SUBMISSION PURSUANT TO SECTION 71 OF THE INTERIM REPORT

The following proposal is submitted by the Centro Iberoamericano de Arbitraje ("CIAR") pursuant to the consultation process established in Paragraphs 3 and 71 of the 2018 Interim Report (the "Interim Report") which has been conducted by the Independent Review Panel (the "Panel") and which summarises the Record of Evidence and Analysis (the "REA").

The present submission is structured in three sections: Section I is devoted to a brief introduction of our institution. Section II addresses the Recommendation 10 of Chapter 14 of the REA regarding the Panel's proposed changes to the TACP disciplinary proceedings. Thirdly, Section III contains the specific proposal that CIAR wishes to submit to the Panel as per Paragraphs 3 and 71 of the Interim Report.

SECTION 1 - WHO WE ARE

CIAR

The main objective of CIAR is to solve international legal issues concerning commercial and investment matters, involving different countries of Latin-America, Portugal and Spain (the "Region"), as well as other Spanish and Portuguese speaking countries, in a timely and effective manner.

CIAR assumes the responsibility of administering arbitration proceedings submitted to the Centre, as well as to promote and spread the use of arbitration, conciliation and mediation as dispute resolution methods. Transnational commerce and investment through the Region demand the efficient solution of potential issues while guaranteeing the principles, the values and the legal culture of the Region, using -when possible and available- alternative dispute resolution methods.

CIAR has a wide presence in the Region as evidenced by the entities adhered:

1. Argentina:

CÁMARA ARGENTINA DE COMERCIO (CAC)
FEDERACIÓN ARGENTINA DE COLEGIOS DE ABOGADOS (FACA)
COLEGIO DE ABOGADOS DE MISIONES (ARG)
COLEGIO DE ABOGADOS DE LA PLATA (ARG)
COLEGIO DE ABOGADOS DE CÓRDOBA (ARG)
COLEGIO DE ABOGADOS DE SAN MARTÍN (ARG)
COLEGIO PÚBLICO DE ABOGADOS DE RÍO GRANDE
COLEGIO DE ABOGADOS DE LA CIUDAD DE BUENOS AIRES

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COLEGIO DE ABOGADOS DE SAN CARLOS DE BARILOCHE
COLEGIO DE ABOGADOS DE SAN ISIDRO
ASOCIACIÓN DE ABOGADOS DE BUENOS AIRES

2. Bolivia

COLEGIO NACIONAL DE ABOGADOS DE BOLIVIA
CONFEDERACIÓN DE ABOGADOS DEL PACTO ANDINO
COLEGIO DE SANTA CRUZ (BOLIVIA)
COLEGIO DE ABOGADOS DE COCHABAMBA
COLEGIO DE ABOGADOS DE LA PAZ

3. Brasil

CONSELHO ARBITRAL DO ESTADO DE SAO PAULO
ESCOLA PAULISTA DE MÉTODOS EXTRAJUDICIAIS DE SOLUÇAO DE CONFLICTOS
ORDEM DOS ADVOGADOS DO BRASIL (OAB)
CONFEDERAÇÃO NACIONAL DA INDÚSTRIA (CNI, BRASIL)

4. Chile

COLEGIO DE ABOGADOS DE CHILE
CENTRO DE ARBITRAJE Y MEDIACIÓN DE LA CÁMARA DE COMERCIO DE SANTIAGO (CAM SANTIAGO)

5. Colombia

COLEGIO DE ABOGADOS DE BOGOTÁ
CLUB DE ABOGADOS (COLOMBIA)
COLEGIO COLOMBIANO DE JURISTAS

6. Costa Rica

COLEGIO DE ABOGADOS Y ABOGADAS DE COSTA RICA

7. Ecuador

ILUSTRE COLEGIO DE ABOGADOS DE LOJA (ECUADOR)
ACADEMIA DE ABOGADOS DEL ECUADOR

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8. España

TRIBUNAL ESPAÑOL DEPORTIVO DEL COMITÉ OLÍMPICO ESPAÑOL
ILUSTRE COLEGIO DE ABOGADOS DE MADRID (ICAM)
ILUSTRE COLEGIO DE ABOGADOS DE VALENCIA
SOCIEDAD ESPAÑOLA DE ARBITRAJE
CONFEDERACIÓN ESPAÑOLA DE ORGANIZACIONES EMPRESARIALES (CEOE)
ILUSTRE COLEGIO DE ABOGADOS DE BARCELONA
ILUSTRE COLEGIO DE ABOGADOS DE VIZCAYA
ILUSTRE COLEGIO DE ABOGADOS DE MÁLAGA
UNIVERSIDAD REY JUAN CARLOS (MADRID)
CONSEJO DE CÁMARAS DE COMERCIO, INDUSTRIA, SERVICIOS Y NAVEGACIÓN DE LA COMUNIDAD VALENCIANA
CONSEJO ARBITRAL PARA EL ALQUILER DE LA COMUNIDAD DE MADRID
CONSEJO GENERAL DE LA ABOGACÍA ESPAÑOLA
CLUB ESPAÑOL DEL ARBITRAJE (CEA)

9. Guatemala

CÁMARA DE COMERCIO DE GUATEMALA

10. México

ILUSTRE Y NACIONAL COLEGIO DE ABOGADOS DE MÉXICO
FACULTAD DE DERECHO UNIVERSIDAD PANAMERICANA
UNIVERSIDAD NACIONAL AUTÓNOMA DE MÉXICO (UNAM)
ASOCIACIÓN NACIONAL DE ABOGADOS DE EMPRESA. COLEGIO DE ABOGADOS, A.C.
BARRA MEXICANA, COLEGIO DE ABOGADOS, AC

11. Nicaragua

CÁMARA DE COMERCIO DE NICARAGUA – CENTRO DE MEDIACIÓN Y ARBITRAJE DE LA CÁMARA-

12. Panamá

COLEGIO NACIONAL DE ABOGADOS DE PANAMÁ
CONSEJO NACIONAL DE LA EMPRESA PRIVADA (CONEP, PANAMÁ)
CÁMARA DE COMERCIO, AGRICULTURA E INDUSTRIA DE PANAMÁ –CENTRO DE CONCILIACIÓN Y ARBITRAJE-

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13. Paraguay

COLEGIO DE ABOGADOS DEL PARAGUAY

14. Perú

COLEGIO DE ABOGADOS DE LIMA (PERÚ)

15. Portugal

INSTITUTO DE MEDIACIÓN Y ARBITRAJE INTERNACIONAL (ILMAI)
ORDEM DOS ADVOGAODS PORTUGUESES
CAMARA DE COMÉRCIO E INDÚSTRIA PORTUGUESA (CCIP)
ASSOCIAÇÃO INDUSTRIAL PORTUGUESA. CÂMARA DE COMÉRCIO E INDUSTRIA (AIP-CCI)

16. República Dominicana

COLEGIO DE ABOGADOS DE REPÚBLICA DOMINICANA

17. Uruguay

COLEGIO DE ABOGADOS DEL URUGUAY
CÁMARA NACIONAL DE COMERCIO Y SERVICIOS DEL URUGUAY (CNCS)

18. Venezuela

CONFEDERACIÓN DE PROFESIONALES UNIVERSITARIOS DE VENEZUELA (CONFEPUV)

19. Miscellaneous

FEDERACIÓN INTERAMERICANA DE ABOGADOS (FIA)
FUNDAÇAO LUSO-ESPANHOLA
UNIÓN IBEROAMERICANA DE COLEGIOS Y AGRUPACIONES DE ABOGADOS (UIBA)
CONSEJO DE EMPRESARIOS IBEROAMERICANOS (CEIB)

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20. Honorary members

CONFEDERACIÓN DE PROFESIONALES UNIVERSITARIOS DE VENEZUELA (CONFEPUV)
CONFERENCIA DE MINISTROS DE JUSTICIA DE LOS PAÍSES IBEROAMERICANOS (COMJIB)
SECRETARÍA GENERAL IBEROAMERICANA (SEGIB)

In addition, CIAR has signed cooperation agreements with the following entities:

- **La Organización de Estados Americanos ("OEA")**
  CIAR and OEA signed a Cooperation Agreement in 2017 to establish mechanisms for the coordination of international cooperation activities.

  The OEA brings together the 35 independent States of the Americas and constitutes the main political, legal and social governmental forum of the Hemisphere. In addition, it has granted Permanent Observer status to 69 States, as well as to the European Union (EU).

- **Conselho Arbitral do Estado de São Paulo ("CAESP") and Escola Paulista de Métodos Extrajudiciais de Solução de Conflitos ("EPMESC")**
  CIAR, CAESP and Escola Paulista de Métodos Extrajudiciais de Solução de Conflitos signed a Coopeation Agreement on 12 June 2018 whose main aims are: (i) Exchange of knowledge in terms of alternative dispute resolution; (ii) reciprocal logistic and administrative assistance, as well as legal guidance deemed necessary, in support of the arbitration procedures initiated in accordance with the respective Regulations; (iii) Collaboration in the appointment of arbitrators, conciliators, mediators or technical consultants in the procedures administered by each party to the collaboration agreement.

SECTION 2 – COMMENTS TO THE PANEL'S PROPOSED CHANGES TO TACP's DISCIPLINARY PROCESSES

The Panel observes in both the REA and the Interim Report that the TACP's current system for adjudicating disciplinary matters is *"unnecessarily lengthy and costly"* for both the TIU and the Covered Person and highlights its need for a change. In more detail:

1. Streamlined Disciplinary Procedures

The Panel has found that the TACP's disciplinary procedures should allow for more timely and cost-effective adjudications, especially for minor offences[1]. To that end, the Panel proposes a single-stage

[1] REA, Chapter 14 Paragraphs 337-348; and Interim Report, Paragraphs 303-315

procedure with no appeal and, alternatively, a two-stage procedure, which preserves the appeal to CAS, but which provides a single arbitrator in all first-instance proceedings and permits expedited proceedings for less serious offences.

All things considered, we share the view of the Panel that:

1. Preserving the appeal to CAS brings an unnecessary duplication of process without a sufficiently offsetting in procedural protection given the *de novo* nature of CAS appeals (*i.e.* the second stage replaces the first, rather than providing a second layer of protection);

2. Procedural fairness could be safeguarded provided that the single disciplinary proceeding is conducted before an independent an impartial tribunal and as long as the right to be heard is observed, which comprises, when necessary, the right to legal aid, and the possibility of requesting the arbitral tribunal to direct interim measures, even before it is constituted.

3. Applicable Law

The Panel has found that consideration should be given when drafting the new TACP to what law (if any, as opposed to general principles of law) should govern matters of enforcement and interpretation, in the light of the decisions to be taken in another matters[2]. In that regard, Paragraph 349 of the REA provides that:

> "*The current TACP selects Florida law, but there may be a more appropriate body of applicable law. Selecting an established body of law from a particular jurisdiction provides a certain degree of clarity and predictability. On the other hand, adopting general principles of law would reflect the international nature and breadth of tennis. In selecting the applicable law, careful consideration should be given to the following issues:*
>
> *349.1 The legal seat of the new TIU. In selecting the new legal seat, the governing bodies will have also to assess if the body of law of that jurisdiction (i) is suitable to disputes arising in connection with the TACP; and (ii) could effectively provide adequate clarity and predictability;*

2 Interim Report, Paragraph 311

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> *349.2 The value of enlisting a pool of truly internationally diverse and qualified arbitrators from various parts of the world. If a single body of law were to govern matters of enforcement and interpretation under the TACP, that could impact the potential diversity of the arbitrator pool;*
>
> *349.3 Covered Persons' right to appoint counsel of their choice/trust. Selecting a single body of applicable law could limit Covered Persons' ability to select their counsel of choice*".

Taking into account that the ATP is incorporated in US and the TIU's headquarters are located in UK, we understand that if the Panel would opt for a single body of applicable law -as opposed to general principles of law- it will probably select either Florida law or English law. Such a choice could:

1. Be tantamount to a *de facto* denial of access to justice;
2. Alternatively, be tantamount to providing legal aid to almost all Covered Persons;
3. Consequently, make unreasonably costly to finance the Covered Persons' legal aid system;
4. Dramatically limit the Covered Persons' right to appoint counsel of their choice/trust; and
5. Dramatically limit the diversity of the pool of arbitrators and the cost of the disciplinary proceedings.

1. *De facto* denial of justice

The Commission on the Future of Legal Services of the American Bar Association found in its 2016 Report[3] that: "[a]*ccess to affordable legal services is critical in a society that depends on the rule of law. Yet legal services are growing more expensive, time-consuming, and complex, making them increasingly out of reach for most Americans. Many who need legal advice cannot afford to hire a lawyer and are forced to either represent themselves or avoid accessing the legal system altogether*".

In that regard, it is worth mentioning that, according to the Daily Business Review, Florida's hourly legal billing rates are considered "Among the Nation's Highest".

[3] Commission on the Future of Legal Services, *Report on the Future of Legal Services in the United States,* American Bar Association (2016), page 8 para. 3

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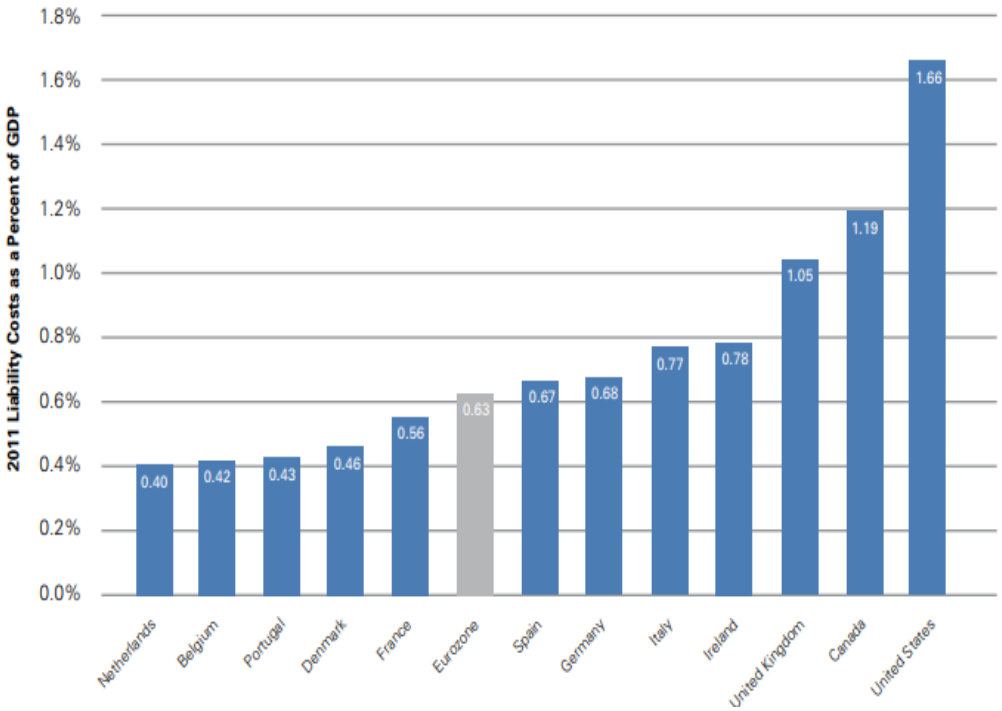
On another note, the U.S. Chamber Institute for Legal Reform found in its publication "International Comparisons of Litigation Costs" that:

6. "*the U.S.* liability *costs is at 2.6 times the average level of the Eurozone economies*"[4];

7. "[t]*he U.S. has* the *highest estimated liability costs in proportion to GDP, and the U.K. is the most costly European country*"[5] as the charter below shows.

Figure 1: 2011 Liability Costs as a Fraction of GDP[5]



On the other hand, recent statistical information on the average lawyer hourly fees in the UK confirms that they are among the highest in Europe.

[4] The U.S. Chamber Institute for Legal Reform, *International Comparisons of Litigation Costs* (2013), page 2

[5] *Ibid*, page 6

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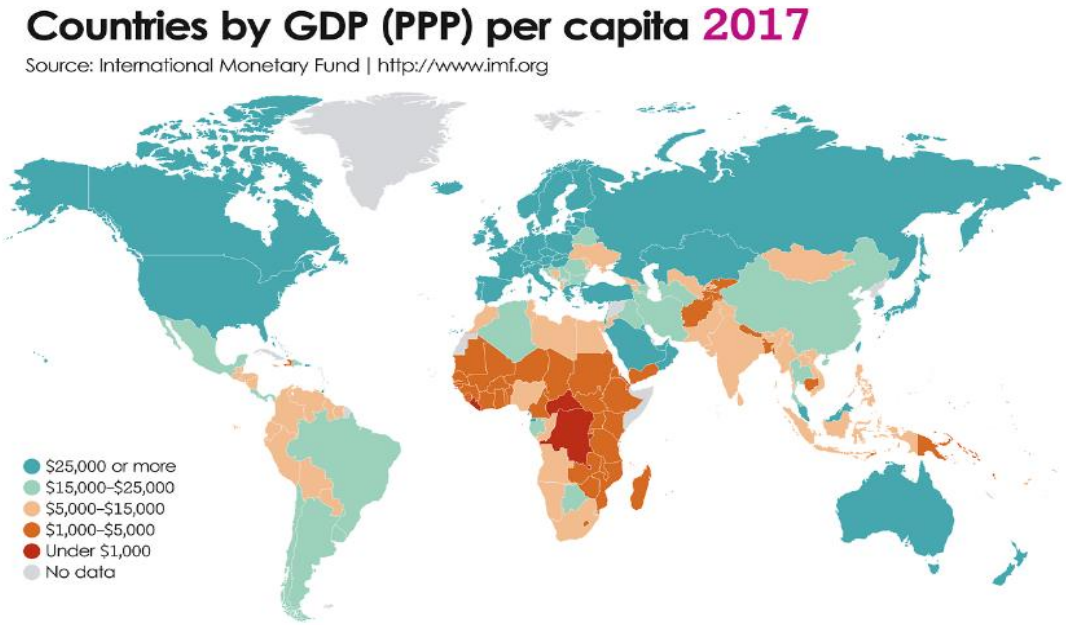
The aforementioned considerations are significantly important provided that Paragraph 103 of the Interim Report states that: "*the available evidence is largely consistent in revealing that betting-related corruption and other breaches of integrity have taken firm root in professional tennis, in particular* ***at the lower and middle levels of the men's game****, and may well be increasing and spreading*". In addition, in Paragraph 7.2 of the Interim Report it is highlighted that: **"[o]*nly the top 250 to 350 players earn enough money to break even*"**.

Moreover, in Paragraph 257 of Chapter 13 of the REA, the Panel observes that "[t]*he available evidence suggests that players from certain countries have historically been more likely to be involved in Primary Breaches of Integrity. The geographic spread of those countries is wide, but players from the geographic areas of* ***Central and South America, North Africa, Central Asia, and Eastern Europe*** *predominate*".

In this respect, the following graphic shows that average citizens from South America, North Africa, Central Asia, and Eastern Europe have less economic resources than citizens from either US or UK.



In light of the above, and despite the fact that an established body of law from a particular jurisdiction can provide a certain degree of clarity and predictability, we believe that both Florida law and English law are far from offering the best solution. In practice, both possibilities will deprive

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Covered Persons from South America, North Africa, Central Asia, and Eastern Europe of hiring a US or UK lawyer and therefore, amounting to a denial of justice.

2. The Beneficiaries of the Legal Aid System

In Paragraph 381 of Chapter 14 of the REA the Panel observes that: "[…] *it is important that legal aid be available, where appropriate, at least at the final de novo stage of disciplinary proceedings under the TACP. Accordingly, as further described above, the Panel considers that a single-stage arbitral proceeding, if adopted, should provide a legal aid system similar to the one provided by CAS. An important concern here is that if there is no possibility of legal aid from one source or another for Covered Persons who cannot afford to hire a suitable lawyer, Covered Persons could attempt to challenge the arbitration agreement in state courts*".

Therefore, bearing in mind:

8. the Panel's assertion that *betting-related corruption and other breaches of integrity have taken firm root in professional tennis, in particular at the lower and middle levels of the men's game*"[6];

9. that "o*nly the top 250 to 350 players earn enough money to break even*"[7]; and

10. that the choice of either Florida law or English law *significantly* raises the legal costs,

it can therefore certainly be concluded that a large number of Covered Persons -and the vast majority of those from South America, North Africa, Central Asia, and Eastern Europe- will be entitled to legal aid.

3. The choice of either English or Florida law leads to an unreasonably costly legal aid system

Legal aid has proved to be unreasonably costly and burdensome for the Anglo-Saxon society itself. England and Wales have been described as "*the most expensive legal aid system in the world*". This circumstance has led to a dramatic reduction of the available legal aid in the UK which has been

[6] Interim Report, Paragraph 103

[7] *Ibid*, Paragraph 7.2

defined by Amnesty International UK as a "*breach of the UK's international human rights obligations*"[8].

Thus, considering the costs of both American and English lawyers and given that, as a result, the vast majority of the Covered Persons would be entitled to legal aid, it is highly likely that the legal aid system will be unreasonably costly, especially if compared with a system where each Covered Person would have the possibility to hire a lawyer from her/his own country.

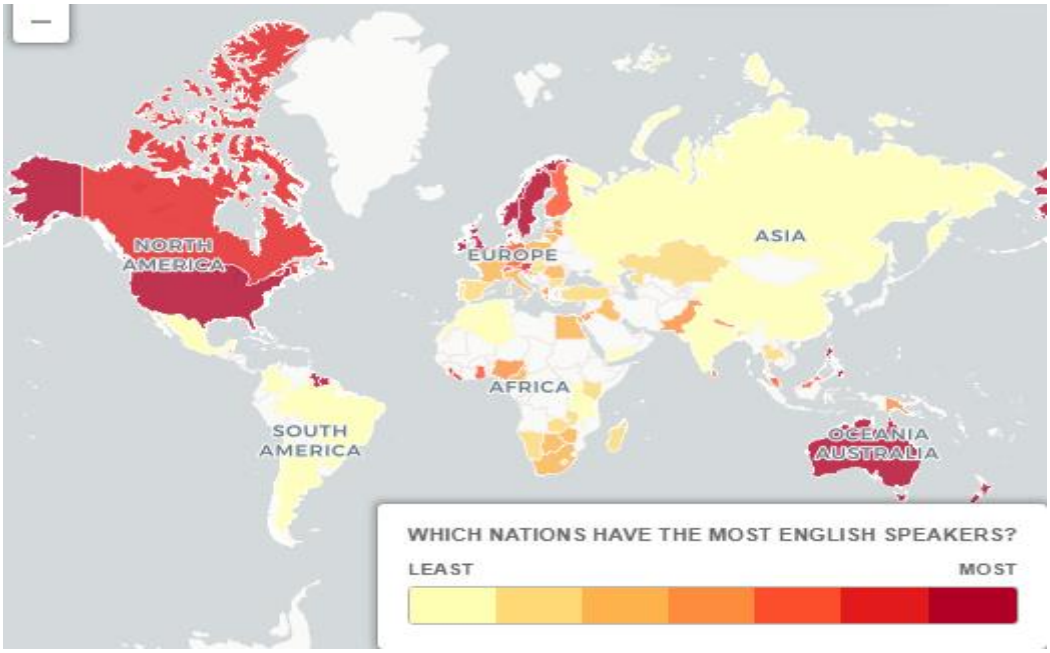
4. Dramatic limitation of the Covered Persons' right to appoint the counsel of their choice

Paragraph 349 of the REA provides that in selecting an established body of law from a particular jurisdiction, careful consideration should be given to the Covered Persons' right to appoint a counsel of their choice.

In that regard, the choice of either English or Florida law will undoubtedly diminish the Covered Persons' right to choose the counsel of their choice. However, if as alternatively suggested by the Panel in Paragraph 349 of the REA, general principles of law are applied to resolve the dispute under the TACP, such a constraint would not exist because the range of possible counsels will be significantly increased.

Moreover, bearing in mind the Panel finding that Covered Persons from the geographic areas of Central and South America, North Africa, Central Asia, and Eastern Europe predominate in the disciplinary proceedings under the TACP, the following graphic shows their limited linguistic ability to effectively communicate with English or American lawyers:

[8] Amnesty International UK, *The impact of Legal Aid Cuts in England on Access to Justice* (2016), page 47



In any event, and on the assumption that some of the Covered Persons would be able to successfully communicate with English or American lawyers, it does seem clear that the Covered Person's choice will be in any event limited to a selected group of lawyers who will certainly be unfamiliar with the Covered Person culture and needs.

In light of the above, it can be concluded that both English and Florida law would dramatically limit the Covered Persons' right to appoint a counsel of their choice/trust.

5. Negative impact on the diversity of the arbitrator's pool

Paragraph 349 of the REA provides that in selecting an established body of law from a particular jurisdiction, careful consideration should be given to the value of enlisting a pool of truly internationally diverse and qualified arbitrators from various parts of the world.

From page 148 of Chapter 10 it follows that, currently, there appears to be no diversity in the pool of arbitrators. Thus, the four individuals usually appointed to serve as AHOs are English qualified lawyers. In this regard, if either United Kingdom law or Florida law were found to be the law applicable to the TACP, it would entail that only qualified lawyers in a common law jurisdiction would

be able to serve as arbitrators and, as a consequence, there would be still no diversity in the arbitrators' pool.

In addition, the exclusive adjudication of disciplinary proceedings by common law practitioners does not appear to be the most suited solution provided that those proceedings mainly involve Covered Persons from Central and South America, North Africa, Central Asia, or Eastern Europe.

Thus, if instead of English or Florida law, general principles of law apply in the TACP disciplinary proceedings, greater diversity in the arbitrator's pool will be achieved.

SECTION 3 - PROPOSAL

We are convinced that CIAR is very well placed to administer disciplinary proceedings under the TACP, within the framework of the single-stage procedure and in which general principles of law apply, for the following reasons:

1. We are in the position to offer an internationally diverse pool of impartial and independent arbitrators - especially, those from Portuguese and Spanish-speaking countries- through a process that ensures their independence from the TIU, the SB and the International Governing Bodies and;

2. Alternatively, we are also in the position to administer cases involving Portuguese and Spanish-speaking Covered Persons or in which there exists a need to appoint a Portuguese or Spanish-speaking arbitrator. Thus, other arbitral institutions would equally be competent to administer cases involving Covered Persons from North Africa, Central Asia, or Eastern Europe.

3. In addition, we are in the position to guarantee an effective legal aid system;

4. Furthermore, we are capable of running cases in a more cost-effective manner than the current TACP disciplinary proceedings before the AHO;

5. Finally, we are prepared to appoint emergency arbitrators within 24 hours from the filing of the interim measure's request.

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