

PROCEDURE: Appeal

These regulations form part of the certification system of the limited company ISACert B.V., established at Ede, the Netherlands, hereafter called ISACert.

Article 1 General

1. The articles of association stipulate that the managing director is obliged to draw up rules of appeal against a decision made by the managing director, insofar as this arises from any agreement to which ISACert is a party. Every party concerned can lodge such an appeal.
2. In the event of an appeal as mentioned in the previous paragraph, according to the certification regulations the managing director is obliged to set up an Appeals Tribunal.
3. In these rules of appeal the managing director specifies the constitution, the authority, the procedure and the responsibilities of the Appeals Tribunal, which shall have the approval of the Committee of Experts of ISACert.
4. The following regulations serve to implement such obligation of the managing director and provide the formal procedure referred to in the introduction and various parts of the certification system and regulations.
5. Every decision or measure by the managing director against which appeal is possible, must be brought to the attention of those involved by means of a registered letter.
6. The establishment of an Appeals Tribunal, the procedure and the manner in which the decision is made and communicated are laid down in these regulations.
7. ISACert stands surety for any costs arising as a result of fees and expenses payable incurred by the members of the Appeals Tribunal, including office costs.
ISACert's rates apply to remuneration and fees.
8. The terms used in these regulations are described in the list of terms in Chapter 7 of the certification regulations.

Article 2 Lodging an appeal

1. The appeal must be lodged within thirty calendar days after the decision or measure of ISACert was communicated to the party concerned by registered letter, or after such time that the concerned party could, in the opinion of the Appeals Tribunal, have reasonably been informed of the controversial decision or measure.
2. Lodging an appeal leaves unimpaired the decision or measure of ISACert until such time the Appeals Tribunal has made a decision.
In addition to lodging an appeal, the appealing party may also submit a request for full or partial suspension of the controversial decision or measure so long as the Tribunal has not yet made a decision regarding the appeal. The chairman of the Tribunal, after consulting with both parties, shall give a reasoned decision regarding the request as soon as possible after receiving the request for suspension.
3. Lodging an appeal, as well as a request for suspension as meant in Paragraph 2, shall be by means of a registered letter to the managing director of ISACert, which letter sets out the reasoned objection.
4. The appealing party shall also specify the name and address of the person representing it in the Appeals Tribunal. This representative must be independent of and not belong to the organisation being represented.
5. Simultaneously with the lodging of the appeal, the appealing party shall pay ISACert a deposit of € 3,000 for possible settlement at a later date of any costs owed by it in connection with the appeal.
6. If there is no contractual relationship between ISACert and the appealing party, the latter shall also submit a signed declaration attesting that it shall comply with the provisions of these regulations.

Article 3 Constitution of the Appeals Tribunal

1. As soon as possible, but in any case within thirty calendar days of receipt of that which is specified in Paragraphs 3, 4 and 5 and where applicable, Paragraph 6 of the previous article, the managing director of ISACert shall establish an Appeals Tribunal by appointing a person to represent ISACert.

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The representatives of both parties shall appoint a third member as chairman. The chairman shall possess a Master of Laws degree based on an examination taken in the Netherlands civil law, commercial law and criminal law as well as one of the following subjects: Netherlands constitutional law, administrative law or tax law.

2. The Tribunal established by the managing director shall endorse the certification regulations, of which the rules of appeal are part, adopted by the managing director and confirm this in writing to the managing director of ISACert.
3. The Tribunal shall appoint a secretary, who is not a member of the Tribunal.
Both the members and the secretary of the Appeals Tribunal may not be members of the ISACert's organisation and must be independent of those involved in the ISACert's activities.
Both parties are entitled to reject the representative of the other side should this person not satisfy the intended profile.
4. The managing director of ISACert shall provide the secretary of the established Appeals Tribunal with the documents mentioned in Article 2 Paragraphs 3, 4 and 6 without delay.

Article 4 Information, confidentiality

1. Members of ISACert or persons called in by ISACert in the execution of its activities shall be obliged, if required, to provide the members of the Appeals Tribunal with any information deemed necessary, without prejudice to their obligation of confidentiality vis-à-vis third parties.
2. Members, as well as the secretary of the Appeals Tribunal, are obliged to observe the greatest confidentiality in regard to all that comes to their knowledge in the framework of that which is laid down in these regulations, including all company information, information on persons, on the organisation or the personal or business affairs of the parties involved.

Article 5 Procedure

1. The secretary shall notify the chairman of the Appeals Tribunal without delay as soon as the appeal and the documents mentioned in Article 3 Paragraph 4 have been received from the managing director of ISACert.
2. If the appellant has not paid the deposit mentioned in Article 2 Paragraph 5, the managing director of ISACert shall set a deadline of eight calendar days with notification to the appellant by registered letter. If after this deadline the appellant has still not paid the deposit, the appeal shall be dismissed.
3. The Appeals Tribunal is entitled to examine witnesses, consult with experts and take any measures and provisions, including holding several sessions, as it deems necessary in order to come to an adequate decision.
4. As soon as possible, the chairman shall decide, in consultation with the other members of the Appeals Tribunal, the place, date and time of the session and shall immediately inform the secretary thereof. The secretary shall notify the managing director of ISACert and the appellant of the relevant data as soon as possible, at least fourteen calendar days before the appointed date of the session.
5. ISACert is entitled to submit a defence, as well as bring along witnesses and experts to the session, provided the names and addresses of the witnesses as well as the defence are made known to the Appeals Tribunal and the other party no later than five calendar days before the date of hearing.
6. Both the appellant and ISACert are entitled to be represented at the session and/or be assisted by a counsel.
7. The Appeals Tribunal is obliged to hear both the appellant and ISACert.

Article 6 Decision

1. The members of the Appeals Tribunal shall base their decision on reasonableness and fairness and are bound by the regulations adopted by ISACert. These include in any case: the certification regulations, the articles of association, the rules, the certification scheme and the list of rates.
2. The Appeals Tribunal shall decide on the appeal lodged by majority vote and inform the parties of the decision in writing, with reasons, within fourteen calendar days of the date of the decision.

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The decision of the Appeals Tribunal is a binding ruling for the parties.

3. The chairman and the secretary shall sign the decision of the Appeals Tribunal; the secretary shall subsequently send a copy thereof to each party by registered letter.
The original copy is filed in the records of the Tribunal, which are managed by the secretariat of ISACert.
4. If the Appeals Tribunal quashes the decision or measure of ISACert, in full or in part, it may decide that ISACert must revoke or amend its controversial decision or measure, or that ISACert make a decision or take a measure or refrain from an act or carry out an act in accordance with the Tribunal's decision.
5. Concurrently with the decision, the Tribunal also determines the amount of the costs of the action, as well as the party that is to pay the costs, either in part or in full. The costs of legal assistance are not included in this amount.
6. If the appellant is ordered to pay the costs mentioned in the previous paragraph, either in full or in part, these shall be settled with the deposit made by the appellant as meant in Article 2 Paragraph 5. Any balance shall be immediately refunded to the appellant. If the deposit is insufficient to cover the aforesaid costs, the appellant shall be obliged to pay ISACert the amount still owing within 30 calendar days of the date of the decision mentioned in the second paragraph.
7. The Appeals Tribunal is obliged to decide on the appeal within six months of the date on which the appeal was lodged with the managing director of ISACert. If, in the opinion of the Tribunal, circumstances so necessitate, the Tribunal shall be entitled to extend the period mentioned in the previous sentence by a period of six months.
8. In case of an appeal regarding BRC-certification, as meant in the BRC Global Standard - ISA, issue 4, January 2005, a decision term of 30 working days after receipt of the last required information from the appellant by the Appeals Tribunal, is applicable.

Article 7 Other conditions

1. In all cases for which these regulations do not provide, the Appeals Tribunal shall decide.
2. These regulations may be cited under the name ISACert Rules of Appeal.

REFERENCES:

- EN 45012 (1998) criterion 2.4
- EN 45011 (1998) criterion 7
- EN 45004 (1995) criterion 15