



36<sup>th</sup>  
**AMERICA'S CUP**

## **AMERICA'S CUP ARBITRATION PANEL**

**ACAP36/01**

### **IN THE MATTER**

of the Protocol  
Governing the 36th America's Cup **AND**

### **IN THE MATTER**

of an Application filed by Malta  
Altus Challenge for an  
interpretation of Article 10.2(a)

20 December 2018

## **AMERICA'S CUP ARBITRATION PANEL Case 01**

### **DECISION**

#### **DEFINITIONS**

1. Definitions and words used in this decision have the same meaning as used in the Protocol and Rules of Procedure (ROP) for the 36th America's Cup.

#### **APPLICATION**

2. On 6 December 2018 the Royal Yacht Club of Malta on behalf of Malta Altus Challenge (MAC) made an Application and submissions to the Panel for an interpretation of the "Nationality" provisions contained in Article 10.2(a) of the Protocol.

#### **DIRECTIONS**

3. On 10 December 2018 Directions were issued by the Panel giving any Party an opportunity to file a Response by 18 December 2018, with the Applicant being entitled to file a Reply by 21 December 2018.
4. In such Directions the Panel advised that (i) it did not consider the questions raised by the Applicant hypothetical, (ii) it was not necessary to be advised of the identity of Sailor A and (iii) no oral hearing was necessary.

## RESPONSES AND REPLY

5. On 15 December 2018 the New York Yacht Club on behalf of the Challenger American Magic filed a Response.
6. On 17 December 2018 the Royal Yacht Squadron on behalf of the Challenger INEOS Team UK filed a Response.
7. While the respective Responses had different views on the approach to this Case neither disagreed with the interpretation conclusions provided for in the Application.
8. On 18 December 2018 the Applicant filed a Reply in which it pointed out that no Party had opposed its conclusions.

## DECISION

9. Article 10.1 of the Protocol provides that “*All Crew racing in the CSS and the Match shall have the nationality of the country of the yacht club that the competing yacht club represents (“Nationality”)*”.

### *Meaning of “National”*

10. Article 10.2(a) of the Protocol, which is the subject-matter of the Application, provides that “*The requirement of Nationality shall be satisfied: if the person is a national of that country*”.
11. The Protocol does not provide any definition of the term “*national*”. Article 59 of the Protocol provides that the meaning of any word used in the Protocol shall be determined by reference to the Oxford English Dictionary (OED). The OED defines “*national*” as “*a citizen of a particular country*” and “*citizen*” as a “*legally recognized subject or national of a state or commonwealth, either native or naturalized*”. This is usually evidenced by the fact that a person holds a passport of a given country.

### *Date on which nationality requirement must be met*


12. The Protocol does not specify a date on which a person must be a “*national*” under Article 10.2(a), other than the fact that this requirement must be met at the latest when crew members are “*racing in the CSS and the Match*”.

### *Conclusion*

13. If Sailor A becomes a citizen of Malta and receives a passport of that country at any time before the commencement of racing in the Challenger Selection Series, that will satisfy Article 10.2(a) of the Protocol.
14. This interpretation is limited to Article 10.2(a) of the Protocol and does not apply to the different Nationality requirements contained in Article 10.2(b) of the Protocol.

## COSTS

15. All costs in relation to the Application are to be met by the Applicant. The Application fee of NZD8,000 meets the Panel costs related to the Application.



David Tillett AM, Chairman

Graham McKenzie

Henry Peter