

# **32<sup>nd</sup> Americas Cup**

## **JURY - Rules of Procedure**

These Rules of Procedure are adopted by the JURY for the 32<sup>nd</sup> America's Cup for all matters within its jurisdiction under the Protocol governing the 32<sup>nd</sup> America's cup, as amended (PROTOCOL), except for those matters instituted under the current Racing Rules of Sailing of the International Sailing Federation, as amended (RRS).

The procedures prescribed by the RRS, will be used by the JURY for all proceedings relating to those matters instituted under those RRS.

### **1. DEFINITIONS**

The definitions contained in the PROTOCOL and the following definitions apply:

1.1 APPLICANT means any PARTY filing an APPLICATION in accordance with these Rules of Procedure.

1.2 APPLICATION means a written request for a decision by the JURY in relation to a dispute or a request for interpretation, or any other matter within the JURY's jurisdiction under the PROTOCOL.

1.3 DOCUMENTATION means any written material or physical evidence filed or lodged in relation to any matter before the JURY.

1.4 AMERICA'S CUP JURY, AC JURY and JURY have the same meaning as 'Jury' in the PROTOCOL.

1.5 JURY SECRETARY means the person appointed by the AC JURY to handle administrative matters for the JURY.

1.6 OBSERVER means a person permitted by the JURY to observe the conduct of a hearing, in accordance with paragraph 9 of these Rules of Procedure.

1.7 PARTY means any person or entity over whom the JURY has jurisdiction under the PROTOCOL, including but not limited to all Competitors, the Race Committee, the Measurement Committee, the Event Authority (ACM), SNG and all Officials.

1.8 PROTOCOL means the PROTOCOL governing the 32<sup>nd</sup> America's Cup, as amended from time to time.

1.9 RACING RULES has the same meaning as RRS.

1.10 REPLY means an APPLICANT'S answer to a RESPONDENT'S RESPONSE.

1.11 RESPONDENT means any PARTY who files a RESPONSE to an APPLICATION.

1.12 RESPONSE means a written reply to an APPLICATION.

1.13 SERVICE ADDRESS LIST means a list of the email and postal addresses advised to the JURY SECRETARY by any PARTY.

## 2. COMPOSITION OF THE JURY

2.1 The JURY shall normally consist of five persons, as specified in Article 21.1(c) of the PROTOCOL.

2.2 When authorised and agreed in accordance with Article 21.1(c) of the PROTOCOL, the JURY may consist of fewer than five persons.

2.3 In accordance with PROTOCOL Article 5.2 (c), the Chief Umpire and other Umpires may be Chairman of the Jury or members of the Jury.

## 3. LEGAL SEAT AND LAW GOVERNING THE JURY PROCEEDINGS

3.1 The legal seat of the JURY is the State of New York. However, the JURY may carry out all the actions which fall within its jurisdiction at the venue of the America's Cup or in any other place it deems appropriate, or by correspondence or other means of communication at a distance.

3.2 The JURY proceedings shall be governed by the U.S. Federal Arbitration Act and by the New York Convention of 1958 on the Recognition and Enforcement of Arbitral Awards. In all instances, the JURY shall act fairly and impartially and shall provide equal treatment and a fair opportunity to be heard given the circumstances in which the decision must be made.

## 4. COMMUNICATIONS

4.1 Each PARTY shall advise the JURY SECRETARY of one or more email addresses and physical addresses for service of documents. The advice of an email address and a physical address shall be included by a

PARTY in any APPLICATION, RESPONSE or REPLY filed with the JURY. Each PARTY shall be responsible for keeping the JURY SECRETARY advised of any additional addresses or changes to them.

4.2 Communications to the JURY shall be addressed to the JURY SECRETARY at the following addresses:

a. by email: bryan@icscourses.co.uk  
or, when this is not possible:

b. by courier or hand delivery:

(i) during pre-regattas and regattas:

The Jury Secretary,  
C/o The Race Office,  
(Pre-Regatta/Regatta venue)

(ii) at all other times:

The Jury Secretary,  
C/o AC Management  
7, rue du Mont-Blanc  
5th Floor  
1201 Geneva  
Switzerland

## 5. INITIATION OF PROCEEDINGS

5.1 Any PARTY may file a written APPLICATION, with attachments if appropriate, with the JURY SECRETARY.

5.2 The JURY SECRETARY will copy the APPLICATION, and attachments, and forward them to the JURY members and to each PARTY on the SERVICE ADDRESS LIST.

5.3 The APPLICATION shall set out the general nature of the matter and with sufficient particulars to support the grounds thereof, including the detailed evidence upon which the APPLICANT relies and including a reference to any rules considered applicable.

5.4 Any PARTY directly affected by an APPLICATION may file a written RESPONSE with attachments if appropriate with the JURY SECRETARY. The Race Committee, Measurement Committee, Event Authority (ACM), SNG or any other official to whom the JURY has granted leave to respond may also file a RESPONSE in their area of responsibility. The

RESPONSE to an APPLICATION shall set forth whether the RESPONDENT supports or opposes the APPLICATION or the reasons for appearance in the matter or any observations relevant to the outcome of the APPLICATION, with the grounds for the support, opposition, appearance or observations and with sufficient particulars to support those grounds, including the detailed evidence upon which the RESPONDENT relies and including a reference to any rules considered applicable. A RESPONDENT is deemed to have waived the issue of lack of jurisdiction of the JURY unless the RESPONDENT raises the issue with its initial RESPONSE.

5.5 The JURY will advise each PARTY of the time within which a RESPONSE must be filed with the JURY, and such further instructions as the JURY deems appropriate.

5.6 When the JURY deems it appropriate, it may grant leave to a bona fide registrant, under Article 3.4 of the PROTOCOL, to file an APPLICATION. Leave to file will be granted to such bona fide registrant only when the Jury believes that the registrant has a significant and demonstrated direct interest and likelihood of becoming a challenger and that the APPLICATION needs to be resolved in order to facilitate them becoming a challenger.

5.7 The JURY will answer hypothetical questions only in exceptional circumstances and only when it decides that a decision on the question is essential to the furtherance of the purposes of the 32nd America's Cup as stated in the PROTOCOL and for those participating in the event.

5.8 An APPLICANT shall pay a filing fee to the JURY upon filing an APPLICATION in accordance with the current schedule of fees available from ACM.

## 6. PROCEEDINGS FOLLOWING APPLICATION AND RESPONSES

6.1 Following the submission of the RESPONSES and any REPLIES, the JURY will give directions on the further course of the proceedings, including the production of additional written submissions and of additional detailed documentary evidence (when permitted by the JURY), list of witnesses, witness statements, or any other procedural aspects.

6.2 Any PARTY to a proceeding may, in its APPLICATION or in its RESPONSE, request an oral hearing and such request will be granted if the JURY deems it appropriate.

6.3 In the absence of such a request, the JURY will decide whether an APPLICATION will be determined by an oral hearing or on documents only.

6.4 In the event of an oral hearing, the JURY Chairman will fix the date, time and place of the hearing and will advise the manner in which the hearing will be conducted. The JURY may, from time to time, adjourn a hearing, on its own volition or at the request of a PARTY.

6.5 Following the filing of RESPONSES within the time limit advised by the JURY, the APPLICANT may file a REPLY to the RESPONSES. The JURY will advise of the time limit within which to file a REPLY. Such REPLY shall not contain new matters or new evidence.

6.6 With the prior approval of the JURY, an APPLICANT or RESPONDENT may withdraw or amend an APPLICATION, RESPONSE or REPLY, or submit new evidence. When an amended APPLICATION, RESPONSE or new evidence is filed, any PARTY directly affected may file a RESPONSE or REPLY, as appropriate.

## 7. CONFIDENTIALITY OF IDENTITY

When a PARTY requests confidentiality of identity in any proceeding, the JURY will grant such a request only in exceptional circumstances and only when the JURY is satisfied that the PARTY has a substantial risk of serious damage if their identity is disclosed. If the JURY decides that the PARTY'S identity shall not be kept confidential, then the JURY will so advise the PARTY, who may then elect to withdraw their submission or to proceed without confidentiality.

## 8. CONFIDENTIALITY OF EVIDENCE AND WRITTEN SUBMISSIONS

8.1 In all matters before the JURY, all evidence and submissions shall be available to each PARTY on the SERVICE ADDRESS LIST unless the JURY decides otherwise in order to protect a person or entity from a breach of confidence, annoyance, embarrassment, oppression, undue burden or expense or for other reasons of fairness and equity.

8.2 Prior to the publication of the JURY'S decision in a matter, the PARTIES shall not make public the APPLICATIONS, RESPONSES, REPLIES or any of the evidence, documentary or otherwise, of themselves or any other PARTY.

## 9. OBSERVERS AT ORAL HEARINGS

9.1 Each Competitor, the Race Committee, the Measurement Committee and the Event Authority (ACM) may appoint two observers. These observers, together with an observer authorised by the JURY representing the America's Cup Press Office will be permitted to observe at oral hearings. The JURY may alter the number of observers at any time. The JURY Chairman may permit additional observers.

9.2 The JURY may order that a hearing, or any part thereof, shall be held in private and may impose any other conditions with respect to each PARTY and OBSERVERS that it deems appropriate.

## 10. DOCUMENTARY EVIDENCE

Documentary evidence shall be in the form of email attachments, except for physical evidence that cannot be emailed. All evidence, whether documentary or otherwise, and submissions will be made available to each PARTY on the SERVICE ADDRESS LIST, unless otherwise ordered by the JURY for reasons stated in the paragraph entitled CONFIDENTIAL EVIDENCE.

## 11. ORAL EVIDENCE

11.1 At an oral hearing, any PARTY who has a direct interest in the outcome of the matter, plus the Race Committee, Measurement Committee, Event Authority (ACM), SNG or any other official to whom the JURY has granted leave to respond to the extent the APPLICATION touches on matters within their area of responsibility, and the JURY, may present oral testimony through witnesses. Witnesses shall be subject to examination by any PARTY who has a direct interest in the outcome of the matter and by the members of the JURY.

11.2 The JURY may order the appearance of witnesses and may compel such appearance through application of the Federal Arbitration Act.

11.3 When permitted by the JURY, witnesses may testify by remote video or such other means as the JURY directs.

11.4 When the JURY permits the use of written statements from a witness at an oral hearing, the JURY may direct that the witness be made available for examination by the PARTIES and members of the JURY.

11.5 Witnesses shall not be under oath. The jury will exercise full control over the evidentiary process and will assess the weight and credibility of the evidence. If a person who has given a written statement is not available for examination at the hearing, the JURY will, as a rule, not consider the statement unless exceptional circumstances command otherwise.

## 12. PROCEDURAL DIRECTIONS

The JURY may, at any time, give such directions as the JURY deems best to facilitate a hearing.

## 13. PROVISIONAL REMEDIES

13.1 Upon the request of a PARTY in any proceeding pending before the JURY, the JURY may make an order for provisional or interim relief, including the stay of the effects of a decision under challenge. In agreeing to these Rules Of Procedure, the PARTIES expressly waive their right to request such relief from other authorities.

13.2 Upon the filing of an APPLICATION for interim or preliminary relief, the JURY Chairman shall advise each PARTY of the APPLICATION and invite each PARTY to express its position within a time limit to be fixed in consideration of the circumstances. In the case of utmost urgency, the interim or preliminary relief may be issued without first hearing any other PARTY, provided that each PARTY is offered the opportunity to be heard at the earliest possible time thereafter. An order for interim or preliminary relief will cease to be effective whenever the JURY so decides, but at the latest upon issuance of the JURY's final decision.

13.3 An order granting interim or preliminary relief may be conditional upon the provision of security.

13.4 When deciding whether to award interim or preliminary relief, the JURY shall consider whether the relief is necessary to protect the applicant from irreparable harm, whether the applicant is likely to succeed on the merits, and whether the interests of the applicant outweigh those of the any other PARTY, or of others who participate in any capacity in the AC, or of the sport of sailing.

## 14. COSTS

All matters before the JURY are subject to an order for costs. If such an order is made, the decision as to the amount payable by a PARTY and the time in which such amount is payable will be determined by the JURY at the conclusion of the matter.

## 15. DECISIONS

15.1 The JURY shall rule on each matter placed before it in accordance with the Deed of Gift, the Protocol, The Terms of Challenge, the RRS and such other rules and regulations as are applicable, using general principles of law and the rules of law the application of which it deems appropriate.

15.2 Decisions of the JURY will be in writing and will contain reasons. Before the written decision is published, a summary of the decision may be given orally or in writing at the conclusion of a hearing. Decisions will be published without restriction unless the JURY determines that for reasons stated in the paragraph entitled CONFIDENTIALITY OF EVIDENCE AND WRITTEN SUBMISSIONS, publication of a decision should be restricted in such manner as the JURY deems appropriate.

15.3 In the event that a decision is not unanimous, any dissenting member of the JURY has the right to be identified and have their dissent published with the JURY'S decision. The dissenting opinion will be appended to the JURY'S decision, but will not be an integral part of it.

15.4 In the event of a tie vote on any decision, the JURY Chairman shall cast the deciding vote.

## 16. AMENDMENTS

These Rules of Procedure may be amended or revoked at any time by a majority vote of all members of the JURY, after consultation in accordance with Article 21.7 of the PROTOCOL.

## 17. SUBMISSION TO THE JURY

By filing an APPLICATION or RESPONSE with the JURY, a PARTY agrees to be bound by these Rules of Procedure, as amended from time to time in accordance with the PROTOCOL.

## 18. EFFECTIVE DATE

These Rules of Procedure are effective from 29<sup>th</sup> May 2004.

AC JURY: Gabrielle Kaufmann-Kohler, Graham McKenzie, Henry Menin, David Tillett, Bryan Willis (chairman).