

## Constitution Committee Minutes



The Constitution Committee met between 09:30 – 18:00 hrs on Tuesday 7 November 2017 and 09:30 – 13:30 hrs on Thursday 9 November 2017 at the Sheraton Baganvilas Resort & Convention Center in Puerto Vallarta, Mexico.

*Please refer to the World Sailing website [www.sailing.org](http://www.sailing.org) for the details of the submissions on the agenda and referred to in these minutes.*

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### Present:

Graham McKenzie (NZL) – Chairman  
Sarah Treseder (GBR) – Vice-Chairman  
Ana Jasna Gamulin (SLO)  
Peter Hall (CAN)  
Dieter Neupert (SUI)  
David Tillett (AUS)  
Ashley Tobin (USA)  
W. Scott Perry - Vice-President

### In Attendance:

Jon Napier – Director of Legal Affairs & Governance  
Kendall Harris – Legal Counsel

### Apologies:

Charles Manzoni (HKG)  
Manuel J Martin Dominguez (ESP)  
Balasz Hajdu (HUN)

## 1. Opening of the Meeting

The Chairman welcomed everyone to the meeting, including observers.

The Chairman asked for any conflicts of interest to be declared. No general conflicts were declared and it was agreed that specific conflicts would be dealt with as they arise.

## 2. Minutes of the Previous Meeting

### (a) Minutes

The minutes of the meetings of 8 and 10 November 2016 (circulated and approved after the meeting) were noted.

### (b) Matters Arising

There were no matters arising not covered elsewhere on the agenda.

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### 3. Submissions

- (a) The Committee considered a submission deferred from 2016 for which the Equipment Committee is the Reporting Committee:

- i) Submission 024-16 – Olympic Equipment – Against the Monopolisation of Production of Boats of Olympic Classes

Opinion: Reject.

*No proposal is stated.*

- (b) The Committee considered submissions for which the Board is the Reporting Committee:

- i) Submission 001-17 World Sailing Regulations – Definition of Continents

Opinion: Reject.

*The Committee does not consider this change is appropriate, nor does it achieve the reasons stated in the submission (it only changes the Definitions in the Regulations – how those Definitions are used is important). There are unintended consequences throughout the Regulations if passed.*

- ii) Submission 002-17 Continental Associations – Position within World Sailing

Opinion: Reject.

*Continental Associations should not be entities answering solely to the Board. The Development & Regions Committee has already been expanded to give better representation to Continental Associations.*

*The amendments requested to the Constitution and Regulations should be set out in any submission.*

- iii) Submission 003-17 World Sailing Annual Conference – Limiting Costs for Attendees – Regulation 37.2

Opinion: Reject.

*These issues are already covered by the criteria which have to be published by the Board.*

*If approved by Council, the wording should be amended to read:*

**The Board shall invite bids from interested venues and shall publish in advance the criteria against which the Board will assess any bids received. Only venues which in the opinion of the Board are in or close to major airport hubs that offer accommodation options in all price ranges within reasonable walking distance to the conference venue shall be considered an eligible bid.**

- iv) Submission 004-17 World Sailing Committees – Olympic Classes Sub-committee – Terms of Reference – New Regulation 6.7.4.3

Opinion: Approve with the following amendment

**The Olympic Classes Sub-committee shall be entitled to make recommendations directly to Council on matters which relate primarily to Olympic classes, and not to other classes (and Regulations 3.1.1(e)(i)-(ii) do not apply accordingly).**

*Subject to policy.*

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- v) Submission 005-17 World Sailing Committees – Olympic Classes Sub-committee – Submissions – Regulation 15.1

Opinion: Approve

*Subject to policy.*

- vi) Submission 008-17 Event Fees – Regulation 25.12

Opinion: Approve

*Subject to policy.*

- vii) Submission 010-17 World Sailing Events – Technical Delegates – Regulation 25.9

Opinion: Approve

*Subject to policy.*

- (c) The Committee considered submissions for which the Board and the Race Officials Committee are the Reporting Committee:

- i) Submission 011-17 World Sailing Race Officials – Conflicts of Interests – New Regulation 34.7

Opinion: Reject

*The Committee notes the comments of the Board. This submission would conflict with the Regulations concerning the appointment of Olympic Technical Delegates.*

- ii) Submission 012-17 World Sailing Race Officials – Conflicts of Interests – New Regulation 34.7

Opinion: Reject

*The Committee agrees that it is important that there is no perception that race officials have conflicts of interest. However, this provision is too severe for regulating any such conflict, which are already covered by Regulation 34.1.*

*It is also important to judge each case on its merits and the job description and role of the staff members in question.*

- (d) The Committee considered submissions for which the Board is the Reporting Committee:

- i) Submission 013-17 Olympic Equipment – Monopoly and Competition Reviews

Opinion: Approve with the following amendment

**23.5.1 In addition to the review processes in Regulation 23.1, the Board shall carry out re-evaluations of the equipment selected for Olympic Events equipment. The purpose of re-evaluation under this Regulation is to ensure that:**

**23.5.2 Equipment selected for each Olympic Event shall be subject to re-evaluation at least every eight years (i.e. two Olympic cycles). However, the Board may set a different shorter transitional timetable for initial re-evaluations following the adoption of this Regulation. The Board may amend the date of the subsequent re-evaluations in order to ensure re-evaluations are carried out in line with any other reviews undertaken under Regulation 23.1.**

The Committee reviewed in closed meeting the proposed Antitrust Policy submitted and recommended to the Council by the Board, and noted the Board have taken specialist external advice in this area.

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### Decision

**The Committee recommends to Council the Anti-Trust Policy with the amendments set out in Appendix 1.**

- ii) Submission 014-17 Antitrust Compliance Programme – New Regulation 39

Opinion: Reject

*Prefer the Anti-Trust Policy and Submission 013-17.*

- iii) Submission 015-17 Olympic Sailing Competition – Selection of Equipment – Antimonopoly & Antitrust Compliance Policy – New Regulation 23.1.10

Opinion: Defer

*Must be deferred under Regulation 23.1.9(d).*

- iv) Submission 016-17 Olympic Sailing Competition – Selection of Equipment – Selection of a Registered Trade Mark – New Regulation 23.1.11

Opinion: Defer

*Must be deferred under Regulation 23.1.9.*

- v) Submission 017-17 World Sailing Events – Selection of Equipment – Antimonopoly & Antitrust Compliance Policy – New Regulation 24.2.3

Opinion: Reject

*Prefer the Anti-Trust Policy and Submission 013.17.*

- vi) Submission 018-17 World Sailing Events – Selection of Equipment – Selection of a Registered Trade Mark – New Regulation 24.2.4

Opinion: Reject

*Prefer the Anti-Trust Policy and Submission 013-17.*

- vii) Submission 019-17 2024 Olympic Sailing Competition – Timeframe to Decide Events & Equipment – Regulation 23.1

Opinion: Defer

*Must be deferred under Regulation 23.1.9(d).*

- viii) Submission 020-17 Athletes' Commission – Paralympic Representation

Opinion: Approve with the following amendment

**(k) Until sailing is re-included in the Paralympic Games, any references in this Regulation to the “Paralympic Sailing Competition” shall mean the Para World Sailing Championships in the same year of the election and references to “Paralympians” shall mean sailors who had competed in at least two Para World Sailing Championships.**

- ix) Submission 021-17 World Championships – Virtual World Championships

*Opinion: Approve*

- (e) The Committee considered submissions for which the Constitution Committee is the Reporting Committee:

- i) Submission 029-17 World Sailing Constitution – Article 40(f) – Council Groups

Recommendation to Council: Approve with the following amendment

**(f) The provisions of the table contained in Schedule A may be varied from time to time by Council in its discretion by a two-thirds majority vote ~~(but any such variation may be reviewed by the Annual General Meeting)~~ or by**

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resolution of the Annual General Meeting, provided that if any National Authority ceases to be a Member National Authority on account of its replacement as a National Authority controlling the sport by some other authority or authorities in the Group concerned, Council may at its discretion make such provision as it thinks fit for the purpose of preserving the regional basis of nomination but any such provision may be reviewed by the Annual General Meeting.

- ii) Submission 030-17 World Sailing Constitution – Age Limit for Board Members – New Article 73.1

Recommendation to Council: Reject

*The matter should be referred to the Governance Commission.*

*If Council wishes to approve the submission, the submission should be amended to read as follows:*

**73.1 A person shall not be eligible for nomination as a ~~Nominated~~ candidates for the office of President or Vice-President ~~shall if they will be not be~~ more than 70 years of age on the day of their election to the Board.**

- iii) Submission 031-17 World Sailing Constitution – Voting – New Article 102

Recommendation to Council: Approve with the following amendment

*As new Article 102(a) already covers the scenario in 102(b)(iii), amend as follows:*

Proposal 1

**(b) In calculating the required majority, the following shall be disregarded:**

**(i) any abstention; or**

**(ii) any person present who is entitled to vote but does not do so; or.**

**~~(iii) any vote cast by someone who has been determined, no later than the time of the vote, to have a conflict of interest under the relevant provisions.~~**

**(h) Except at a General Meeting, the chairman of a meeting shall be entitled to a deliberative vote.**

Proposal 2

**A resolution passed by a 75% majority of the votes cast ~~75% majority vote~~ at a ~~General Meeting~~ of which not less than 21 days' notice has been given as more particularly defined in the Acts.**

- iv) Submission 032-17 World Sailing Regulations – Electronic Voting for Olympic Sailing Competition – regulation 7.1.1

Recommendation to Council: Reject

*The ability to conduct electronic votes is important. The Committee has recommended to Council a model voting procedure (see recommendations not based on submission below).*

- v) Submission 033-17 World Sailing Regulations – Electronic Voting by Council – New Regulation

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### Recommendation to Council: Reject

See comment to Submission 032-17.

- vi) Submission 034-17 Olympic Sailing Competition – AGM to Decide Olympic Events & Equipment – Regulations 6.6.3 & 23

### Recommendation to Council: Defer

Must be deferred under Regulation 23.1.19(d).

- vii) Submission 035-17 World Sailing Regulations – Regulation 35.1.5

### Recommendation to Council: Reject

The Committee supports the reasons of the Board. In addition, this submission only amends the introduction to the Code and not the correct operative provisions.

- viii) Submission 036-17 Anti-Discrimination Code – New Regulation 37

### Recommendation to Council: Defer

To be referred to the Ethics Commission to report to Council by May 2018. The Committee considers that the Code of Ethics, where there are already some discrimination provisions, is a more appropriate place for these provisions.

- (f) The Committee considered submissions for which the Equipment Committee is the Reporting Committee:

- i) Submission 059-17 Olympic Sailing Competition – Selection of New Olympic Equipment – Regulations 23.1.3 & 23.1.5

### Opinion: Defer

Must be deferred under Regulation 23.1.9(d).

- (g) The Committee considered submissions for which the Events Committee is the Reporting Committee:

- i) Submission 065-17 World and Continental Championships – Entry Quotas for Olympic Classes

### Opinion: Approve

Subject to policy.

- ii) Submission 066-17 Olympic Sailing Competition

### Opinion: Approve with the following amendment

**23.45 All decisions concerning the format, qualification system, and quotas for the 2024 and later Olympic Sailing Competitions shall be ~~decided determined~~ no later than 31 May in the year following the previous Olympic Sailing Competition. The Board may change this deadline to a later date in order to comply with any schedule or requirements from the ~~IOC-International Olympic Committee~~.**

Subject to policy.

- iii) Submission 078-17 2024 Olympic Sailing Competition – Creating Event Gender Equity

### Opinion: Approve with the following amendment

This submission is only capable of being considered as a discussion paper (under Regulation 15.5.1). If passed, the Regulations would need to be amended and Council cannot therefore pass this as a final proposal.

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*On that basis, the Committee recommends the following amendment:*

### **Proposal**

**The Procedure (outlined below) to select Olympic Events *should be considered by a working party*. Appoint a working party to create an event based selection procedure for the selection of events and equipment to replace Regulation 23 on a one-time basis. The Working Party shall have representatives from Events Committee, Equipment Committee and Constitution Committee. The recommendation of the Working Party should be presented to Council in enough time for MNAs to consider the process prior to the submission deadline for the World Sailing Meeting in the Spring 2018.**

- iv) Submission 083-17 Olympic Sailing Competition – Olympic Events and Equipment – Regulation 23.1.2

*Opinion: Defer*

*Must be deferred under Regulation 23.1.9(d).*

- v) Submission 087-17 Youth Sailing World Championships – December Date Change

*Opinion: Approve*

*Subject to policy.*

- vi) Submission 088-17 Youth Sailing World Championships – Decision Process for Venue Selection

*Opinion: Approve*

*Subject to policy.*

- vii) Submission 089-17 Youth Sailing World Championships – NOR Approval

*Opinion: Approve*

*Subject to policy.*

- viii) Submission 090-17 World Championships – Class World Championships – Regulation 25.2

*Opinion: Approve*

*Subject to policy.*

- ix) Submission 091-17 World Championships – Class World Championships – Regulation 25.2

*Opinion: Approve*

*Subject to policy.*

- x) Submission 092-17 World Championships – Women's World Championships

*Opinion: Approve*

*Subject to policy.*

- xi) Submission 093-17 World Championships – Youth & Junior World Championships

*Opinion: Reject*

*The proposal affects all World Sailing Classes. The purpose stated is that this should apply to Olympic Classes only. Therefore, the proposal is wider than the stated purpose.*



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- xii) Submission 096-17 World Sailing Committees – Match Racing Sub-committee – Terms of Reference – Regulation 6.6.7

Opinion: Approve

- xiii) Submission 097-17 World Sailing Rankings – Regulation 27.2.3(d)

Opinion: Approve

*Subject to policy.*

- (h) The Committee considered submissions for which the Events and the Para World Sailing Committees are the Reporting Committee:

- i) Submission 101-17 Sailing World Championships – Para World Sailing Events

Opinion: Approve with the following amendment

**1. Amend Regulation 24.3.2 as follows:**

**Only the events and equipment included in the next Olympic Sailing Competition and the next Paralympic Sailing Competition (if and when applicable) shall be included in the programme of the Championships.**

- (i) The Committee considered submissions for which the Race Officials Committee is the Reporting Committee:

- i) Submission 124-17 World Sailing Race Officials – Regulation 31.8

Opinion: Approve with the following amendment

*Reject Option 1. Approve Option 2.*

- ii) Submission 125-17 World Sailing Race Officials – Regulations 25.8.10 & 27.2.3

Opinion: Approve

*Subject to policy.*

- iii) Submission 126-17 World Sailing Race Officials – Olympic Jury – Regulation 23.3

Opinion: Reject

*This new requirement may make it difficult to achieve the other requirements in the Regulation. The word “successive” can have two potential meanings.*

- iv) Submission 127-17 World Sailing Race Officials – Olympic Jury – Regulation 23.3

Opinion: Approve with the following amendment

**(1) If any of the persons listed in this Regulation have has a conflict of interest, the remaining persons shall make a recommendation on that appointment. Once decided, the conflicted person can participate in the remainder of the appointments.**

- (j) The Committee considered submissions for which the Racing Rules Committee is the Reporting Committee:

- i) Submission 133-17 World Sailing Committees – Racing Rules Committee – Regulation 6.11 & 28

Opinion: Approve

- ii) Submission 164-17 Racing Rules of Sailing – New Case

Opinion: Approve with the following amendment

*The Committee supports the amendments of the Racing Rules Committee.*



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### 4. Working Parties

#### (a) Advertising Code Discrimination Working Party

The Chairman noted that a working party has been appointed that consists of Manuel J Martin Dominguez from the Constitution Committee, and Marina Psichogiou from the Racing Rules Committee.

The Committee noted that the Racing Rules Committee supports the use of Rule 69 (misconduct) for dealing with this issue. The Committee agreed that Rule 69 is appropriate, and while some minor amendments to the Rule to specifically deal with discrimination may be preferable, in the interim a case can be published which confirms that Rule 69 can be used.

The Chairman noted that the Racing Rules Committee will develop a Q&A, and look to publish a case on the matter. Ana Jasna Gamulin was added as a member of the Working Party to assist in the drafting of the case.

#### (b) Membership Working Party

The Chairman noted that this issue relates to the rights of affiliate members.

The Committee noted that a paper about the Caribbean Sailing Association application had been circulated. The previous Constitution Committee gave an opinion on that paper, and the Board have also discussed it. It then went to Council at the May meeting and was rejected on the basis that it is not clear what Council was actually being asked to approve.

It has been largely agreed that something needs to be put forward for Council to consider, and that the rights, benefits and obligations of affiliate members should be clearly defined.

The Chairman noted that the role of the Constitution Committee was to give Council some input, but that the matter is ultimately for Council to decide.

### **Decision**

**The Committee recommends to Council the terms and conditions of affiliate membership as per the circulated paper with a minor amendment.**

#### (c) Plain English Working Party

The Chairman noted that the Working Party has been established, and Dieter Neupert and Charles Manzoni have agreed to be the initial members.

#### (d) Rule 69 and Judicial Matters Working Party

The Chairman noted that John Doerr has prepared a report, which had been circulated to members.

The Committee noted the report.

#### (e) Submission Working Party

David Tillett, the Chairman of the Submission Working Party (SWP), advised that the concept of the SWP had been well received and they are expecting to receive more requests for assistance next year. It was noted that timing is important, and people should be encouraged to provide their draft submissions to the SWP as soon as possible to ensure there is sufficient time for consultation.

The Chairman thanked the SWP for its work. It was noted that as workload increases, it may be necessary for additional members to be appointed to the SWP.

### 5. Council Group Review

The Committee noted that a paper had been circulated summarising the relevant parts of the Regulations and the process that will be undertaken in relation to the review.

#### Decision

**A working party was established consisting of the Vice-Chairman, Peter Hall and Balazs Hadju. During 2018, information will be collected and a model will be designed to interpret the results.**

### 6. Election Review

The Director of Legal and Governance noted that the Committee has been requested to establish a working party to look into the last election, and election procedures and processes in general.

For the first time in 2016, election rules were introduced modelled on the IOC format. ASOIF regards these types of rules as a good best practice tool, but now that an election has been conducted, the rules should be reviewed based on the experience of 2016. The role of the Election Committee may also need to be considered, in particular whether it should have a wider supervisory role and monitor compliance with the election rules. Another matter for consideration is the relationship between the Election Committee and Ethics Commission and which body should have jurisdiction over certain types of complaints. It has also been suggested that candidate access to corporate information should be considered.

As part of its review, ASOIF collated best practice suggestions on how elections could work. The Committee or a group of the Committee may wish to look at these suggestions and determine whether there are any World Sailing may wish to adopt.

The Chairman noted that it is not yet clear what the mandate of the Governance Commission will be, and therefore what the role of the Constitution Committee might be in this respect.

The Director of Legal and Governance noted that it is important to identify the issues with the most recent election in Barcelona, and suggested that this is a preliminary piece of work that could be undertaken in the meantime.

#### Decision

**The Executive Office is requested to prepare draft recommendations to the Committee for consideration.**

### 7. Conflict of Interest Requirements

The Committee noted there are multiple conflict of interest provisions across a range of rules, regulations and documents. It has been suggested that one document should contain all conflict of interest provisions so there is consistency and less duplication.

#### Decision

**The Committee agreed that a working party should be established, and Dieter Neupert and Charlie Manzoni were appointed as the initial members.**

### 8. Committee Terms of Reference

The Committee agreed that it may be necessary to review the Committee's terms of reference, but that the review should be carried forward to next year's agenda.

### 9. Governance Commission

The Committee noted the proposed terms of reference of the Governance Commission.

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### **10. Proxy Voting**

The Committee agreed that this is a matter likely to be considered by the Governance Commission, but if it is not the Committee will consider it next year.

### **11. Electronic Voting by Council, Committees and Commissions**

The Committee discussed electronic voting by Council, Committees and Commissions, and the draft model procedure for electronic voting.

The Committee considered it was vital that electronic voting is not used for substantial matters that require proper discussion. The Committee agreed that the chairman of the body must give reasons for suggesting that a matter is urgent, and therefore an electronic vote is required. It also agreed that participants should not be allowed to change their vote once it has been cast, and that the procedures should make clear that participants have an ongoing obligation to declare conflicts of interests during the course of all discussions.

The Committee agreed that it would note in its recommendation to Council that it shares the concerns of several Council Members that electronic votes should not be used for substantial matters which ought to be decided by face-to-face meetings.

#### **Decision**

**The Committee recommends to Council the model procedure for conducting electronic votes with the amendments in Appendix 2.**

### **12. Constitution & Regulations**

It was noted that no interpretations were issued during 2017.

### **13. Annual General Meeting**

The Committee noted the agenda of the Annual General Meeting.

### **14. Annual Report**

The Chairman presented his annual report covering the period 1 January 2017 to 31 December 2017.

### **15. Any Other Business**

#### **(a) ASOIF Governance Review**

The Committee noted a presentation from the Director of Legal and Governance on the outcome of the Association of Summer Olympic International Federations (ASOIF) governance review. ASOIF was asked by the IOC to conduct a review of the governance arrangements within all summer Olympic international federations (IFs). ASOIF required IFs to complete a self-assessment, and provide documents and evidence, against 50 different criteria. The criteria are based on the five ASOIF governance principles of:

- transparency;
- integrity;
- democracy;
- sports development and solidarity; and
- control mechanism.

ASOIF verified and moderated information provided as part of the self-assessments using an independent sports governance firm, and IFs were scored on a scale of 0 to 4

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against each criteria (0 being not fulfilled at all, 4 being totally fulfilled in a state of the art way).

Following the review, World Sailing was given its specific results, and general results for the other IFs.

World Sailing's results were summarised as follows:

- The overall self-assessed score was 2.36, and the overall ASOIF-moderated score was 2.26.
- Self-assessed scores were not changed in the areas of transparency and democracy, and only minor adjustments were made to scores in integrity, development and solidarity, and control mechanisms.
- ASOIF split all IFs into four groups (A, B, C and D) and World Sailing was ranked at the top of Group B (which included 11 IFs with a range of scores from 91 to 113).
- General comments provided by ASOIF included:
  - The mean difference between all self-assessed scores and ASOIF moderated scores was -13. The difference between World Sailing's self-assessed and moderated score was -7.
  - Out of the 50 individual scores, 19 were in categories 3 or 4.
  - World Sailing was ranked first out of all IF's for democracy.
  - Some of the areas World Sailing scored well in included transparency (based on the amount of information published), democracy (in relation to secret ballots and election process) and representation of athletes (athlete representatives with voting rights on all major committees, Council and Board).
  - Areas for improvement included the need to publish a strategic plan online, and the disclosure of financial benefits of officers and senior staff (noting the impact of UK privacy laws).
  - Areas identified as being 'best practice' included the publication of regulations, the availability of archive material, the information provided in relation to elections, the conflicts of interest policy, and the existence of an audit committee with independent representation.

### (b) Scheduling of Committee and Sub-Committee meetings

The Committee noted the concerns of a number of Committees and Sub-committees that meetings are not being scheduled in the correct order (i.e. some Sub-committees are meeting after the Committee they are reporting to) and agreed it is an issue which needs to be considered further.

### (c) Article 51 of the Constitution

The Committee advised the Chairman on an urgent interpretation required of Article 51.

There being no other business, the meeting was closed.

## Appendix 1 – Anti-Trust Policy

# ANTI-TRUST POLICY FOR OLYMPIC EQUIPMENT

## 1 The scope of competition (antitrust) law

- 1.1 Sports federations, including World Sailing, are subject to competition laws. The practice of sport is subject to competition laws as far as it constitutes an economic activity.
- 1.2 Competition law, in general, governs two main areas of World Sailing's work:
  - 1.2.1 The law prohibits agreements which may affect trade between countries and which prevent, restrict or distort competition; and
  - 1.2.2 The law prohibits bodies in a dominant position in a market from abusing that position in a way which may affect trade adversely.
- 1.3 These prohibitions are enforced by national and international governmental bodies. Breaches can lead to substantial sanctions (including fines of up to 10% of worldwide turnover), damages and court orders prohibiting the conduct in question.
- 1.4 Sailing authorities, such as World Sailing and its MNAs, are covered by these laws and our rules amount to decisions which are subject to review under the laws. In particular, because World Sailing makes the rules governing Olympic and World Sailing events – including what equipment and suppliers can be used by competitors – it could be viewed as having a dominant market position in the organisation of sailing events, in which case the abuse of dominance prohibition is potentially applicable. ~~it has a dominant market position which it cannot abuse.~~
- 1.5 The legal prohibitions apply to the rules and standards established by World Sailing when setting the conditions for equipment to be used in competition. There are recognised restrictions that are permitted for a variety of sporting reasons, such as:
  - 1.5.1 safety reasons;
  - 1.5.2 providing sporting performance or spectator appeal; or
  - 1.5.3 ensuring that similar equipment is used by all competitors in the interests of fairness.
- 1.6 However, even these rules may breach the prohibitions where they impose disproportionate or arbitrary restrictions on equipment manufacturers/suppliers. In particular, it is important that any rules are objective and only exclude manufacturers from the market where there are legally justifiable reasons to do so.

## 2 How World Sailing complies with competition law

- 2.1 World Sailing is committed to complying with its obligations under all applicable antitrust and competition laws.
- 2.2 There are two areas of World Sailing that require particular attention.
- 2.3 First, the governance, administration and management of Olympic Events and World Sailing Events. As the world governing body for the sport of sailing, World Sailing controls a number of areas such as the rules and technical, sporting and some economic aspects of competitions. The economic aspects include commercial payments being made by participants in sports competitions in order to access the competition (including the use of equipment). Therefore, World Sailing must ensure where its rules impose restrictions on the commercial

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enterprises' (such as equipment suppliers) commercial conduct, such restrictions are objectively justified and proportionate. ~~it does not abuse its dominant position in relation to these events.~~

- 2.4 Second, there is the market for the production and supply of boats to teams participating in Olympic, World Sailing and Class Events. The supply of boats for each Olympic Class can be a separate market. This means where a Class has restricted or sole manufacturers/suppliers, there is a **exclusivity monopoly** (as there is no other competition for the supply of boats). As World Sailing **rules to a certain extent** sets the conditions for this market, its rules, **decisions** and agreements **as regards boats and related equipment** ~~in this market~~ need careful assessment under competition law.

- 2.5 In order to ensure compliance in these areas, World Sailing uses a number of policies and agreements:

- 2.5.1 Once equipment is selected for an Olympic Event, there is a mandatory regular review of its selection. This ensures that, even though the original selection decision was based on an open and fair evaluation, a subsequent **exclusivity monopoly** situation **if only one supplier is selected** is not permitted to continue without review. These reviews permit competing equipment and competing manufacturers of existing equipment to bid to access the market on a fair and objective basis. This reduces risk of monopolies and ensures existing manufacturers do not become complacent or abuse their position.

**Note: the fact that an evaluation results in the grant of the exclusive right to supply equipment for a given event organised by World Sailing to one supplier (e.g. where the selected equipment may only lawfully be manufactured by one supplier) is not, in itself, incompatible with the competition rules.**

- 2.5.2 Via its contracts with Olympic Classes and their manufacturers, World Sailing monitors production quality and prices of manufacturers, in particular sole manufacturers, **to ensure that the supplier(s) is satisfying demand at acceptable quality and service levels.** ~~to ensure that there is no abuse of a dominant market position.~~ In the event of a breach of the contracts **(e.g. consistent failure by the supplier to maintain acceptable quality and service levels)**, World Sailing has the right to require re-tendering for the production of equipment of the Class.
- 2.5.3 When selecting equipment for a new Olympic Event (or when reviewing the equipment in an existing Olympic Event), evaluations are held. These are based on open tender processes with assessment against objective criteria. These ensure that a fair and competitive process is followed in awarding the economic rights that are associated with producing and selling the equipment.

## 3 Reviews of Olympic Events

- 3.1 Under World Sailing Regulation 23.5, World Sailing carries out regular reviews of the equipment used to compete in Olympic Events. This review process is in addition to the sporting reviews of the Olympic Events. These reviews ensure that:
- 3.1.1 competing equipment and competing manufacturers of existing equipment can bid to be selected for Olympic Events and therefore access the market on a fair and objective basis;
  - 3.1.2 the risk of monopolies is reduced; and
  - 3.1.3 manufacturers do not become complacent, remain price-competitive, produce high-quality equipment, and do not abuse their market positions.
- 3.2 Under the review procedure, the equipment selected for each Olympic Event is subject to re-evaluation every eight years (i.e. two Olympic cycles). This timeframe has been selected in

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order to balance the need for regular reviews and the need for manufacturers and commercial bodies to have a sufficient period of time to justify the financial investment needed to supply Olympic equipment. It also provides certainty to competitors, MNAs and teams as they invest and plan for the Olympic cycles.

- 3.3 When a review is carried out, the Board is required to ensure that the review procedures meet the following requirements:
- 3.3.1 classes and manufacturers of other equipment suitable for the Event in question are allowed to tender for its use in the Event;
  - 3.3.2 the criteria to be used are open, fair and non-discriminatory;
  - 3.3.3 the criteria to be used are approved by the specialist policy committee for equipment matters (the Equipment Committee) and are published publicly as part of the 'invitation to tender'; and
  - 3.3.4 the procedures must be approved by World Sailing's Council prior to publication.
- 3.4 Once a review is complete, the World Sailing Board makes a recommendation to the World Sailing Council to either retain the current Equipment, evolve the current Equipment, or to select new Equipment. At this time, the Board can also make other recommendations to Council which it considers necessary to secure compliance with legal requirements.

## 4 Olympic Class Contracts

- 4.1 Once equipment has been selected for an Olympic Event, World Sailing enters into a contract with both the relevant Class Association and each of the commercial parties involved in the selected equipment. One of the central purposes of this contract is to protect the integrity of the equipment and to ensure fairness (in both sporting and economic terms) for competitors. This contract governs a number of areas including:
- 4.1.1 evolution of the equipment;
  - 4.1.2 price stability (including the factors which may justify an increase in price);
  - 4.1.3 the minimum number of manufacturers and their locations;
  - 4.1.4 quality assurance (including consistency of production, production tolerances, prohibitions on customer-requested changes, compliance with equipment certification programmes and the reporting of material deviations or problems);
  - 4.1.5 rights for World Sailing to input into equipment building specifications to ensure that equipment is robust and will have longevity of use (a review of the design of all elements of the 'as sailed' boat);
  - 4.1.6 requirements that any new Olympic equipment has a prototype period to ensure robust equipment has been defined, in the 'as sailed' condition (extending trials after selection to validate the building specifications prior to high rates of production);
  - 4.1.7 inspections of shipments prior to delivery to ensure that the quality system is having the desired effect on the finished products delivered to the sailors;
  - 4.1.8 standardisation of warranties to customers and the reporting of warranty claims; and
  - 4.1.9 compliance with antitrust and competition laws.
- 4.2 Through the contract, World Sailing ~~is committed to complying with~~ ~~takes~~ its obligations under all applicable antitrust and competition laws ~~seriously~~. Manufacturers and suppliers agree that if World Sailing considers that they have consistently breached contractual quality



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~~and service levels the contract~~ (or a breach is not remedied within 30 days of direction to do so) then they can be required to ~~will~~ license all necessary rights to a third party selected ~~nominated~~ by World Sailing through objective criteria. This licence will be on fair, reasonable and non-discriminatory terms to enable the new third party to manufacture and supply the Class equipment ~~at market prices~~ to customers ~~in a similar market as them~~ as an alternative source of supply to the Class supplier. Any dispute over this licensing is referred to an independently appointed expert for determination.

- 4.3 Through this approach, World Sailing ensures that there is sufficient economic incentive and reward for commercial parties who participate in the Olympic equipment market. However, the contract also provides that any ~~monopolies in place due to~~ sole or restricted supplier exclusivity status cannot be abused and there are effective sanctions in place to ensure compliance with the legal and contractual requirements.
- 4.4 World Sailing has also considered the possibility that all commercial parties involved in the production and supply of Olympic equipment could be required, as a blanket condition of participating in this market, to surrender their commercial and intellectual property rights to World Sailing (which could then allow any other parties to access the market). This policy carries substantial risk that it could be challenged under the competition rules as an anticompetitive decision and/or an abuse by World Sailing of its position as the sport's governing body ~~would not be compliant with competition law as it would form a barrier for entry for new manufacturers who would be required to turn over their intellectual property rights on entering the market.~~

## 5 Equipment evaluations

- 5.1 As part of its processes for selecting new Olympic equipment, and for reviewing existing equipment, World Sailing undertakes equipment evaluations. World Sailing Regulation 23.1.3(e) states that new equipment shall only be selected following Equipment trials or other evaluation against the specified criteria.
- 5.2 Evaluations are held following a tender process which is open to all interested manufacturers to participate in. Tenders are assessed against specified criteria and then selected bidders are invited to participate in the evaluation. The criteria are defined in advance and published as part of the request for proposals.
- 5.3 Following the evaluation process, a report is presented to the Equipment Committee which then makes a formal recommendation to the World Sailing Council.

## 6 Monitoring of antitrust and competition law compliance

- 6.1 Under the World Sailing Constitution, the World Sailing Board is responsible for the corporate and financial affairs of World Sailing. It is also responsible for implementing the policy decisions of Council.
- 6.2 The World Sailing Council considers and determines the policy and strategic priorities of World Sailing. It is advised in this task by the Equipment Committee (the specialist policy committee for equipment matters).
- 6.3 Under these responsibilities, the Board and the World Sailing staff monitor compliance with competition and antitrust law, taking expert external advice and putting in place the relevant contractual requirements. The Equipment Committee is consulted on competition matters, and any recommendations for policy changes are made to Council.
- 6.4 Any requests, complaints or concerns about antitrust or competition law matters should be sent to the Chief Executive Officer at [office@sailing.org](mailto:office@sailing.org)

## Appendix 2 – Amended Electronic Voting Procedures

1. Any request for an electronic vote shall be considered and decided on by the Chairman. The Chairman must consider whether or not the matter is appropriate to be decided by an electronic vote.
2. Following consultation with the Chairman, the Chief Executive Officer shall send an email to all the members stating:
  - 2.1. the intention to call an email vote;
  - 2.2. the subject matter, including any documents;
  - 2.3. the proposed voting deadline;
  - 2.4. a request for members to notify the Chairman and Chief Executive Officer of any conflicts of interest, or any inability to take part in the vote. This does not change the obligation to declare a conflict of interest should one arise.
3. The Chief Executive Officer shall ascertain that a quorum is available to participate in the vote. The procedure shall not continue unless the Chairman is satisfied a quorum is available to participate.
4. The Chairman shall set a discussion period, which should normally not be less than ~~5~~ 7 days. In cases of urgency, this period may be shortened but members must have sufficient time to consult with members of their Group (if applicable), exchange their opinions and discussion on the items to be voted on. Reasons for urgency must be given by the Chairman.
5. Any request for procedural motions (such as a motion to defer or a motion requesting the matter be discussed by conference call) shall be notified to the Chairman and the Chief Executive Officer. The Chairman shall decide on what order to take any motions.
6. At the end of the discussion period, the Chief Executive Officer shall commence an electronic vote on the matters discussed. The voting period shall be at least ~~5~~ 7 days or until the number of returned votes is sufficient to determine the outcome of the vote.
7. Members shall send his/her email to the Chief Executive Officer. The Chief Executive Officer shall count the votes and announce the results at the end of the voting period along with a list showing the vote of each member. A vote cannot be changed once cast.
8. The Chief Executive Officer will record the discussion and vote in a written resolution of the Committee, which shall be approved by the Chairman and communicated to the members after such approval. The resolution shall be published on the World Sailing website.
9. In the event these rules of procedure do not cover a particular situation, the Chairman shall refer to the normal procedures used at World Sailing meetings and to the general rules of procedure in English law. The Chairman of the Constitution Committee may be consulted for his or her opinion before any ruling is made.