5.2.1 in cases where a *Provisional Suspension* has been imposed or where it otherwise deems appropriate. For the avoidance of doubt, however: (a) the *Anti-Corruption Tribunal* shall still be required to issue a written, reasoned decision in accordance with Article 5.2.1; and (b) the time to appeal pursuant to Code Article 7 shall not run until receipt of that written, reasoned decision. Notice of such decision will be provided by CSA to the domestic cricket association to which the *Participant* is affiliated without unnecessary delay following its announcement.

5.2.4 The *Anti-Corruption Tribunal* has the power to make a costs order against any party to the hearing in respect of the costs of convening the *Anti-Corruption Tribunal* and of staging the hearing and/or in respect of the costs (legal, expert, travel, accommodation, translation or otherwise) incurred by the parties in relation to the proceedings where it deems fit (for example, but without limitation, where it considers that such party has acted spuriously, frivolously or otherwise in bad faith). If it does not exercise that power, CSA shall pay the costs of convening the *Anti-Corruption Tribunal* and of staging the hearing, and each party shall bear its own costs for participation therein (legal, expert, travel, accommodation, translation or otherwise).

5.2.5 Subject only to the rights of appeal under Code Article 7, the *Anti-Corruption Tribunal's* decision shall be the full, final and complete disposition of the matter and will be binding on all parties.

#### (c) Appeals

6. For the purposes of Code Article 7, the *Appeals Body* in cases where CSA is the *Prosecuting Authority* shall be the Court of Arbitration for Sport ("CAS").
7. In all appeals to CAS pursuant to Code Article 7:
  - 7.1 CAS's Code of Sports-related Arbitration shall apply, save as amended below.
  - 7.2 Where required in order to do justice (for example to cure procedural errors at the first instance hearing), the appeal shall take the form of a re-hearing *de novo* of the issues raised by the case. In all other cases, the appeal shall not take the form of a *de novo* hearing but instead shall be limited to a consideration of whether the decision being appealed was erroneous.
  - 7.3 The governing law shall be South African law and the appeal shall be conducted in English, unless the parties agree otherwise.
  - 7.4 The decision of CAS on the appeal shall be final and binding on all parties, and no right of appeal shall lie from the CAS decision.

#### APPENDIX 1 – DEFINITIONS

*Anti-Corruption Tribunal.* The *Adjudicatory Body* established by CSA to adjudicate upon any conduct in accordance with Clauses 5.1 and 5.2 of these procedural rules.

*Anti-Corruption Unit.* The anti-corruption unit established by CSA to consider and investigate matters falling within the ambit of the Code.