

Tribunal Arbitral du Sport
Court of Arbitration for Sport

**CAS 2019/A/6557 Japan Mountaineering & Sport Climbing Association (JMSCA) v.
International Federation of Sport Climbing (IFSC)**

**CAS 2019/A/6663 Japan Mountaineering & Sport Climbing Association (JMSCA) v.
International Federation of Sport Climbing (IFSC)**

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Prof. Dr. Martin Schimke, Attorney-at-Law, Düsseldorf, Germany
Arbitrators: Dr. Hans Nater, Attorney-at-Law, Zurich, Switzerland
Mr. Michele A.R. Bernasconi, Attorney-at-Law, Zurich, Switzerland
Ad hoc Clerk: Ms. Marianne Saroli, Attorney-at-Law, Montreal, Canada

in the arbitration between

Japan Mountaineering & Sport Climbing Association, Tokyo, Japan

Represented by Mr. Shoichi Sugiyama, Attorney-at-Law, Tokyo, Japan

Appellant

and

International Federation of Sport Climbing, Berne, Switzerland

Represented by Dr. Bernhard Berger and Mr. Manuel Imfeld, Attorneys-at-Law, Berne, Switzerland

Respondent

I. PARTIES

1. The Japan Mountaineering & Sport Climbing Association (the “JMCA” or “Appellant”) is the national federation (“NF”) of mountaineering and sport climbing for Japan. The Appellant has its seat in Tokyo, Japan and is affiliated to the Japanese Olympic Committee (the “JOC”) and to the International Federation of Sport Climbing.
2. The International Federation of Sport Climbing (the “IFSC” or “Respondent”) is an international federation (“IF”) and a non-governmental, non-profit organization whose main objectives are the direction, regulation, promotion, development and furtherance of climbing competitions around the world. The Respondent has its seat in Berne, Switzerland.

II. FACTUAL BACKGROUND

A. Background Facts

3. This Award contains a concise summary of the relevant facts and allegations based on the Parties’ submissions, correspondence and the evidence adduced throughout the procedure. Additional facts and allegations found in the Parties’ submissions, correspondence and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has carefully considered all the facts, allegations, legal arguments, correspondence and evidence submitted by the Parties and treated as admissible in the present procedure, it refers in this Award only to the matters necessary to explain its reasoning and conclusions.

B. The Qualification System (YOG)

4. On 29 August 2017, the IFSC announced its Qualification System for the Youth Olympic Games, Buenos Aires 2018 (the “YOG”). The YOG Qualification System provides *inter alia* as follows:

B. Athlete’s Quota

1. Total Quota for Sport Climbing:

	<i>Qualification Places</i>	<i>Host Country Places</i>	<i>Universality Places</i>	<i>Total</i>
<i>Men</i>	18	1	1	20
<i>Women</i>	18	1	1	20
<i>Total</i>	35	2	2	40

2. Maximum Number of Athletes per National Olympic Committee (NOC):

	<i>Quota per NOC</i>
<i>Men</i>	2
<i>Women</i>	2
<i>Total</i>	4

3. Type of Allocation of Quota Places:

The quota place is allocated to the athlete(s) by name. NOCs with more than two (2) qualified athlete, per gender, have the authority to decide which two (2) qualified athlete, per gender, they will enter.

...

C. Athlete Eligibility

All athletes must comply with the provisions of the Olympic Charter currently in force, including but not limited to, Rule 41 (Nationality of Competitors). Only those athletes who have complied with the Olympic Charter may participate in the Youth Olympic Games.

Age

To be eligible to participate in the Youth Olympic Games, athletes must have been born between 1 January 2000 and 31 December 2001.

Additional IF criteria

To be eligible to participate in the Youth Olympic Games, athletes must:

- *Hold a valid IFSC license;*
- *Not have been banned from participating in any IFSC competition for whatever reason during the Youth Olympic Games year.*

D. Qualification Pathway

The applicable rules for the athletes' ranking and participation to the above events are the IFSC Rules for the relevant years.

Qualification Places

Men & Women

Number of Quota Places	Qualification Event
<i>D.1. 13 Men 13 Women (26 athletes)</i>	<i>D.1. Youth World Championships (YWCH) 30.08.2017 – 10.09.2017, Innsbruck, (AUT)</i> <i>The top 13 ranked athletes per gender in the “Youth A” category at the Youth World Championships will be allocated one (1) quota place respecting the maximum quota per gender per NOC.</i>
<i>D.2. 5 Men 5 Women</i>	<i>D.2. Youth Continental Championships (YCCH) 2017</i>

<p>(10 athletes)</p>	<p><i>The best ranked athlete at the Youth Continental Championships will obtain one (1) quota place, respecting the maximum quota per gender per NOC, at each of the following YCCH sanctioned by IFSC:</i></p> <ul style="list-style-type: none">• <i>Africa, African Youth A 2018 YOG qualifying competition, 08.12.2017 – Johannesburg (RSA)</i>• <i>Asia, Asian Youth Continental Championships, 05.07.2017 – 09.07.2017, Singapore (SIN)</i>• <i>Oceania, Oceania Youth Continental Championships, 13.10.2017 – 15.10.2017, Nouméa, New-Caledonia (FRA)</i>• <i>Pan-America, Youth Continental Championships, 30.10.2017 – 5.11.2017, Montreal (CAN)</i>• <i>Europe, European Combined Youth Continental Championships, 25.11.2017 – 26.11.2017, St Etienne (FRA)</i> <p><i>In case the best ranked athlete already obtained a quota place through D.1 the quota place will be allocated to the next best ranked athlete not yet qualified.</i></p> <p><i>Should a Youth Continental Championship be held prior to the Youth World Championship and should an athlete obtain a quota place in both. The allocation of the Youth World Championships will take precedent and the quota place from the YCCH will be allocated to the next best ranked athlete not yet qualified.</i></p>
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E. Confirmation for Quota Places

Confirmation of Qualification Places

IFSC will publish the Youth World Championships ranking by 12 September 2017 on their website at link.

IFSC will publish the ranking of the Youth Continental Championships immediately following the completion of the event on their website (link).

The IFSC will confirm in writing to NOCs five (5) days after the completion of the Youth Continental Championships the quota places they have achieved.

Should a Youth Continental Championships occur prior to the Youth World Championships the IFSC will confirm in writing to NOCs after the completion of the Youth World Championships on 12 September 2017.

The NOCs will then have two (2) weeks to confirm to IFSC and BAYOGOC if they wish to use these quota places, as detailed in section G. Qualification Timeline.

Confirmation of Host Country Places

If the host country is not allocated a quota place through D.1 or D.2 the host country must confirm in writing to IFSC and BAYOGOC by 26 September 2017 the participation of its athletes.

F. Reallocation of Unused Quota Places

Reallocation of Unused Qualification Places

If a quota place allocated is not confirmed by the NOC by the confirmation of quota place deadline or is declined by the NOC, the quota place will be reallocated to the next best-ranked athlete not yet qualified at the respective event where the quota place was obtained. Should there be no other eligible athletes available from the respective Youth Continental Championships to receive the reallocated quota place, the latter will be reallocated to the next best-ranked athlete not yet qualified at the Youth World Championships.

5. From 5 to 9 July 2017, the Asian Youth Continental Championships took place in Singapore (“Asian Youth Games”). Mr. Daichi Nakashima finished in 4th place in the Male Youth “A” Combined Event, following which he was allocated one quota place.
6. From 30 August 2017 to 10 September 2017, the IFSC Youth World Championships took place in Innsbruck, Austria (“IFSC Youth Championships”). Mr. Keita Dohi and Mr. Shuta Tanka finished in 2nd and 6th place, respectively, in the Male Youth “A” Combined Event. Each athlete was allocated one quota place.
7. On 12 September 2017, the IFSC sent a letter to the JOC confirming quota places following the Asian Youth Games and IFSC Youth Championships. The IFSC letter provides as follows:

Dear Sirs,

Following the publication of the Qualification System for the Youth Olympic Games 2018 for Sport Climbing and the publication of the result of both the IFSC Asian Youth Continental Championships and Youth World Championships we have the pleasure to inform you that the following athlete(s):

*Dohi Keita – Male Youth A Combined
Shuta Tanaka – Male Youth A Combined
Daichi Nakashima – Male Youth A Combined
Mao Nakamura – Female Youth A Combined*

could benefit from the quota allocated for Sport Climbing at the Youth Olympic Games 2018.

However, for the Male category, as per the NOC maximum quota, we would like you to confirm only 2 out of the 3 athletes.

*For the Female category, please confirm if Mao Nakamura will use the allocated quota.
(...)*

8. Following receipt of this letter, the JOC confirmed the allocated quota places in the Male Category for Mr. Dohi and Mr. Tanaka with the IFSC and YOG Organizing Committee.

C. The Qualification System for the Games of the XXXII Olympiad – Tokyo 2020

9. The International Olympic Committee (“IOC”) established the Qualification System Principles for the Games of the XXXII Olympiad – Tokyo (“Tokyo 2020”), which was approved by the IOC Executive Board in July 2017. Subsequently, a qualification system for each sport was prepared in collaboration with the relevant international federations (“IF”).
10. In October 2017, the qualification system for the sport of climbing for Tokyo 2020 was ratified by the IFSC (the “IFSC Qualification System”).
11. On 3 February 2018, the IFSC Qualification System was approved by the IOC Executive Board in accordance with Rule 40 of the Olympic Charter and Article 1 of the By-law to Rule 40. The approval letter of the IOC reads as follows:

Dear Marco, dear Debra,

We would like to thank you and the IFSC for the excellent collaboration in the development of the qualification system for the Games of the XXXII Olympiad, Tokyo 2020.

We are pleased to inform you that the Tokyo 2020 qualification system for sports climbing was approved by the IOC Executive Board during its meeting in PyeongChang on 3 February.

My team will share with you in the upcoming weeks the final version of your qualification system in English and French as well as the Tripartite Commission Places allocation procedure, following standardisation of certain language and formatting elements.

As you know, it is very important that the NOCs can access the latest information regarding qualification events. In cases where this information is still pending, we kindly ask you to provide us with all the updates regarding dates and locations of qualification events as soon as these details are confirmed to ensure we update the systems accordingly.

As per the qualification system principles and to ensure all NOCs are working of the correct document, the qualification system for each sport, once agreed by the IOC and the IFs, shall not be changed without IOC agreement. To avoid confusion or discrepancies they also should not be published in any other format without IOC

approval. Please contact Bram Schellekens (bram.schellekens@olympic.org) for any questions you may have in this regard.

We thank you once again for your excellent collaboration and look forward to continuing our fantastic partnership as we work toward the Olympic Games Tokyo 2020.

*Very best regards,
Kit McConnell
Sports Director*

12. In October 2018, the Respondent published the IFSC Qualification System for the sport of climbing, which provides *inter alia* as follows:

B. Athlete's Quota

1. Total Quota for Sport Climbing:

	<i>Qualification Places</i>	<i>Host Country Places</i>	<i>Tripartite Commission Invitation Places</i>	<i>Total</i>
<i>Men</i>	18	1	1	20
<i>Women</i>	18	1	1	20
<i>Total</i>	35	2	2	40

2. Maximum Number of Athletes per NOC:

	<i>Quota per NOC</i>	<i>Event Specific Quota</i>
<i>Men</i>	2	2 athletes per event
<i>Women</i>	2	2 athletes per event
<i>Total</i>	4	

3. Type of Allocation of Quota Places:

The quota place is allocated to the athlete(s) by name.

C. Athlete Eligibility

All athletes must comply with the provisions of the Olympic Charter currently in force, including but not limited to, Rule 41 (Nationality of Competitors) and Rule 43 (World Anti-Doping Code and the Olympic Movement Code on the Prevention of Manipulation of Competitions). Only those athletes who comply with the Olympic Charter may participate in the Olympic Games Tokyo 2020.

Additional IF criteria

To be eligible to participate in the Olympic Games Tokyo 2020, all athletes, including those receiving Tripartite Commission Invitation Places and Host Country Places, must:

- *Hold a valid International license issued by the IFSC for the Olympic Games year at the date of the final entries deadline (6 July 2020);*
- *Not have been banned from participating in any IFSC competition for whatever reason during the Olympic Games year.*
- *Have participated at least in one (1) of the events mentioned in section D “Qualification Pathway” of this document.*

D. Qualification Pathway

Qualification Places

The qualification events are listed in hierarchical order of qualification.

Men & Women

<i>Number of Quota Places</i>	<i>Qualification Event</i>
7	<p><u><i>D.1. IFSC Combined World Championships (WCH) 20-21 August 2019, Hachioji - Tokyo, (JPN)</i></u></p> <p><i>The seven (7) highest placed athletes per gender at the World Championships will be allocated one (1) quota place, respecting the maximum quota per gender per NOC.</i></p>
6	<p><u><i>D.2. Olympic Qualifying Event 2019, 28 November-1 December, Toulouse (FRA)</i></u></p> <p><i>The twenty (20) highest ranked athletes per gender, not yet qualified through D.1 above, at the Overall World Cup Ranking will be selected for participating in the Olympic Qualifying Event.</i></p> <p><i>Then, the six (6) highest placed athletes per gender at the Olympic Qualifying Event will be allocated one (1) quota place, respecting the maximum quota per gender per NOC.</i></p>
5	<p><u><i>D.3. IFSC Combined Continental Championships (CCH) 2020</i></u></p> <p><i>The highest placed athlete at the Continental Championships will obtain one (1) quota place, respecting the maximum quota per gender per NOC, at each of the following CCH sanctioned by IFSC:</i></p> <ul style="list-style-type: none"> • <i>Africa, 1-3 May, Johannesburg (RSA)</i> • <i>Asia, 18-24 May, Morioka (JPN)</i>

	<ul style="list-style-type: none">• <i>Europe, 16-18 April, Moscow (RUS)</i>• <i>Pan-Am, 27 February-1 March, Los Angeles (USA)</i>• <i>Oceania, 18-19 April, Sydney (AUS)</i> <p><i>In case the highest placed athlete already obtained a quota place through D.1. or D.2. the quota place will be allocated to the next best ranked athlete, not yet qualified, at the same Continental Championship.</i></p>
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Host Country Places

The host country will automatically qualify one (1) male and one (1) female athlete, on the condition that the athletes meet the eligibility requirements described under section C of this document and that the athletes participate in the Youth World Championships.

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F. Reallocation of Unused Quota Places

Reallocation of Unused Qualification Places

Unused Host Country Place(s) will be reallocated to the next highest placed athlete, not yet qualified, in the Combined World Championships 2019 in Tokyo, respecting the maximum quota per gender per NOC.

13. On 6 November 2018, the Appellant sent an email to the Respondent inquiring as to the interpretation of the IFSC Qualification System.
14. On 10 November 2018, Mr. Jérôme Meyer, Head of Olympic Coordination responsible for the qualification process for Tokyo 2020, circulated an email regarding Host Country Places to the Appellant. The email provided as follows:

Dear Yuji, dear Saki, dear all,

Thank you very much for your letter regarding the Qualification System (QS) of OG 2020. I hope my answers below will be useful.

First of all allow me to highlight that the link you used is an IFSC website link, and you should be aware that this is not the official source for that document.

The official source is the IOC relevant platform for all of the NOCs. Obviously, the IFSC is in close contact with the IOC and we'll make sure that what is displayed on our website is up to date, but in general for any official request regarding this QS should go to your NOC (JOC).

This may look as a picky answer but is important as, for example, in case of issues with the QS, it's going to be the JOC who raise the complain [sic] to the IOC and not the JMSCA to the IFSC.

Then on your questions:

-In general:

any participating country is subject to an absolute maximum of 2 athletes per gender, so whatever is the method of selection the Japanese [sic] for the OG 2020 will not be more than 2 men and 2 women.

-Your questions on the host country quota:

Does this mean that Japan, the host country can use the “Host Country Places” ONLY when NO Japanese male (or female) athlete obtains the “Qualification Places» > NO Or does Japan can use “Host Country Places” even if ONE male (or female) Japanese athlete obtains the “Qualification Places”? > YES

Should the JPN team manage to only select one athlete (in a specific gender) then you may use the Host country place to have a second athlete.

Further, does Japan can use [sic] “Host Country Places” even if TWO male (or female) Japanese athletes obtain the “Qualification Places” regardless of the “2. Maximum [sic] Number of Athletes per NOC” in the section “B. ATHLETES QUOTA” in page 1/4, which states that quota per NOC is two men and two women? > NO but... (see below)

Is “REALLOCATION OF UNUSED HOST COUNTRY PLACES” in page 4/4 provided regarding this case? > YES

As stated above, the 2 per country is an absolute minimum so if Japan has 2 athletes selected you may not be able to use the host country quota and therefore these places will be re-allocated.

However, there’s a possibility that you use the host country quota but in this case this means you need to refuse one of the two athletes that are selected via the qualification events, but you need to be sure that the next athlete in the ranking of the event is not a Japanese athlete otherwise the quota you refuse goes automatically to another member of your team, and in such case you may need to refuse that athlete again.

The process I describe here, is a way to select a specific athlete should you trust him/her to make good result at the Games despite him/her no being selected via the qualifying events. [...]

15. On 20 February 2019, Mr. Toru Kobinata, Vice President of the IFSC, sent an email to the JOC and JMSCA confirming his understanding of the allocation for quotas and Host Country Places. The email provided in relevant part as follows:

The key here is that while each NOC can ultimately enter a maximum of two persons in Tokyo OG, athletes who have obtained a quota place in the WCH confirmed by NOC cannot participate in the Olympic Qualifying Event 2019, but can participate in the Asian CCH.

In other words, more than one athlete might qualify, the possibility of which is extremely high for Japan, not to mention that Japan also has Host Country Places.

Which athlete will be confirmed by NOC is a question for NOC (NF) to answer, nonetheless.

*All of the above information is obtainable from the published document.
(of not, my understanding has been helped by reading through the document with the executive office staff during my latest business trip to IF).*

Strictly in my personal opinion, I believe it would be better to just confirm the athletes once they qualify before IF says anything.

This is because, although entries are limited to two persons, the document does not state anything about the limit on the number of persons who can be qualified and confirmed.

On the other hand, the document states that is an athlete is not confirmed, an athlete who has not obtained a quota place – i.e. a lower placed athlete – will have to be confirmed in the same manner.

If a non-Host Country Place is relinquished by the relevant athlete, it is very unlikely to be reclaimable as it will be handed over to another athlete.

*In any case, anything could happen until June (e.g. accident, illness, hospitalization).
(While Host Country Places are available, this document does not clearly state that if an athlete who has already obtained a Host Country Place is selected, the allocated place cannot be used; my understanding is that it can be used freely within the participation quota, i.e. two persons per NOC.*

16. On 14 March 2019, a workshop on the IFSC Qualification System was held in Japan. On the Appellant's account, Mr. Jérôme Meyer explained during that workshop that when two athletes per gender of a NOC have already been qualified and confirmed at a World Championship, other athletes from the same NOC may also qualify through a qualifying event thereafter.
17. On 16 March 2019, a press conference was held on the occasion of the IFSC General Assembly. On the Appellant's account, Mr. Toru Kobinata stated as follows:

Confirming the qualified places" is not the same concept as "confirming the entry of Olympics Game". In the case where athletes who have no qualified places participate in the Combined Qualifying Event, it may be possible that the third qualified quota are confirmed. As NOCs are possible to confirm at maximum two athletes' quotas per each of the qualification events, NOCs may confirm two or more qualifications in total. The qualified places are given to athletes who have been confirmed. On the other hand, the Host Country Places can be used for athletes who have not been confirmed.

18. On 19 May 2019, the IFSC announced the 2019 IFSC Combined Qualifier regulations for the Olympic Qualifying Event in Toulouse, France (“OQE”), which provide *inter alia* as follows:

5. *Tokyo 2020 Olympic Games Quota Places*

For each gender, the six (6) highest ranked Athletes from the 2019 IFSC Combined Qualifier will each be allocated a provisional Quota Place for Tokyo 2020 Olympic Games, which will be subject to acceptance/confirmation by their NOC.

19. On 21 May 2019, the JMSCA announced its domestic selection criteria for Tokyo 2020 (the “Domestic Criteria”). The Domestic Criteria provides *inter alia* as follows:

1. How to participate in the Tokyo Games

In accordance with the Qualification System (Appendix), JMSCA will select up to two men and women (refer to section B. of the Qualification System) from among athletes who meet the Athlete Eligibility criteria (refer to section C. of the Qualification System) and have been allocated a Qualification Place or Host Country Place (hereinafter collectively referred to as “Quota Place”; refer to section D. of the Qualification System) and recommend them to JOC, based on which JOC will submit Sport Entries from the Tokyo Games.

2. How to obtain a Quota Place for the Tokyo Games

Please refer to the Qualification System (Appendix)

3. How to become a JOC-recommended athlete

KMSCA will select athletes to be recommended to JOC (hereinafter referred to as “JOC-recommended athletes”) by the following method:

[1] Qualification events for JOC-recommended athletes for Tokyo Games

*(1) IFSC Combined World Championships 2019
Period: From August 11, 2019 to August 21, 2019
Venue: Hachioji City, Tokyo*

*(2) Olympic Qualifying Event 2019
Period: From November 28, 2019 to December 1, 2019
Venue: Toulouse, France*

*(3) IFSC Asian Combined Continental Championships 2020
Period: From April 27, 2020 to May 3, 2020
Venue: Morioka City, Iwate Prefecture*

*(4) Third Sport Climbing Combined Japan Cup
Period: From May 16, 2020 to May 17, 2020
Venue: To be decided*

[2] Selection method of JOC-recommended athletes (same for both men and women)

(1) When three or more athletes have obtained a Qualification Place (same for both men and women), JOC-recommended athletes will be selected by the following method:

(a) Preferred selected athlete

By the following selection method, one person shall be selected on a preferential basis as a JOC-recommended athlete from among the athletes who have obtained a Qualification Place in the events referred to in (i) through (iii) below.

(i) IFSC Combined World Championships 2019 (1 above)

The highest placed Japanese athlete among the athletes who have obtained a Qualification Place in accordance with the Qualification System (in principle, an athlete placed seventh or higher, provided, however that there is a possibility of the athlete being moved up; hereinafter the same shall apply) shall be a JOC-recommended athlete.

(ii) Olympic Qualifying Event 2019 ([1](2) above)

The results of this Event shall be used only in cases where (i) is not applicable to any athlete.

The highest placed Japanese athlete among the athletes who have obtained a Qualification Place in accordance with the Qualification System shall be a JOC-recommended athlete.

(iii) IFSC Asian Combined Continental Championships 2020([1](3) above)

The results of this Event shall be used only in cases where neither (i) nor (ii) is applicable to any athlete.

The highest placed Japanese athlete among the athletes who have obtained a Qualification Place in accordance with the Qualification System shall be a JOC-recommended athlete.

(b) Non-preferred selected athlete

(i) Qualification event

Third Sport Climbing Combined Japan Cup ([1](4) above)

(ii) Eligible athletes

Athletes who have obtained a Qualification Place but were not selected on a preferential basis in (a).

(iii) Selection Method

The highest placed athlete (one person) at this event shall be recommended.

20. On 20-21 August 2019, the IFSC Combined World Championships were held in Hachioji, Japan (the “WCH”). In the Men’s Combined Event, Mr. Kai Harada finished in 4th place, Mr. Meichi Narasaki finished in 5th place, and Mr. Nokoro Fujii finished in 6th place. In the Women’s Combined Event, Ms. Akiyo Noguchi finished in 1st place, Ms. Miho Nonaka finished in 5th place, Ms. Ai Mori finished in 6th place, and Ms. Futaba Ito finished in 7th place.
21. On 26 August 2019, Mr. Toshikazu Watanabe, a director or officer of JOC, received an email from Ms. Sakura Sato, the Sports Entry, the Organizing Committee of the Tokyo Olympic and Paralympic Games, which provided him the following details:

Dear Mr. Watanabe,

I hope this e-mail finds you well.

Thank you for contacting us.

I have once more verified our matter within the team and as climbing is a competition where the right to appear is obtained “by name”, as indicated under “Qualification System”, I understand that if you “confirm” this time, four persons will be confirmed.

(If the NOC was allowed to choose, the “Qualification System” would be described as for the Modern Pentathlon (ref. 1); the climbing clearly specifies “by name” (ref. 2).)

Ref 1: Modern Pentathlon

3. Type of Allocation of Quota Places: The quota places is allocated to the athletes by name. NOCs with more than two (2) qualified athletes have the authority to decide which two (2) qualified athletes they will enter.

Ref 2: Climbing

3. Type of Allocation of Quota Places:

The quota place is allocated to the athlete(s) by name.

We kindly ask for your confirmation.

Sato

22. On 27 August 2019, the JMSCA wrote to the IFSC the following:

Dear Jérôme Meyer,

Japan Mountaineering & Sport Climbing Association (JMSCA) would like to confirm the following four qualified athletes for the Olympic Games Tokyo 2020:

Tomoa Narasaki - MEN

Kai Harada – MEN

Akiyo Noguchi - WOMEN

Miho Nonaka – WOMEN

Also, the following is what JMSCA understands to stand true for the upcoming qualifications:

- *A maximum of two other Japanese athletes (each of MEN/WOMEN) can qualify and be confirmed at the Olympic Qualifying Event.*
- *Another Japanese athlete (each of MEN/WOMEN) can qualify and be confirmed at the Asia Championships.*
- *Ultimately, JMSCA will select two of the five athletes (each of MEN/WOMEN) as members of the Japan National Team for the Olympic Games Tokyo 2020.*

It would be appreciated if you could confirm the above details.

Best regards,

Hiroshi Yasui

Head Coach of Japan National Team

23. On 30 August 2019, the JOC wrote to the Respondent the following:

Dear Jérôme Meyer

Head of Olympic Coordination

International Federation of Sport Climbing

Re: the confirmation of using allocated quota places for the TOKYO2020

Thank you very much for the announcement regarding confirmation of using allocated quota places for the TOKYO2020 Olympic Games.

We, the Japanese Olympic Committee, are very pleased to confirm quota places as follows;

Sports Climbing

Tomoa Narasaki – MEN

Kai Harada – MEN

Akiyo Noguchi – WOMEN

Miho Nonaka – WOMEN

According to our NF's letter, it is highly appreciated if you could clarify their qualification process.

Yours sincerely,

*Tsuyoshi FUKUI
Secretary General
Japanese Olympic Committee*

24. After the WCH in August 2019, the JOC approached the Director of the Tokyo 2020 Sport Entry, Ms. Melina Xanthopoulou, to inquire whether the JOC would be at liberty to reconfirm a different qualified athlete at a later stage. In response to this inquiry, Ms. Melina Xanthopoulou replied to the JOC on 30 August 2019 as follows:

Dear Jerome,

Further to Rebecca's e-mail and the question she is putting forward, and as per our telephone discussion and the current approved qualification system, the answer should be that they are not able to change their athletes after confirmation. Whatever the USOPC confirms now are the athletes able to compete. In any other case a reallocation will occur. Unfortunately this is the answer we also provided to the JOC as they had exactly the same request since they had also three qualifiers.

Please see the attached Modern Pentathlon qualification system to understand the difference in the wording which allows you to choose from your qualified athletes if more than 2 have qualified.

A change might need to be considered for the future.

The attached extract is from MP and you might want to use it to prove to NOCs (that could come up with similar requests/answers) that this is not reflected in the current QS and if it was to be reflected the wording would have been as for Modern Pentathlon.

Please do not hesitate to come back with your comments or additional clarifications and I hope to meet you next time you are in Tokyo.

Looking forward to a great cooperation towards the Games.

Kindest Regards

Melina

25. On 4 September 2019, in response, the Respondent wrote to the JMSCA the following letter:

Dear Hiroshi Yasui,

Thank you for confirming the four athletes, we're happy that Japan can possibility secure already a good team for the Olympic Games.

Thank you also for your questions. In regards to qualification opportunities for other Japanese athletes at coming qualifying events, the IFSC will proceed as follows:

Should two Japanese athletes per gender take a place at the Toulouse qualifying event, within the quota of six places available, the IFSC will send a letter to the Japanese Olympic Committee (JOC) asking confirmation for these athletes.

Should another Japanese athlete take the place available at the Asian Combined Championships, the IFSC proceed in the same way.

The above will not affect previous confirmation at previous events.

However, by the date of the Entries deadline the JPC will have to enter two athletes maximum per gender. The selection of these 2 athletes belongs to the JOC, and I believe they will seek your opinion.

I hope this answer your questions and I remain at your disposal for anything else.

*Jérôme Meyer
Head of Olympic Coordination*

26. On 4 October 2019¹, the Respondent modified its position as set out in its 4 September 2019 correspondence as follows:

Dear Secretary-General, Dear Fukui San,

We would like to congratulate one more time Team Japan of the Japan Mountaineering and Sport Climbing Association (JMSCA) for having already secured 2 places for the Summer Olympic Games Tokyo 2020, and we wish the best for the next months of training that awaits these athletes.

Following this selection, and in the light of the interpretation of the Sport Climbing Qualification System provided by the IOC and Tokyo 2020 Organizing Committee, our statement in our letter dated 4th September 2019 to the JMSCA appears not correct. Therefore, we will proceed with the reallocation of the Host Country Quota.

This reallocation comes as Japan reached the maximum athlete quota at the occasion of the 2019 Combined World Championships, confirming two female and two male athletes.

We thank you very much for your trustful collaboration and remain at your disposal for any questions.

Very best regards,

*Jérôme Meyer
IFSC Head of Olympic Coordination*

27. On 3 October 2019, the JOC wrote to the IFSC, announcing its intention to support the qualification process of the JMSCA. The JOC also sought clarification on JMSCA quotas based on the previous explanations provided by Mr. Jérôme Meyer and Mr. Toru

¹ As it appears from the exhibits submitted by the Appellant, the letter is dated 4 October 2019. However, the Panel notes that the letter dated 4 October 2019 seems unchronological with the events that followed this letter and the dates of the subsequent letters. Hence, the Panel assumes the letter dated 4 October 2019 may simply contain a clerical error as regards to the date.

Kobinata regarding Host Country Places. In addition, the JOC attached to its letter a communication from the JMSCA (also dated 3 October 2019), which reads as follows:

Dear Jérôme Meyer,

We have read the document dated October 4 (PROT. 2019 / OG 1141).

In May 2019, the Japan Mountaineering & Sport Mountaineering Association (JMSCA) made an official announcement on the Olympic selection criteria. For this reason, it is difficult to make significant changes to the domestic selection criteria. We hope you can understand our situation.

Upon receiving your document (PROT. 2019 / OG / 141), JMSCA would like to revise its decision on the athletes who will participate in Tokyo 2020 as follows. Please note that this is different from what was confirmed in writing on August 27.

Regarding Japan Olympic Climbing Team

[Men]

- 1. TOMOA NARASAKI (confirmed from World Championships)*
- 2. Host country places (appointed by JMSCA)*

[Women]

- 1. AKIYO NOGUCHI (confirmed from World Championships)*
- 2. Host country places (appointed by JMSCA)*

It would be greatly appreciated if you could confirm the above details.

Yours sincerely,

*Hiroshi Yasui
Head Coach of Japan National Team*

28. On 14 October 2019, the IFSC sent the JOC a letter (the “First Communication”) stating that Host Country Places could be used flexibly. More specifically, the First Communication provided as follows:

Dear Secretary-General, Dear Fukui San,

Thank you for your answer to my previous letter and thank you for your patience, in light of recent developments, we refer to the Sport Climbing Qualification System (QS) for the sake of the athletes engaged in this process.

We understood from the 3rd of October JMSCA letter [...] and your correspondence, that the JOC and JMSCA would like to withdraw the second amongst the Japanese athletes confirmed from the Combined World Championship 2019 (in this case Ms. Miho Nonaka and Mr. Kai Harada) and use the Host Country Quota for a delayed confirmation.

However, according to the provisions of the QS, a withdrawn athlete cannot be confirmed again at a later stage. This means that if Ms. Miho Nonaka and Mr. Kai Harada are withdrawn, they are out of the Tokyo 2020 Olympic Games qualification path. We assume this is not your intention.

Additionally, the Host Country quota is a special quota introduced by the IOC, in order to secure the host country participation in the Olympic Games. It is not intended as a tool that allows flexibility regarding qualified athletes. In other words, if Japan qualifies and confirms one athlete, the Host Country quota is not applicable and is reallocated.

In light of the above, we are afraid to inform you that we are not able to follow up on your request. Consequently, we will reallocate the Host Country Quota place to the next best ranked athletes at the Combined World Championship 2019.

Thank you very much for your understanding and we remain at your disposal for any further question.

Very best regards,

Jérôme Meyer
IFSC Head of Olympic Coordination

29. On 25 October 2019, the IFSC sent the JMSCA a document dated 24 October 2019 and headed “Qualification process to the 2020 Olympic Games Sport Climbing Illustrations” (the “Second Communication”), listing the athletes concerned by such qualification. The document at issue stated, *inter alia*, that “request for confirmation have been already sent to the NOCs which confirmed the qualification of their athletes.” The Second Communication contained the following chart:

2. Scenarios of Olympic Qualification, illustration of Athlete by name principle

a) Athletes qualified at the World Championships (WCH) and at Combined Qualifier Event (CQE)

Step 1: World Championships (WCH)				Step 2: Combined Qualifying Event (CQE)			
Rank	Athlete	NOC	Notes	Rank	Athlete	NOC	Notes
1	Z1	Z		1	A1	A	
2	D1	D		2	B1	B	
3	X1	X		3	C2	C	
4	D2	D		4	D3	D	Two athletes already qualified (from WCH)
5	J1	J		5	Z2	Z	
6	J2	J		6	Z3	Z	Two athletes already qualified (from WCH / CQE)
7	C1	C		7	X2	X	
8	J3	J		8	P1	P	

30. It is from the First and Second Communications that the JMSCA appeals to the CAS in case CAS 2019/A/6557.
31. On 30 October 2019, the JMSCA wrote to the IFSC “to raise an official complaint” and to make the following requests:
- (...)
8. To exclude possible athletes, who had prepared based on the interpretation showed by the IFSC and the Domestic Criteria, from qualifying for the 2020 Tokyo Games

under these circumstances is totally unfair and contrary to the doctrine of estoppel. It is clear that when the JMSCA files this case before the Court of Arbitration for Sport (CAS) in Lausanne, CAS panel is sure to award the JMSCA and set aside the Decisions by the IFSC.

9. *In light of the above, the JMSCA hereby requests the IF-SC as below;*
- (1) withdraw the decision dated 24th October 2019 that athletes, belonging to Japanese NOC, which has already confirmed two athletes (per gender) at the WCH, will not be qualified even when they are ranked in the six highest places at the CQE or the highest place at the Asian CCH;*
 - (2) admit in writing that even though Japanese NOC has already acquired two quotas (per gender) at the WCH, athletes are still possible to be qualified and confirmed if they are ranked in the six highest places at the CQE, or the highest place at the Asian CCH;*
 - (3) withdraw the decision dated 14th October 2019 that the Host Country Places may not be used flexibly; and*
 - (4) admit in writing that Japanese NOC is able to flexibly select a specific athlete (with or without qualification quota) (per gender) to be eligible by using the Host Country Places.*
10. *Though sending this request to the IFSC is a very hard decision for the JMSCA, there isn't enough time to amicably resolve this conflict within one month until the CQE. Therefore, the JMSCA will file this case before the CAS, unless the JMSCA receives a written response from the IFSC, in which the IFSC fully accepts these requests stated in paragraph 9, by 7:00 a.m. (JST) on 1st November 2019. (...)*
32. On 1 November 2019, the IFSC amended the Qualification System for the OQE in Toulouse, France. But in doing so, paragraph 5 (see *supra*) was maintained as follows:

Dear National Federation,

Following a review of Tokyo 2020 Summer Olympic Games Qualification System (QS) application occurred today together with the Tokyo 2020 Sport Entry, with regard to the 2019 IFSC Combined Qualifier in Toulouse (FRA) from 28 November to 1 December, please take note of an important amendment that now applies to the 2019 IFSC Combined Qualifier regulations (Qualification System), as reported in the event info sheet and on the IFSC rules section of the website (https://www.ifscclimbing.org/images/World_Competitions/190516_IFSC_Combined_Qualifier_QualificationSystem.pdf)

1. Quota

[...]

1.2 Selection Criteria

The Athlete Quota within each gender will be filled from:

- 1) the highest ranked Athletes from the IFSC Combined World Cup Ranking as at 01 November 2019; and/or*
- 2) where following (1) the Athlete Quota remains incomplete,*

the highest ranked Athletes from the 2019 World Championship Combined Ranking, in each case

a) excluding any Athletes who have a confirmed Quota Place for Tokyo 2020 Olympic Games following the 2019 Combined World Championship; and

b) ~~subject to a National Quota of two (2) Athletes: (deleted)~~ [...]

4. Reallocation of Unused Quota

If an allocated quota place is not registered to the event by the NF by the registration of quota place deadline, the quota place will be reallocated to the next eligible best-ranked athlete ~~respecting NFs quota allocation (deleted)~~. [...]

All other provisions remaining.

Due to the closure of the office, the new info sheet and the new IFSC Rules 2019 Annex — Combined Qualifier will be published on November 4th.

We remain at your disposal for any questions.

Kind regards,

*Jérôme Meyer
IFSC Head of Olympic Coordination*

33. For the OQE in Toulouse, the JMSCA had initially listed the following athletes as starters: Ms. Ai Mori, Ms. Futaba Ito, Mr. Kokoro Fujii and Mr. Meichi Narasaki.
34. However, on 4 November 2019 and in light of the aforesaid Qualification System amendment for the OQE in Toulouse (i.e. the deletion of the 2-per-country quota rule for participation in the Toulouse event), the IFSC invited two additional male Japanese athletes – Mr. Keita Dohi and Mr. Rei Sugimoto – to compete in the OQE in Toulouse on the Men’s side, alongside Mr. Meichi Narasaki and Mr. Kokoro Fuji, who finished in 1st and 3rd place at the event, respectively. On the women’s side, Ms. Futaba Ito and Ms. Ai Mori finished in 1st and 5th place, respectively.
35. On 30 November 2019, the IFSC published the names of the athletes on the Men’s side who had officially qualified for Tokyo 2020 at the end of the OQE in Toulouse, but did not allocate qualification places or otherwise allocated provisional quota places to Mr. Fuji and Mr. Narasaki for Tokyo 2020 (the “Third Communication”).

TWO MEDALS FOR JAPAN AND SIX NEW OLYMPIANS 30 NOVEMBER 2019

At the conclusion of the first day of the IFSC Combined Qualifier Toulouse 2019, six men had already secured their spots for Tokyo 2020, but the battle for the last gold medal of the season was still to be held.

FRANCE WINS SPEED

For the speed specialists, a win in the first round of the combined competition was imperative to find a spot at the top of the final rankings. Crowd favorite, and winner of the IFSC Speed World Cup 2019 series, Bassa MAWEM (FRA) gave his all in the qualification round to finish in first place with a total speed of 5.68 seconds, which earned him a spot in the finals and a quota place for Tokyo 2020 alongside his brother, Mickael MAWEM. He followed up the Thursday win with another during the final on Saturday to ultimately finish the event in fourth place.

A CRUCIAL NUMBER OF ATTEMPTS

Both Bouldering competitions at the Combined Qualifier came down to the final problems to determine the winners. During the qualifications, ten of the twenty-two competitors walked away with three tops and four zones each, leaving the final results down to the number of attempts. It was China's YuFei PAN who finished at the top of the rankings for this discipline, to claim his country's first Olympic quota place.

During the finals, the routes were less forgiving with only seven total tops among the eight climbers, many requiring nine attempts to reach a crucial hold. Meichi NARASAKI (JPN) was the one who walked away with the win this time, putting him in first overall going into the Lead event. His compatriot, Kokoro FUJII was close behind, also with two tops but missed out on the win due to attempts.

STANDING OVATION FOR ONDRA

While the lead wall saw no tops today, several climbers came close. Adam ONDRA (CZE) really showed his skill as the undisputed lead winner, coming in first in both the qualification and final rounds. To his relief and that of the climbing community around the world, he officially found a place on the road to Tokyo and received overwhelming cheers from the crowd when he returned to the ground. However, it wasn't enough to stand on the highest step of the combined podium, having to settle with a silver medal in Toulouse.

FUJII came in second again, falling only one move short of ONDRA. Paired with his earlier results he clinched the gold at the IFSC Combined Qualifier. The final climber of the night was NARASAKI and despite an upsetting fall low on the route, his overall score was enough to grant him a bronze medal.

OLYMPICS BOUND

The following athletes have officially qualified for the Olympic Games Tokyo 2020 at the end of the IFSC Combined Qualifier:

1. *Adam ONDRA (CZE)*
2. *Bassa MAWEM (FRA)*
3. *Jan HOJER (GER)*
4. *YuFei PAN (CHN)*
5. *Alberto GINÉS LÓPEZ (ESP)*
6. *Nathaniel COLEMAN (USA)*

All qualification places are provisional until confirmed by each athlete's National Olympic Committee (NOC).

Complete results for this event can be found on the [official event page](#).

36. On 1 December 2019, the IFSC published the names of the athletes on the Women's side who had officially qualified for Tokyo 2020 at the end of the OQE in Toulouse, but did not allocate qualification places or otherwise to Ms. Ito and Ms. Mori, or otherwise allocated provisional quota places to them for the Tokyo 2020 (the "Fourth Communication").

SIX WOMEN QUALIFY FOR OLYMPICS IN TOULOUSE

01 DECEMBER 2019

At the conclusion of the final day of the IFSC Combined Qualifier Toulouse 2019, the IFSC is pleased to announce the next group of Olympic qualified athletes.

The end of the qualification rounds on Friday determined the first five women to earn a quota place for Tokyo 2020, out of twenty-two contenders, but one place still needed to be decided between two Slovenian climbers. After a close final competition, the official list of athletes was confirmed. China's YiLing SONG finished the qualifications in ninth place and did not participate in the Sunday finals, based on the number of remaining quota place in Japan and Slovenia, it was enough to earn a place at the Olympics.

WOMEN'S QUALIFIED ATHLETES

- *Julia CHANOURDIE (FRA)*
- *Mia KRAMPL (SLO)*
- *Iuliia KAPLINA (RUS)*
- *Kyra CONDIE (USA)*
- *Laura ROGORA (ITA)*
- *YiLing SONG (CHN)*

All qualification places are provisional until confirmed by each athlete's National Olympic Committee (NOC). Formal invitations will be sent by the IFSC to the relevant

NOCs within five days of the conclusion of the Combined Qualifier. The NOCs will then have two weeks to either confirm or decline the quota places.

The next qualifying event for Tokyo 2020 will be held from 24 February to 1 March during the Pan-American Championships 2020. Two additional athletes—one man and one woman—will qualify for the Olympic Games at this event.

Find more information about Sport Climbing’s Tokyo 2020 Olympic Qualification System [here](#).

37. It is from the Third and Fourth Communications that the JMSCA appeals to the CAS in case CAS 2019/A/6663.
38. The First Communication, Second Communication, Third Communication and Fourth Communication will be jointly referred to in this award as the “Communications”.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. CAS 2019/A/6557

39. On 1 November 2019, the Appellant filed a Statement of Appeal against the Respondent in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”) with respect to the First and Second Communications. In its Statement of Appeal, the Appellant proposed that its appeal be submitted to a Sole Arbitrator, and that the procedure be dealt with on an expedited basis. In addition, the Appellant filed a Request for Provisional Measures in accordance with Article R37 of the Code.
40. On 11 November 2019, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.
41. On 13 November 2019, the Respondent objected to the Appellant’s request for Sole Arbitrator and confirmed its preference that this procedure be referred to a three-member Panel.
42. On 14 November 2019, the Appellant reiterated its request that this procedure be referred to a Sole Arbitrator.
43. On 15 November 2019, the Respondent objected to the Appellant’s request for an expedited procedure and, moreover, objected to the Appellant’s unsolicited letter dated 14 November 2019 and reiterated its request that this procedure be referred to a three-member Panel.
44. On 18 November 2019, the CAS Court Office confirmed that as no agreement was reached between the Parties, this procedure would not be expedited.
45. On 21 November 2019, following an agreed-upon extension of time, the Respondent filed its response to the Appellant’s Request for Provisional Measures.

46. On 28 November 2019, the President of the Appeals Arbitration Division (1) issued her decision denying the Appellant's Request for Provisional Measures; and (2) confirmed her decision to refer this procedure to a three-member Panel in accordance with Article R50 of the Code.
47. On 9 December 2019, the Appellant nominated Dr. Hans Nater, Attorney-at-Law in Zurich, Switzerland as arbitrator.
48. On 19 December 2019, the Respondent nominated Mr. Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland as arbitrator.
49. On 14 January 2019, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the constitution of the Panel as follows:

President: Prof. Dr. Martin Schimke, Attorney-at-Law in Düsseldorf, Germany
Arbitrators: Dr. Hans Nater, Attorney-at-Law in Zurich, Switzerland
Mr. Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland
50. On 20 January 2020, the Respondent, following an agreed-upon extension of time, filed its Answer in accordance with Article R55 of the Code. Within its Answer, the Respondent filed an objection to CAS jurisdiction, the admissibility of the appeal, and the Appellant's standing to sue.
51. On 6 March 2020, the Appellant, following an agreed-upon extension of time, filed its response to the Respondent's objection to CAS jurisdiction, the admissibility of the appeal, and the Appellant's standing to sue.
52. On 16 March 2020, the Respondent objected to the admissibility of evidence filed by the Appellant in its 6 March 2020 response. In particular, the Respondent averred that Appellant's Exhibits AA to AC, as well as Witness Statements Z1 to Z6 were identical to those filed by the Appellant with its Appeal Brief in case CAS 2019/A/6663 and that such evidence, if to be considered as part of the CAS 2019/A/6557 procedure, should have been filed with the Appellant's Appeal Brief. No excuse was provided as to why this evidence could not have been filed earlier.
53. On 23 March 2020, the Appellant responded to the Respondent's objections regarding the admissibility of evidence. In its defence, the Appellant asserted *inter alia* that the evidence in question is admissible in so far as it is relevant to defend itself against jurisdictional, admissibility, and standing objections. It is no moment that these documents were not filed along with the Appeal Brief. Moreover, Witness Statements Z1 to Z 6 were all signed after the submission of the Appeal Brief as none of these witnesses were available to the Appellant in advance of the Appeal Brief as the filing deadline fell just before the OQE in Toulouse.

B. CAS 2019/A/6663

54. On 21 December 2019, the Appellant filed a Statement of Appeal against the Respondent in accordance with Article R47 *et seq.* of the Code with respect to Third and Fourth Communications. In its Statement of Appeal, the Appellant requested that

this procedure be referred to the same Panel as in case CAS 2019/A/6557 and moreover, that the two procedures be formally consolidated in accordance with Article R52 of the Code.

55. On 27 December 2019, the CAS Court Office informed the Appellant *inter alia* that consolidation was only possible when two appeals were directed against the same decision. Therefore, because this second appeal concerned the Third and Fourth Communications, and not the First and Second Communications, consolidation was not possible. This said, the CAS Court Office proposed that this second appeal be referred to the same Panel as in case CAS 2019/A/6557.
56. On 31 December 2019, the Appellant confirmed its agreement to refer this procedure to the Panel in CAS 2019/A/6557.
57. On 17 January 2019, the Respondent confirmed its agreement to refer this procedure to the same Panel as in case CAS 2019/A/6557.
58. On 22 January 2020, the Appellant, following an agreed-upon extension of time, filed its Appeal Brief in accordance with Article R51 of the Code.
59. On 28 January 2020, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed that the Panel in CAS 2019/A/6557 would preside over CAS 2019/6663 as well.
60. On 11 February 2020, the CAS Court Office confirmed that Ms. Marianne Saroli was appointed as *Ad Hoc* Clerk in this procedure.
61. On 9 March 2020, the Respondent, following an agreed-upon extension of time, filed its Answer in accordance with Article R55 of the Code. Within its Answer, the Respondent filed an objection to CAS jurisdiction, the admissibility of the appeal, and the Appellant's standing to sue.
62. On 15 April 2020, the Appellant, following an agreed-upon extension of time, filed its response to the Respondent's objection to CAS jurisdiction, the admissibility of the appeal, and the Appellant's standing to sue.

C. CAS 2019/A/6557 & CAS 2019/A/6663

63. On 3 August 2020, the Parties signed and returned the Orders of Procedure in these two cases.
64. The global coronavirus pandemic wreaked havoc on the scheduling of a hearing in these procedures. The Panel appreciates the Parties' flexibility and patience as various hearing dates were adjourned, and world-wide travel bans made an in-person hearing difficult, if not impossible, to accommodate. This said, and given the adjournment of Toyko 2020, the Panel is comforted that no Party was prejudiced by the hearing adjournments. The Panel is further grateful for the quality of the Parties' written submissions and oral submissions which were ultimately conducted, on agreement of the Parties, by video conference.

65. A joint video hearing on both cases was held on 26 August 2020. The Panel was assisted by Ms. Delphine Deschenaux-Rochat, CAS Counsel, and Ms. Marianne Saroli, *Ad Hoc* Clerk, and joined by the following:

For the Appellant (via Tokyo):

- Mr. Yuji Hirayama (Vice-President of JMSCA)
- Mr. Soichi Sugiyama (Counsel)
- Ms. Nan Sato (Counsel – via United States)
- Mr. Mike Sekine (Interpreter)
- Mr. Toshikazu Watanabe (Sport Performance, JOC)
- Mr. Hiroshi Yasui (Head Coach of JMSCA National Team)
- Mr. Keita Dohi (Athlete)

For the Respondent (via Lausanne):

- Mr. Marco Maria Sclaris (President of IFSC)
- Dr. Bernhard Berger (Counsel)
- Mr. Manuel Imfeld (Counsel)

66. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution of the Panel in these cases. They also agreed that while the two procedures were not consolidated, that the Panel could address the facts and issues across both cases in a single hearing and in a single award.
67. At the conclusion of the hearing, the Parties confirmed that their right to be heard had been fully respected and moreover, that they had no objection to the way in which the procedure was handled by the CAS Court Office or the Panel.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

68. In its Appeal Brief for CAS 2019/A/6557, the Appellant sought the following relief:

- (1) The decision rendered by the IFSC on 14th October 2019 (Exhibit A) is set aside;*
- (2) declaration that JMSCA and JOC are able to flexibly select a specific athlete (with or without qualification quota) to be eligible (per gender) by using the Host Country Places;*
- (3) The decision rendered by the IFSC on 24th October 2019 (Exhibit B) is set aside;*
- (4) declaration that JMSCA and JOC are still possible to qualify and confirm Japanese athletes if they are ranked in the six highest places at the OQE, or the highest place at the Asian CCH; and*
- (5) The costs of arbitration (including the expenses incurred by the JMSCA in connection with this arbitration proceeding) shall be borne by the IFSC.*

69. In its Appeal Brief for CAS 2019/A/6663, the Appellant sought the following relief:

- (1) The decision rendered by the IFSC on 30th November 2019 is set aside;*
- (2) the IFSC shall qualify, and allocate provisional quota places of the OQE to, Kokoro FUJII and Meichi NARASAKI*
- (3) the decision rendered by the IFSC on 1st December 2019 is set aside;*
- (4) the IFSC shall qualify, and allocate provisional quota places of the OQE to, Futaba ITO and Ai MORI;*
- (5) the costs of arbitration (including costs of provisional measure and all other expenses incurred by the JMCA in connection with this arbitration proceeding) shall be borne by the IFSC; and*
- (6) Any other appropriate and applicable remedies (including recommendation to IOC) which are reasonable for these facts of this specific case.*

70. The Appellant's submissions on the merits of these cases, in essence, may be summarized as follows:

a. The Interpretation of the IFSC Qualification System

- For the Appellant, there is an issue with the interpretation of the following paragraphs of Section D. QUALIFICATION PATHWAY with respect to i) the allocation of provisional quotas to the athletes who competed at the OQE in Toulouse, France and; ii) as to the usage of Host Country Places:

i) Allocation of provisional quotas to the athletes

The six (6) highest placed athletes per gender at the Olympic Qualifying Event will be allocated one (1) quota place, respecting the maximum quota per gender per NOC.

(...)

The highest placed athlete at the Continental Championships will obtain one (1) quota place, respecting the maximum quota per gender per NOC.

(...)

In case the highest placed athlete already obtained a quota place through D. 1. or D. 2. the quota place will be allocated to the next best ranked athlete, not yet qualified, at the same Continental Championship.

ii) Usage of Host Country Places

“HOST COUNTRY PLACES

The Host Country is guaranteed one (1) male and one (1) female athlete, on the condition that the athletes meet the eligibility requirements described under section C of this document and that the athletes participate in at least in one (1) of the events mentioned in section D “Qualification Pathway” of this document.

(...)

F. REALLOCATION OF UNUSED QUOTA PLACES

(...)

REALLOCATION OF UNUSED HOST COUNTRY PLACES

Unused Host Country Place(s) will be reallocated to the next highest placed athlete, not yet qualified, in the Combined World Championships 2019 in Tokyo, respecting the maximum quota per gender per NOC.

- More particularly, the Appellant alleges that the Respondent issued Communications which resulted in a radical alteration of the IFSC Qualification System.
- In this respect, the Appellant submits that the IFSC Qualification System is a contractual document between the IFSC and National Olympic Committee (“NOC”) (including its NFs and its athletes) according to which the terms shall be determined by what a reasonable person would have understood them to mean, which, normally, requires consideration not only of the text, but also of the surrounding circumstances known to the parties, and the purpose and object of the transaction (CAS 2014/A/3473). In the present case, the surrounding circumstances known to the parties related to the IFSC Qualification System are the following:
 - First of all, the Respondent used the same wording as the one in the IFSC Qualification System for the YOG back in 2018, i.e. “*one (1) quota place respecting the maximum quota per gender per NOC*”. Such wording meant that one NOC was entitled to have more than two qualified athletes at the YOG in 2018. For example, the JOC received on 12 September 2017 three provisional quotas for Men Combined from both the Youth World Championships and the Youth Continental Championships, in excess of the maximum two entry quotas per NOC. Thus, under the same wording of the criteria, the Respondent admitted having allocated two or more provisional quotas to athletes whose NOCs had reached the maximum two entry quotas per gender.
 - Second of all, in the information sheet of the IFSC Combined Qualifier Toulouse 2019, the wording of the rules for allocation of quotas did not exclude the possible allocation for athletes whose NOCs had already confirmed two provisional quotas at the WCH.
 - Third of all, the Respondent confirmed the interpretation of the IFSC Qualification System on several occasions since the IFSC announced it in October 2018. The explanations provided to the Appellant by the IFSC notably included the following:
 - On 10 November 2018, Mr. Jérôme Meyer sent the following email regarding the use of the Host Country Places to the Appellant:

As stated above, the 2 per country is an absolute minimum so if Japan has 2 athletes selected you may not be able to use the host country quota and therefore these place will be re-allocated.

However there's a possibility that you use the host country quota but in this case this means you need to refuse one of the two athletes that are selected via the qualifying events, but you need to be sure that the next athlete in the ranking of the event is not a Japanese athlete otherwise the quota you refuse goes automatically to another member of your team, and in such case you may need to refuse that athlete again.

The process i describe here, is a way to select a specific athlete should you trust him / her to make good result at the Games despite him / her not being selected via the qualifying events.

- On 14 March 2019, at the workshop on the IFSC Qualification System, Mr. Jérôme Meyer explained that even when two athletes per gender of a NOC had already been qualified and confirmed at the WCH, other athletes of the NOC could additionally and provisionally be qualified and confirmed at the qualifying events thereafter.
- At the press conference of the IFSC General Assembly held on 16 March 2019, Mr. Toru Kobinata gave the following verbal explanations (in Japanese):

“Confirming the qualified place” is not the same concept as “confirming the entry of Olympics Game”;

In the case where athletes, who have no qualified places, participate in the Combined Qualifying Event, it may be possible that the third qualified quota are confirmed;

As NOCs are possible to confirm at maximum two athletes’ quotas per each of the qualification events, NOCs may confirm two or more qualification in total: The qualified places are given to athletes who have been confirmed. On the other hand the host county quota can be used for athletes who have not.

- In a letter dated 27 August 2019, the Appellant inquired from the Respondent whether Japanese athletes could qualify when they were ranked in the six highest places at the OQE or the highest place at the OQE or the highest place at the IFSC Combined Continental Championships 2020 (“CCH”).
- On 4 September, the Respondent stated in a letter the following comments:

Should two Japanese athletes per gender take a lace at the Toulouse qualifying event, within the quota of six laces available places, the IFSC will send a letter to the Japanese Olympic Committee (JOC) asking confirmation for these athletes.

Should another Japanese athlete take the place available at the Asian Combined Championships, the IFSC proceed in the same way.

The above will not affect previous confirmation at previous events.

- Considering the aforementioned, the Respondent undoubtedly admitted that the IFSC Qualification System meant that even when two Japanese athletes per gender had already been qualified and confirmed at the WCH, other athletes could still be qualified and confirmed when they were ranked in the six highest places at the OQE or the highest place at the CCH.
- Accordingly, it is the Appellant’s understanding that it can flexibly qualify one specific athlete per gender by using the Host Country Places, whether or not such athlete was qualified via the qualifying events.

- In any event, any ambiguous provisions must be construed *contra proferentem*, meaning that a party be deemed at fault if it has created or introduced an ambiguous contract clause that harms another party agreeing to the contract (CAS 2004/A/642; CAS 2011/A/2670 and CAS 2015/A/4222).
- With respect to the allocation of provisional quotas to athletes at the qualifying events, there is no explicit wording to restrict the number of athletes, who are allocated quota places to, at the three qualifying events. In addition, there is no clear wording in the IFSC Qualification System stating that athletes whose NOCs had already confirmed two provisional quotas at the WCH could not be qualified even when he or she was ranked in the six highest at the OQE or the highest place at the CCH.
- With respect to the usage of the Host Country Places, there is no explicit wording on the deadline to use them. In addition, there is no clear wording in the IFSC Qualification System establishing that the Host Country Places could not be used after the country confirms two provisional quotas for its athletes.
- Consequently, the interpretation of the IFSC Qualification System must be construed in a way that causes no harm to the JOC, the Appellant and its athletes, in accordance with the principle of *contra proferentem*.

b. The revocation of the interpretation of the IFSC Qualification System

- In this case, the Respondent revoked its previous interpretation of the IFSC Qualification System on 14 and 24 October 2019. In this respect, the Appellant claims that such revocation should not be permissible at this stage on the basis of the following principles:

i) Estoppel by representation

- Since the Respondent announced the IFSC Qualification System in October 2018, the Appellant has confirmed with the IFSC on repetitive occasions its interpretation. The IFSC provided a clear-cut explanation that even when two Japanese athletes per gender had already been qualified and confirmed at the WCH, other athletes could still be qualified and confirmed when they were ranked in the six highest places at the OQE or the highest place at the CCH.
- Based on the repeated explanations of the interpretation of the IFSC Qualification System given by the Respondent, the Appellant announced on 21 May 2019 the Domestic Criteria for Tokyo 2020, which provided as follows: “*When three or more athletes have obtained a Qualification Place (same for both men and women), JOC-recommended athletes will be selected by the following method.*”
- However, on 14 October 2019, the Respondent suddenly informed the Appellant that the Host Country Places could not be used flexibly. In addition, the Respondent notified the Appellant on 25 October 2019 of the document intitled “*Qualification process to the 2020 Olympic Games Sport Climbing Illustrations*” dated 24 October 2019, which implied that athletes who belong to the Japanese NOC, which had already confirmed

two quotas at the WCH, would not be qualified even if he or she was ranked in the six highest at the OQE or the highest place at the CCH.

- Pursuant to the Communication of 14 October 2019, the JOC and the JMSCA couldn't use the Host Country Places. Hence, this Communication affects the legal status of the JOC, the JMSCA and their Japanese athletes. Additionally, due to the Communication which revoked the previous interpretation on the allocation of quota place, the JOC and JMSCA were also deprived from the status to confirm quota places via the OQE and the CCH. Thus, it was impossible for Mr. Keita Dohi and Mr. Rei Sugimoto, who participated in the OQE, to be qualified even when they were ranked six highest at the OQE.
- For these reasons, the Appellant underlines that an analogy can be drawn to the doctrine of “Estoppel by Representation”, which is a general principle of law recognized by the CAS jurisprudence (CAS OG 02/006 and CAS OG 08/002). For instance, in CAS OG 08/002, the Panel indicated that:

An estoppel that arises when one makes a statement or admission that induces another person to believe something and that results in that person's reasonable and detrimental reliance on the belief (black's Law Dictionary, 7th ed., 1999)

- Against this background, the Respondent induced the JOC, JMSCA and its athletes to believe its explanations, to publish the Domestic Criteria, and to prepare for the qualifying events of the OQE and the CCE based on the Domestic Criteria. Yet, the Respondent suddenly withdrew such previous interpretation only once the Appellant had published the Domestic Criteria. Such behaviour was highly detrimental to the JOC, the JMSCA, and their athletes.
- As a result, the exclusion of athletes, who had prepared based on the previous interpretation given by the IFSC and the Domestic Criteria, from qualifying for Tokyo 2020 under the surrounding circumstances is unfair and contrary to the doctrine of estoppel.

ii) Prohibition of Radical Alteration

- The Respondent proceeded to a radical alteration of the IFSC Qualification System, claiming that it was drastically changed.
- As it was mentioned in CAS OG 06/008, the radical alternation of a qualification system is unfair and unreasonable after it was published by an IF and communicated to the NFs. In CAS OG 06/008, it was stated the following:

16. The 2-best rule is a radical alteration to the original criteria. It came too late in the selection process to be fair particularly as it was not announced in a complete fashion and communicated to the Applicant. Therefore, the Panel finds the 2-best rule to be arbitrary and it would be unfair and unreasonable in all the circumstances to apply it.

- In such context, to refuse flexible usage of the Host Country Places as well as to refuse the allocation to athletes in the same NOC, which had already confirmed two quotas per gender at the OQE and CCH, is a radical alteration of the IFSC Qualification System.

iii) Protection of Legitimate Expectation

- Any power to amend the interpretation of the criteria for selection must be subject to a limitation that it could not be revoked once that allocation procedure has started.
- Here, the JOC, JMSCA and their athletes had a legitimate expectation that the issue of allocation of quota would be governed by the previous interpretation of the IFSC Qualification System and Domestic Criteria, existing until 21 May 2019.
- Therefore, the Respondent could not revoke its interpretation of the IFSC Qualification System after the selection proceedings had started against the legitimate expectation of the JOC, JMSCA and their athletes (CAS 2000/A/284).
- Nevertheless, there is no significant disadvantage to any athletes of other NOCs in setting aside the Communications because the final entry quota is restricted to the maximum two. The JOC and JMSCA shall decide to entry two athletes per gender, and decline other athletes, before the deadline of the entry for Tokyo 2020 in accordance with the IFSC Qualification System.

c. The Appellant has standing to appeal

- The Appellant is directly affected by the Communications as it is a NF that gives recommendation of athletes for entries to the Olympic Games in accordance with the IFSC Qualification System made by its international federation (pursuant to clauses 40.2 and 44.4 of the Olympic Charter). Hence, the Appellant has authority and discretion to make Olympic selection broadly in accordance with the IFSC Qualification System set out by the Respondent. The Appellant used this discretion based on the previously repeated explanations of the IFSC Qualification System, and the Respondent's behaviour has deprived it of this legal right. A NOC is not able to recommend eligible athletes by itself, but it can enter athletes based on the recommendations of its NF.

Moreover, on 21 May 2019, the Appellant established its Domestic Criteria and as a result, Japanese athletes have legitimately expected that selection for Tokyo 2020 would be conducted accordingly and in accordance with the Respondent's previous interpretations. Consequently, the Appellant risks to lose its credibility and legitimacy as a national federation. Hence, the Communications clearly affect the right of the Appellant to recommend its athletes based on the previous interpretation given by the Respondent, i.e. the Domestic Criteria. The Appellant and the JOC, as well as the four Japanese athletes, have something at stake and thus a concrete interest in challenging the decisions.

- Furthermore, the Respondent contends that the Appellant has no concrete interest in challenging the Communications notably since the JMSCA and the JOC confirmed two maximum athletes on 27 and 30 August 2019. But the confirmations on 27 and 30

August 2019 by the JMSCA and JOC do not mean any waiver to dispute the Communications.

- Likewise, Japanese athletes, including Mr. Meichi Narasaki, Mr. Kokoro Fuji, Ms. Ai Mori and Ms. Futaba Ito, had expected and believed that the selection procedure was conducted as stipulated in the Domestic Criteria, which was made based on the revoked interpretation of the Respondent. Had the Appellant not disputed the revocation of the previous interpretation, the legitimate expectation of Mr. Meichi Narasaki, Mr. Kokoro Fuji, Ms. Ai Mori and Ms. Futaba Ito would have been betrayed.
- So, the Appellant has a concrete interest to preserve the legitimate expectation of Japanese athletes by challenging the Communications. Indeed, the Appellant would lose its credibility and legitimacy as a NF if the selection procedure for Tokyo 2020 was not conducted according to the Domestic Criteria.

B. The Respondent

71. In its Answer for CAS 2019/A/6557, the Respondent sought the following requests for relief:

1. *The Appeal is declared inadmissible.*
2. *Subsidiarily, the Appeal is dismissed in its entirety.*
3. *The costs of the arbitration, including those pertaining to the request for provisional measures, are borne by the Appellant.*
4. *The Appellant is ordered to compensate the Respondent for all of its legal and other costs incurred for the conduct of the arbitration, including those incurred for the conduct of the proceedings in relation to the request for provisional measures.*

72. In its Answer for CAS 2019/A/6663, the Respondent sought the following requests for relief:

Procedurally:

1. *The present proceedings are stayed pending a final award in the matter CAS 2019/A/6557.*

Substantively:

2. *The Appeal is declared inadmissible.*
3. *Subsidiarily, the Appeal is dismissed in its entirety.*
4. *The costs of the arbitration are borne by the Appellant.*
5. *The Appellant is ordered to compensate the Respondent for all of its legal and other costs incurred for the conduct of the arbitration.*

73. The Respondent's submissions on the merits of this case, in essence, may be summarized as follows:

a. The Appellant's claims are meritless

- The Respondent submits that the Appellant's claims are meritless from the outset since the IFSC has never issued any appealable decisions about the allocation of quota places

and/or the provisions on the use and reallocation of the Host Country Places. The Appellant wrongly qualifies the Communications as “decisions”. The Communications are only letters, documents, and press releases from the IFSC; they are not “decisions”.

b. The Appellant’s interpretation of the IFSC Qualification System is unsound

- The Appellant’s interpretation of the IFSC Qualification System is unsound especially regarding the allocation of the quota places as per Section D. QUALIFICATION PATHWAY as well as per Section F. REALLOCATION OF UNUSED QUOTA PLACES relating to the Host Country Places.
- According to the Appellant, other athletes can be qualified and confirmed when they are ranked in the six highest places at the OQC in Toulouse or at the highest places at the CCH even when two Japanese athletes per gender have already been qualified and confirmed at the WCH.
- But such interpretation of the IFSC Qualification System on the type of allocation of quota places is plainly inaccurate. Indeed, the IFSC Qualification System specifies that quota places are allocated in accordance with the “by name system” and that any unused Host Country Places are reallocated to the next highest placed athlete, not yet qualified, in the WCH. To substantiate its incorrect interpretation, the Appellant makes the following references:
 - The Appellant’s reference to the Clause B.3 of the Qualification System for Sport Climbing for the YOG in 2018 (which states: “*The quota place is allocated to the athlete(s) by name. NOCs with more than two (2) qualified athlete, per gender, have the authority to decide which two (2) qualified athlete, per gender, they will enter*”) is irrelevant since the Qualification System for Tokyo 2020 only provides that “[t]he quota place is allocated to the athlete(s) by name”. Hence, the Qualification System does not apply a “by NOC system”, but rather a “by name system”.
 - The Appellant also relies upon the IFSC Combined Qualifier Toulouse 2019 Qualification System dated 17 May 2019, but such reference is also immaterial. Indeed, the IFSC Combined Qualifier Toulouse 2019 Qualification System unambiguously refers to the IFSC Qualification System and thus, the “by name system” was not changed.
- In view of the aforesaid, it is clear that the quota places are allocated “by name” pursuant to the IFSC Qualification System. And in this respect, there is no room for the application of the *contra proferentem* principle as stated by the Appellant. Contrary to the Appellant’s assertion, the application of the *contra proferentem* principle would instead compromise the interests of the already qualified and confirmed athletes against the interests of the other Japanese athletes.

c. The Respondent never proceeded to a “radical alteration” of the IFSC Qualification System

- The Appellant incorrectly alleges that the Respondent proceeded to a “radical alteration” of the IFSC Qualification System. Indeed, the information and explanations the Appellant received on several occasions from the IFSC and its officers, such as the Respondent’s Head of Olympic Coordination, Mr. Jérôme Meyer, did not change or amend the IFSC Qualification System. Since its approval by the IOC in February 2018, the IFSC Qualification System has not been subject to any material change or amendment.
- Contrary to the Appellant’s contention, the IFSC did not provide any information that could have potentially given rise to any legitimate expectations of the Appellant.
- Moreover, in its Appeal Brief, it was admitted that the JOC and the Appellant were informed by the Tokyo 2020 Sport Entry as early as on 26 August 2019 that the IFSC Qualification System imposes the “*by name system*”, which means that any confirmation of an athlete by a NOC is final. After that, the Appellant “*should*” have attempted to resolve its issue with the IOC Sports Department. Regardless of the aforesaid, the Appellant and the JOC proceeded to the (final) confirmation of all four Japanese athletes, in particular two males, two females, on 27 and 30 August 2019.
- Likewise, the JOC and the Appellant received the same information from the Director of the Tokyo 2020 Sport Entry, Ms. Melina Xanthopoulou immediately after the IFSC World Championships when the JOC asked whether it would have the opportunity to reconfirm a different qualified athlete afterwards.
- Notwithstanding Ms. Melina Xanthopoulou’s negative answer, the Appellant and the JOC nevertheless proceeded to the final confirmation of all four Japanese athletes (two male, two female) on 27 and 30 August 2019. So, according to Ms. Melina Xanthopoulou’s answer, the Appellant and the JOC had no reason to believe in the position the Appellant now puts forwards.
- In this context, this answer from Ms. Melina Xanthopoulou makes it obvious that the Appellant did not “suddenly” learn on 14 October 2019 that the reallocations were not permitted as the information was sent to it on or about 30 August 2019, i.e. weeks before the receipt of the letter dated 14 October 2019. For this reason, there is no grounds for the protection of any “legitimate expectations” as asserted by the Appellant.
- In any event, the Appellant asked the Respondent in its letter of 18 December 2019 to seek the IOC approval of a proposed amendment to Clause B.3 of the IFSC Qualification System regarding the “Type of Allocation of Quota Places”. This proves that the Appellant confirmed in its letter the absence of any material change to the IFSC Qualification System since its initial approval by the IOC in February 2018.

d. The Appellant's Domestic Criteria is immaterial

- The Appellant's appeal is an attempt to preserve its Domestic Criteria, which are completely irrelevant for the qualification of Tokyo 2020 since they are governed exclusively by the IFSC Qualification System that was established in accordance with the IOC Qualification System Principles.
- The IOC Qualification System Principles require that the qualification system shall "*indicate whether quota places are allocated to individual athletes by name or to the NOC*" whereas the IFSC Qualification System indicates that quota places are "*allocated to the athlete(s) by name*".
- In this respect, the Respondent submits that the Appellant and the JOC were both aware that their Domestic Criteria did not comply with the IFSC Qualification System and the IOC Qualification System Principles, at the latest as of 3 February 2018 when the IOC approved the IFSC Qualification System. In fact, the Appellant or the JOC could and should have asked the IOC for advice, not the IFSC if they had any doubt about the compliance of their Domestic Criteria with the IFSC Qualification System. Against this background, the Appellant and the JOC were notified on 10 November 2018 of the following: "*...in case of issues with the QS, it's going to be the JOC who raise the complain to the IOC and not the JMSCA to the IFSC*".
- In addition, the Domestic Criteria ignore the event hierarchy set out in the IFSC Qualification System which stipulates that the WCH is and always remains number one, as appears from Section D. QUALIFICATION PATHWAY about the hierarchical order of qualification events and Section F. REALLOCATION OF UNUSED QUOTA PLACES, pursuant to which any allocated quota place not confirmed or declined by a NOC "*will be reallocated to the next best-ranked athlete, not yet qualified, at the respective event where the quota place was obtained*".
- Accordingly, it is wrong for the Athlete to believe that two athletes qualified in the World Championships (one female and one male) can be replaced by two other athletes who will be the winners of a domestic event organised by the Appellant in Japan referred to as the "Third Sport Climbing Combined Japan Cup".

e. The Appellant's comments on the alleged absence of a "significant disadvantage to any athletes of other NOCs" are wrong

- The Appellant wrongly contends *inter alia* that "*there is no significant disadvantage to any athletes of other NOCs*". If this Appeal is upheld, the JOC, as the NOC, would be permitted to apply the "by NOC system", which, in turn, would trigger a number of undesirable consequences for other NOCs and athletes, notably:
 - Injury / impossibility to participate: If a qualified and confirmed athlete cannot participate in Tokyo 2020 due to injury or any other impossibility, the "by name system" imposed by the IFSC Qualification System means that the quota place of the athlete concerned is reallocated to the next best-ranked athlete at the qualifying event where the quota place was obtained (*without regard to the concerned athlete's*

nationality). But, if the JOC was allowed to apply the “by NOC system”, it could simply replace the concerned athlete by another Japanese athlete.

- Choice vs. no choice: Pursuant to the “by name system”, each NOC has exhausted its maximum number of quota places as soon as it has confirmed two athletes per gender. By claiming that it should be allowed to apply the “by NOC system”, the Appellant seeks to obtain a significant advantage over all the other NOCs by being entitled to have a subsequent liberty to choose, which all other NOCs would not have.
- Conflict with the event hierarchy: The IFSC Qualification System provides that any unused quota place is “*reallocated to the next best-ranked athlete, not yet qualified, at the respective event where the quota place was obtained*” (i.e. the WCH). At the WCH, in both the male and female categories four Japanese athletes were ranked among the first seven places and thus met the IFSC Qualification System. By claiming that it should be allowed to apply the “by NOC system”, the Appellant seeks the right to obtain two quota places from the WCH for itself, but to confirm neither of these four athletes or only one out of the four.

f. The Appellant lacks standing to sue

- Further, the Respondent believes that these appeals should be dismissed for lack of standing. Indeed, the Appellant incorrectly asserts that it has a concrete interest in challenging the Communications before the CAS.
- In support of its position, the Appellant improperly refers to CAS 2009/A/1880 & 1881. In said decision, the CAS Panel held that “*only an aggrieved party, having something at stake and thus a concrete interest in challenging a decision adopted by a sports body, may appeal to the CAS against that decision*” and that “*a party has no standing if it ‘is not directly affected by the decision appealed from’*”.
- But the Respondent fails to understand what harm, if any, the Appellant could have suffered by the Communications as the Appellant and the JOC have already used the maximum number of quota places available per NOC when they confirmed the two highest placed Japanese athletes for the male and female categories in the WCH on 27 and 30 August 2019, respectively. Therefore, the JOC and the Appellant have reached the maximum number of athletes per NOC (i.e. four) pursuant to the IFSC Qualification System, specifically two athletes per NOC in the male and female categories.
- In light of the aforesaid, the Appellant is a NF, and its own interests are not at stake, not to mention any concrete interests. If any, the only parties in this case who could potentially be affected by the Communications amending or changing the IFSC Qualification System are the athletes (whether confirmed or unconfirmed).
- So, the Appellant is not “*directly affected*” by the Communications and has neither any “*interest worthy of protection*”, nor “*sufficient interest in the matter being appealed*” (CAS 2013/A/3140).

V. JURISDICTION

74. Article R47 of the Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.

75. In accordance with Article 186 of the Swiss Private International Law Act, the CAS has power to decide upon its own jurisdiction. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognise the CAS as an arbitral body of appeal.

76. The Respondent challenges the jurisdiction of CAS to resolve this appeal. The Panel, therefore, must decide this objection as a threshold matter.

A. The Respondent's Objection on Jurisdiction and Admissibility

77. The Respondent's objection to CAS jurisdiction and admissibility may be summarized as follows:

a. No Appealable Decision

- Article R47 of the Code states that an appeal may only be filed against a "decision" of a federation. However, the IFSC has never issued any appealable decisions about the allocation of quota places and/or the provisions on the use and reallocation of the Host Country Places. In fact, the Appellant improperly qualified the four Communications as "decisions".

- First, the appeal CAS 2019/A/6557 is brought against 1) the 14 October 2019 letter from the IFSC to the JOC (i.e. the First Communication); and 2) the 24 October 2019 document entitled "*Qualification process to the 2020 Olympic Games*" (i.e. the Second Communication). Neither documents, however, constitutes an appealable "decision" as they contain nothing but information and explanations about the IFSC Qualification System in relation to certain aspects of the applicable qualification requirements as were contained in the IOC Qualification System Principles, and which has not been changed or amended since its approval by the IOC Executive Board on 3 February 2018. While some of the information and explanations contained in these Communications partly deviate from previous information provided to the Appellant, these documents are still not "decisions".

- Secondly, the appeal CAS 2019/A/6663 is brought against 1) the document headed “*Two Medals for Japan and Six New Olympians*” of 30 November 2019 (i.e. the Third Communication); and 2) the document headed “*Six Women Qualify for Olympics in Toulouse*” of 1 December 2019 (i.e. the Forth Communication). Neither of these communications constitutes an appealable decision as they are both IFSC press releases merely reporting summaries of the results of the IFSC Combined Qualifier Toulouse 2019 men’s and women’s competition. Both documents explicitly state that “[a]ll qualification places are provisional until confirmed by each athlete’s National Olympic Committee (NOC)”.

b. *Ratione Personae*

- The present case concerns the execution of the IFSC Qualification System, which is a document approved by the IOC. The IFSC Qualification System must comply with the IOC Qualification System Principles, which contain, *inter alia*, the following provision:

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Any dispute arising between and IF and a NOC in connection with the interpretation or execution of a qualification system should be resolved through direct consultation with the IOC Sports Department. The Court of Arbitration for Sport (CAS) in Lausanne (Switzerland) shall be the last step for the resolution of such disputes.

- In accordance with this provision, any qualification system-related disputes must first be resolved between the concerned NOC and IF. The CAS is the “*last step for the resolution of such disputes*” and only has jurisdiction if the dispute involves a NOC and IF. Otherwise, CAS lacks jurisdiction *ratione personae*.
- While the Respondent qualifies as an IF, the Appellant is a NF representing sport climbing in Japan. It is not a NOC. If anything, the present appeal should have been filed by the JOC.

c. *Ratione Temporis* – No Exhaustion of Legal Remedies

- Article R47 of the Code requires that the Appellant exhausts all legal remedies before filing an appeal.
- The relevant provisions in the IOC Qualification System Principles require that the Parties first attempt to resolve any qualification system disputes “*through direct consultation with the IOC Sports Department*”, and that the “*last step for the resolution of such disputes*” shall be the CAS.
- Having realized its failure to bring its claim “*through direct consultation with the IOC Sports Department*”, the Appellant sent a letter to the Respondent on 18 December 2019 (after its initial appeal was filed), inviting the Respondent to request the IOC to approve certain amendments to the IFSC Qualification System. The Appellant’s request, indeed, was consistent with the advice it received from the Respondent as early as November

2018, which went ignored. Instead, the Appellant filed a CAS appeal without having exhausted available and necessary remedies in accordance with Article R47 of the Code.

B. The Appellant's Response to the Respondent's Objection to Jurisdiction and Admissibility

78. The Appellant's response to the Respondent's objection to CAS jurisdiction and Admissibility may be summarized as follows:

a. The Communications are Appealable Decisions

- The Appellant submits that the Communications are decisions because they contain a ruling intending to affect the legal state of the addressee of the decision or other parties (*See, Despina Mavromati & Matthieu Reeb, The Code of the Court of Arbitration for Sport — Commentary, Cases and Materials, p. 384 para. 14*).
- With respect to CAS 2019/A/6557, the Appellant submits that a letter was sent by the IFSC to the JMSCA on 14 October 2019, stating that the Host Country Places could not be used flexibly. This letter revoked the previous interpretation on the Host Country Quotas while depriving the JOC and the JMSCA of the flexible usage of the Host Country Quotas as well as the Japanese athletes of the possibility to be nominated for Tokyo 2020 by Host Country Quotas. Thus, this letter affected the legal state of the JOC, the JMSCA and their Japanese athletes. Therefore, the letter of 14 October 2019 is a decision pursuant to Article R47 of the Code.
- Moreover, the document dated 24 October 2019, which implied that athletes who belong to the same NOC that had already confirmed two quotas at the WCH, would not be qualified even if he or she was ranked in the six highest places at the OQE or the highest place at the CCH, shall be considered also a decision. This communication revoked the previous interpretation on whether quota places were allocated or not to the athletes whose NOCs had already acquired two quota places. Again, this decision deprived the JOC of the status to confirm quota places when Japanese athletes ranked within six highest place at the OQE and 1st place at the CCH and also deprived their Japanese athletes of the status to be qualified and confirmed at the OQE and CCH. Particularly, Japanese athletes, other than Mr. Tomoa Narasaki, Mr. Kai Harada, Mr. Meichi Narasaki and Mr. Kokoro Fujii for Male Combined, and Ms. Akiyo Noguchi, Ms. Miho Nonaka, Ms. Ai Mori and Ms. Futaba Ito (who had already gotten quotas or possibility to acquire quotas by reallocation) lost their legal status to acquire quota places for the Tokyo 2020 at the OQE and CCH. This document affected the legal status of the JOC, the JMSCA and their Japanese athletes and therefore it constitutes a decision according to Article R47 of the Code.
- With respect to CAS 2019/A/6663, the Respondent asserts that the Communications do not constitute appealable decisions because they are nothing but press releases, which informed the public of the course and results of the OQE in Toulouse. However, the Communications, not qualifying and not allocating provisional quota places to Mr. Kokoro Fujii, Mr. Meichi Narasaki, Ms. Futaba Ito and Ms. Ai Mori are appealable decisions in accordance with Article R47 of the Code.

- The well-established jurisprudence of CAS says that the term “decision” ought to be interpreted in a wide manner so as not to restrain the relief available to the person(s) affected as it must be intended to affect the legal rights of a person, usually, if not always, the addressee. In fact, what constitutes a decision is a question of substance not form, i.e. a decision is to be distinguished from the mere provision of information (*See CAS 2004/A/659; CAS 2005/A/899; CAS 2007/A/1251; CAS 2012/A/2854; CAS 2012/A/2750; CAS 2017/A/5133*).

b. *Ratione Personae*

- The Appellant relies on two provisions which confer jurisdiction to the CAS:
- First, Article 61.2 of the Olympic Charter, pursuant to which “*any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration.*” As both the Appellant (as a recognized NF) and Respondent (as a recognized IF) are binding parties to the Olympic Charter, any dispute concerning eligibility involving the Parties, including matters of interpretation of a qualification system, are subject to Article 61.2 of the Olympic Charter. Therefore, CAS has jurisdiction to resolve such a dispute.
- Second, Article 36 of the IFSC Statutes provide that “[*d*]isputes arising under the IFSC Statutes or otherwise, will be dealt with under the procedure and rules set out in the Disciplinary and Appeals Rules. The final determination of a dispute can be appealed to the Court of Arbitration for Sport (in Lausanne, Switzerland)”. Notwithstanding the language of Article 36, the Respondent mistakenly asserts that the IOC Qualification System Principles require an initial “*direct consultation with the IOC Sports Department*”. However, there is no wording in the IOC Qualification System Principles which excludes CAS jurisdiction over dispute between the Appellant and Respondent based on Article 36. Therefore, the CAS has jurisdiction under Article 36 of the IFSC Statutes.

c. *Ratione Temporis* – No Exhaustion of Legal Remedies

- The IFSC Qualification System does not deny a direct appeal of appeal to the CAS as the IOC Qualification System Principles use the words “*should be resolved*”, not “*shall*” or “*must*” be resolved. Therefore, there is no obligation on the Appellant to resolve a dispute through the IOC Sports Department in advance of filing a CAS appeal. This is only an optional remedy.
- In addition, the fulfilment of the exhaustion of remedies may be waived if the remedies are illusory. In other words, if the remedies seized creates a risk which excessively prevents the procedure, a party has no need to fulfil the exhaustion of this remedy. In this case, the 21-day deadline to file a CAS appeal was approaching and had the Appellant sought to consult the IOC Sports Department, it would have been time barred from filing a CAS appeal. Additionally, it would have lost the possibility to resolve the dispute before the OQE.

- Moreover, the Appellant’s letter to the IOC dated 18 December 2019 was sent in the context of settlement, as proposed by the Respondent. And the reason why the Appellant sought approval from the IOC is because the approval of the IOC is required under Article 40.1 as part of an IF’s amendment to any qualification system. “*Approval*” is different than “*consultation with the IOC Sports Department*”.

C. The Panel’s Decision on Jurisdiction

79. In the present case, there is a dispute between the Parties as to whether the Communications are true, appealable *decisions*.

80. Given the aforesaid, the Panel must assess this jurisdictional issue in light of Article R47 of the Code. According to Article R47 of the Code, an appeal may be filed before CAS only if a) “*a decision of a federation, an association or other sports-related organization*” was rendered; b) the statutes or the regulations of the said organization provide for it and c) all the available internal appeals within that organization have been exhausted.

81. Each constituent element of an appeal before CAS will be addressed in turn below.

a. Did the IFSC issue actual decisions?

82. The case at hand concerns the four following Communications:

- i. Letter of 14 October 2019 from the IFSC to the JOC;
- ii. Document titled “*Qualification process to the 2020 Olympic Games, Sport Climbing Illustrations*” of 24 October 2019;
- iii. Document headed “*Two Medals for Japan and Six New Olympians*” of 30 November 2019;
- iv. Document headed “*Six Women Qualify for Olympics in Toulouse*” of 1 December 2019.

83. The Parties, however, disagree as to whether the Communications are actual decisions. Indeed, the Respondent claims that the appeal must be dismissed as it is filed against four Communications, which cannot be considered “decisions” within the meaning of Article 47 of the Code.

84. In determining whether such Communications constitute “decisions” per se, the Panel takes note of the following CAS jurisprudence:

- CAS 2004/A/659 described a decision as “*an act of individual sovereignty addressed to an individual, by which a relation of concrete administrative law, forming or stating a legal situation, is resolved in an obligatory and constraining manner. The effects must be directly binding both with respect to the authority as to the party who receives the decision*”.
- CAS/2015/A/4213 further defined a decision as being “*a unilateral act, sent to one or more determined recipients and is intended to produce legal effects. An appealable*

decision of a sport association or federation is normally a communication of the association directed to a party and based on an 'animus decidendi', i.e. an intention of a body of the association to decide on a matter. A simple information, which does not contain any 'ruling', cannot be considered a decision".

- CAS 2005/A/899 & 2007/A/1251 specified that *"the form of a communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal"*.
 - Also, CAS 2005/A/899 & 2007/A/1251 indicated that *"for a communication to be a decision, this communication must contain ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties"*.
 - CAS 2007/A/1251 found that a ruling issued by a sports-related body refusing to deal with a request could be considered a decision under certain circumstances. In particular, it stated that *"by responding in such manner to ARIS' request for relief, FIFA clearly manifested it would not entertain the request, thereby making a ruling on the admissibility of the request and directly affecting ARIS' legal situation. Thus, despite being formulated in a letter, FIFA's refusal to entertain ARIS' request was, in substance, a decision"*.
85. In consideration of the foregoing, the Panel first notes that the letter of 14 October 2019 was written in response to the JOC's letter of 3 October 2019. In the letter dated 3 October 2019, the JOC announced its intention to support the qualification process of the JMSCA while asking the IFSC to clarify the procedure as to the priority order of the Host Country Places and of the Event Qualification Places. The JOC also attached to this letter a communication from the JMSCA (also dated 3 October 2019) whereby the Appellant expressed its desire to change its list of athletes who had been confirmed on 27 August 2019. The Panel notes that the JMSCA's desire was to keep Mr. Tomoa Narasaki and Ms. Akiyo Noguchi (who had both been confirmed through the WCH), but to withdraw Mr. Kai Harada and Ms. Miho Nonaka from the list in order to appoint one male and one female athlete through the Host Country Places.
86. On 14 October 2019, the IFSC acknowledged receipt of the letters of 3 October 2019 and informed the JOC that it was *"not able to follow on the [sic] request"*, specifying that *"a withdrawn athlete cannot be confirmed again at a later stage"* pursuant to the IFSC Qualification System. The IFSC further stated that the *"the Host Country quota is a special quota introduced by the IOC, in order to secure the host country participation in the Olympic Games. It is not intended as a tool that allows flexibility regarding qualified athletes. In other words, if Japan qualifies and confirms one athlete, the Host Country quota is not applicable and is reallocated"*.
87. As regards to the document titled *"Qualification process to the 2020 Olympic Games, Sport Climbing Illustrations"* dated 24 October 2019, the Panel assumes that this document is meant to support the arguments made in the IFSC's letter of 14 October 2019.

88. As regards to the document headed “*Two Medals for Japan and Six New Olympians*” of 30 November 2019 and the document headed “*Six Women Qualify for Olympics in Toulouse*” of 1 December 2019, the Panel notes that these documents published the names of the athletes who had officially qualified for Tokyo 2020 at the end of the OQE in Toulouse, but did not allocate qualification places or otherwise allocated provisional quota places to Mr. Kokoro Fujii, Mr. Meichi Narasaki, Ms. Futaba Ito and Ms. Ai Mori for Tokyo 2020. Thus, the Panel also assumes that these documents are consequential to the IFSC’s letter of 14 October 2019, which confirmed its position according to which it would not revise the JMSCA’s list of already confirmed Olympic-qualified athletes.
89. Moreover, the Panel observes that the IFSC admits at para. 4 of its Answer (in the appeal CAS 2019/A/6557) that the information and explanations contained in the First and Second Communications deviate – to some extent – from previous information provided by the Respondent.
90. In consideration of the foregoing, the Panel concludes that the Communications from the IFSC cannot be said, as asserted by the Respondent, to only contain information and explanations about qualification systems. In the Panel’s view, the Communications display an authoritative position by the IFSC thus constituting a decision (see CAS 2015/A/4203).
91. The result is that the IFSC denied the request from the JOC on the basis of the JMSCA’s wishes to be permitted “*to revise its decision on the athletes who will participate in Tokyo 2020*” and to change “*what was confirmed in writing on August 27*”. The Panel is nevertheless cautious that the letter of 14 October 2019 is addressed to the JOC, not the JMSCA. In this respect, the Panel remarks that the IOC Qualification System Principles provide that the NOC can select athletes on the recommendation of a NF (i.e. the JMSCA in the present case).
92. In this context, the question as to who – between the JMSCA or the JOC – had the legal right to select the athletes at a national level is irrelevant. Indeed, the JOC, as the NOC, agreed to follow the recommendations of the JMSCA, as the NF, and accordingly supported the JMSCA’s qualification process and its request to revise the list of already confirmed Olympic-qualified athletes.
93. Instead, the question for the Panel is to determine who was affected by the Communications. The doctrine and jurisprudence generally accept that “*a communication is qualified as a decision if it contains a ruling intending to affect the legal state of the addressee of the decision or other parties*” (CAS 2004/A/659 and MAVROMATI/REEB, The Code of the Court of Arbitration for Sport. Commentary, Cases and Materials, p. 384).
94. In the case at hand, the Panel concludes that the communication of 14 October 2019 from the IFSC affected the legal rights of the JMSCA. The IFSC denied the request from the JOC on the basis of the JMSCA’s wishes, thereby making a ruling on the admissibility and directly affecting the JMSCA. In particular, the Panel finds that the JMSCA’s right of recommendation was denied by the IFSC and therefore constitutes a

decision which transpired in the subsequent communications of 24 October 2019, 30 November 2019 and 1 December 2019.

95. As a result, the Panel is of the opinion that the Communications are decisions capable of being challenged because they affected the legal rights of the JMSCA.

b. Are the Communications final, i.e. any available stages of appeal within that sports organization have been exhausted?

96. Having established that the Communications are actual decisions issued by the IFSC affecting the JMSCA, the Panel must now determine if they are “final”.

97. As an initial matter, the Panel notes that the clause “Issue Resolution” in the IOC Qualification System Principles provides as follows:

Any dispute arising between an IF and a NOC in connection with the interpretation or execution of a qualification system should be resolved through direct consultation with the IOC Sports Department. The Court of Arbitration for Sport (CAS) in Lausanne (Switzerland) shall be the last step for the resolution of such disputes.

98. In this respect, the Respondent asserts that any dispute relating to a qualification system should be “resolved through direct consultation with the IOC Sports Department”, and that only the “the last step for the resolution of such disputes” shall be the CAS. However, the Panel is not convinced by the IFSC’s argument according to which the IFSC Qualification System must comply with the IOC Qualification System Principles of the IOC and consequently, the dispute must first be conducted “through direct consultation with the IOC Sports Department”. The “Issue Resolution” clause mentions “Any dispute arising between an IF and a NOC in connection with the interpretation or execution of a qualification system should be resolved through direct consultation with the IOC Sports Department”. Yet, the dispute at hand is not between the JOC and the IFSC, but between the JMSCA and the IFSC.

99. Then, the Panel notes that Article 36 of the IFSC Statutes provides that “[d]isputes arising under the IFSC Statutes or otherwise, will be dealt with under the procedure and rules set out in the Disciplinary and Appeals Rules. The final determination of a dispute can be appealed to the Court of Arbitration for Sport (in Lausanne, Switzerland)”.

100. Considering that there is no wording in the IOC Qualification System Principles which excludes CAS jurisdiction over dispute between a NF and an IF based on Article 36 of the IFSC Statutes, the Panel finds that CAS jurisdiction under Article 36 shall be admitted.

101. In addition, given that the Appellant, as the national federation, and the Respondent, as the international federation, are binding parties to the Olympic Charter, any dispute concerning eligibility, including matters of interpretation of the Qualification System, “shall be submitted exclusively” to CAS pursuant to Article 61.2 of the Olympic Charter. In this respect, the Panel observes that the Olympic Charter does not provide any internal

formal stage of appeal and do not set forth any legal remedy other than an appeal to the CAS.

102. Therefore, the Panel finds that the Communications were final, and that the Appellant complied with the requirement of exhaustion of all available legal remedies prior to the appeal.

c. Do the statutes or regulations of the IFSC, or any specific agreements between the concerned Parties, set forth an arbitration clause providing for an appeal to the CAS against the said decision?

103. To determine its jurisdiction, the Panel must look at the appeal arbitration clauses included in the regulations and rules of law.

104. As mentioned above, Article 61.2 of the Olympic Charter provides that “*any dispute arising on the occasion of, or in connection with, the Olympic Games shall be submitted exclusively to the Court of Arbitration for Sport, in accordance with the Code of Sports-Related Arbitration*”, whereas Article 36 of the IFSC Statutes provides that “[*d*]isputes arising under the IFSC Statutes or otherwise, will be dealt with under the procedure and rules set out in the Disciplinary and Appeals Rules. The final determination of a dispute can be appealed to the Court of Arbitration for Sport (in Lausanne, Switzerland)”.

105. In light of the aforesaid, the Panel finds that the combination of these appeal arbitration clauses confer the CAS jurisdiction to decide the present case.

106. The Panel, therefore, confirms the jurisdiction of the CAS to decide this appeal.

VI. ADMISSIBILITY

107. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.

108. The First Communication and Second Communication were rendered and notified to the Parties respectively on 14 October 2019 and 24 October 2019. The Statement of Appeal in CAS 2019/A/6557 was subsequently filed on 1 November 2019.

109. The Third Communication and Fourth Communication were rendered and notified to the Parties respectively on 30 November 2019 and 1 December 2019. The Statement of Appeal in CAS 2019/A/6557 was subsequently filed on 21 December 2019.
110. It follows, therefore, that these appeals are admissible.

VII. APPLICABLE LAW

111. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

112. The Parties primarily rely on the IFSC Qualification System, the IFSC Statutes and other relevant regulations of the IFSC as well as the Olympic Charter and the IOC Qualification System Principles in support of their positions and supplement their argument by relying on CAS jurisprudence. Neither Party has argued otherwise.
113. The Panel, therefore, confirms that the IFSC Qualification System, the IFSC Statutes and other relevant regulations of the IFSC as well as the Olympic Charter and the IOC Qualification System Principles are the “applicable regulations” for the purposes of Article R58 of the Code. Swiss law, however, applies subsidiarily to the merits of the dispute, given that Switzerland is the country in which IFSC is domiciled.

VIII. MERITS

114. The object of the dispute are the Communications. On one hand, the JMSCA wants the Panel to rule that it is entitled to flexibly select a specific athlete (with or without qualification quota) (per gender) by using the Host Country Places while allowing it to qualify and confirm Japanese athletes if they are ranked in the six highest places at the OQE, or the highest place at the CCH. On the other hand, the IFSC requests the present appeals to be outright dismissed.
115. In light of the Parties’ submissions, there are three issues that the Panel must examine: First, does the Appellant have standing to bring this claim before the CAS? Second, what is the IFSC Qualification System in place for the participation to Tokyo 2020? Third, is the Appellant’s interpretation of the IFSC Qualification System correct?
116. The Panel shall analyze those issues separately and in sequence below.

A. Does the Appellant have standing to sue?

117. The Respondent asserts that the Appellant, as the NF, is not directly affected by the Communications and therefore, does not have a right to appeal to the CAS. According

to the Respondent, the Appellant has not suffered any harm since it exhausted the maximum number of athletes per NOC as per the IFSC Qualification System (namely two athletes per NOC in both the male and female categories) after having confirmed for both the male and female categories the two highest placed Japanese athletes at the WCH in August 2019. The Respondent asserts that the Appellant, through this proceeding, plays the interests of the confirmed Olympic-qualified Japanese athletes off against the interests of the unconfirmed.

118. In response, the Appellant claims that the Communications affect the legal status of the JOC, the JMSCA and the unconfirmed Olympic-qualified Japanese athletes (i.e. Mr. Meichi Narasaki, Mr. Kokoro Fuji, Ms. Ai Mori and Ms. Futaba Ito).
119. The Panel underlines that the Parties have a legal interest in ensuring that the IFSC Qualification System, the 2019 IFSC Combined Qualifier regulations, the IFSC Statutes and other relevant regulations of the IFSC are all applied uniformly with a view towards creating a level playing field for all the IFSC members (and competitors) in the sport. The Panel is mindful that there is an interest in sport that everyone competes under the same rules. Sport federations must comply with certain basic principles of procedural fairness towards their members while an IF is required to exercise its normative discretion by adopting regulations in appropriate compliance with the formal procedures displayed in its own statutes. An IF cannot simply disregard rules which bind it contractually to its member federations.
120. As discussed *supra* in the Jurisdiction and Admissibility sections, the Panel is of the opinion that the Appellant is the recipient of the Communications. Given that a NF has the power to suggest athletes to the NOC for nomination, the Panel finds that the Communications affect the JMSCA's original and autonomous right of recommendation in the final selection of athletes by the JOC.
121. In view of the above, the Panel determines that an addressee of a decision should have standing to sue according to Swiss Law. Against this background, the Panel confirms that the Appellant has standing to bring these appeals as filed.

B. What is the IFSC Qualification System in place for Tokyo 2020?

122. The IOC Qualification System Principles are the reference point for all the qualification systems, which are the regulations established by all IFs to regulate the qualification to their sport. According to the IOC Qualification System Principles, the qualification systems established by the IFs are "*subject to final selection by each NOC upon recommendation of the respective National Federation. These systems shall conform to the Olympic Charter and IOC Qualification System Principles and shall be approved by the IOC Executive Board*".
123. Generally speaking, the Panel remarks that the IOC ultimately governs the qualification system for the sport of climbing, not the Respondent. According to Rule 40 of the Olympic Charter and Article 1 of the By-law to Rule 40, the qualification system for every sport must be submitted for approval to the IOC Executive Committee.

124. Against this background, the Panel notes that the IOC Qualification System Principles for Tokyo 2020 have been approved by the IOC Executive Board in July 2017. Thereafter, a qualification system for each sport was prepared in collaboration with the relevant IFs. As regards to the system for the sport of climbing, it was ratified by the IFSC in October 2017 and subsequently approved by the IOC Executive Board on 3 February 2018 in accordance with Rule 40 of the Olympic Charter and Article 1 of the By-law to Rule 40. The IOC, in its approval letter of 3 February 2018, specifically mentioned the following:

As per the IOC Qualification System Principles and to ensure all NOCs are working of the correct document, the qualification system for each sport, once agreed by the IOC and the IFs, shall not be changed without the IOC agreement. To avoid confusion or discrepancies they also should not be published in any other format without IOC approval.

125. In October 2018, the Respondent published the IFSC Qualification System for the sport of climbing.
126. As to the allocation of the quota places, the IOC Qualification System Principles require that the qualification system for every sport shall “*indicate whether quota places are allocated to individual athletes by name or to the NOC*”. Here, the IFSC has chosen to establish a system whereby “*the quota place is allocated to the athlete(s) by name*”. In particular, the allocation of the quota places by name is set out at Article 3 of the IFSC Qualification System.
127. As to the allocation of the Host Country Places, the IFSC Qualification System, under section D. QUALIFICATION PATHWAY and section F. REALLOCATION OF UNUSED QUOTA PLACES, provides as follows:

The Host Country is guaranteed one (1) male and one (1) female athlete, on the condition that the athletes meet the eligibility requirements described under section C of this document and that the athletes participate in at least in one (1) of the events mentioned in section D “Qualification Pathway” of this document.”

(...)

F. REALLOCATION OF UNUSED QUOTA PLACES

(...)

REALLOCATION OF UNUSED HOST COUNTRY PLACES

Unused Host Country Place(s) will be reallocated to the next highest placed athlete, not yet qualified, in the Combined World Championships 2019 in Tokyo, respecting the maximum quota per gender per NOC.

128. In light of the foregoing, the Panel is satisfied that the IFSC Qualification System neither mentions that the Host Country can replace a qualified and confirmed athlete with

another qualified athlete, nor does it allow the Host Country to select a second man or woman who did not qualify through the Qualification Pathway.

C. Is the Appellant’s interpretation of the IFSC Qualification System correct?

129. The Panel acknowledges that the rules contained in the IOC Qualification System Principles and in the IFSC Qualification System are generally clear on their face. Yet, the application of these rules in the case at hand, for various reasons set out below, is convoluted.

130. In this regard, the Panel notes that the Appellant has, since October 2018, exchanged on numerous occasions with the Respondent about the interpretation of the IFSC Qualification System. In order to assess the situation, it seems necessary to consider the following sequence of events:

- On 6 November 2018, the Appellant sent an email to the Respondent, inquiring about the interpretation of the IFSC Qualification System.
- On 10 November 2018, Mr. Jérôme Meyer, the Head of Olympic Coordination, sent the following email regarding the use of the Host Country Places to the Appellant and stated that “*in case of issues with the QS, it's going to be the JOC who raise the complaint to the IOC and not the JMSCA to the IFSC*”.
- On 14 March 2019, at the workshop on the IFSC Qualification System, Mr. Jérôme Meyer explained that even when two athletes per gender of a NOC had already been qualified and confirmed at the WCH, other athletes of the NOC could additionally and provisionally be qualified and confirmed at the qualifying events thereafter.
- On 16 March 2019, at the press conference of the IFSC General Assembly, Mr. Toru Kobinata gave the following verbal explanations (translated from Japanese):

“Confirming the qualified place” is not the same concept as “confirming the entry of Olympics Game”;

In the case where athletes, who have no qualified places, participate in the Combined Qualifying Event, it may be possible that the third qualified quota are confirmed;

As NOCs are possible to confirm at maximum two athletes’ quotas per each of the qualification events, NOCs may confirm two or more qualification in total: The qualified places are given to athletes who have been confirmed. On the other hand the host county quota can be used for athletes who have not.

- On 21 May 2019, the Appellant announced a Domestic Criteria on how to participate to Tokyo 2020 and according to which three or more athletes could obtain quota places through three qualifying events.
- On 20 and 21 August 2019, the WCH in Hachioji was held. For Men Combined, Mr. Tomoa Narasaki ranked 1st place, Mr. Kai Harada ranked 4th place. Mr. Meichi Narasaki ranked 5th place and Mr. Kokoro Fujii ranked 6th place. For Women

Combined, Ms. Akiyo Noguchi ranked 1st place, Ms. Miho Nonaka ranked 5th place, Ms. Ai Mori ranked 6th place and Ms. Futaba Ito ranked 7th place.

- On 26 August 2019, Mrs. Sakura Sato replied to Mr. Toshkazu Watanabe's inquiry regarding the IFSC Qualification System, stating that the IFSC Qualification System was a "by name system".
- On 27 August 2019, the JMSCA sent a letter to Mr. Jérôme Meyer, confirming the four Olympic-qualified athletes, i.e. Mr. Tomoa Narasaki, Mr. Kai Harada, Ms. Akiyo Noguchi and Ms. Miho Nonaka.
- On 30 August 2019, the JOC wrote to Mr. Jérôme Meyer to confirm the quota places for Tokyo 2020, thereby registering Mr. Tomoa Narasaki, Mr. Kai Harada, Ms. Akiyo Noguchi and Ms. Miho Nonaka as the four Olympic-qualified athletes for climbing. The subject of this letter was "*Re: the confirmation of using allocated quota places for the TOKYO2020*".
- On 4 September 2019, Mr. Jérôme Meyer acknowledged receipt of the JOC's confirmation of the quota places for Tokyo 2020. With respect to the JOC's question about qualification opportunities for other Japanese athletes at coming events, he explained that the IFSC would proceed as follows: "*Should two Japanese athletes per gender take a place at the Toulouse qualifying event, within the quota of six places available places, the IFSC will send a letter to the Japanese Olympic Committee (JOC) asking confirmation for these athletes. Should another Japanese athlete take the place available at the Asian Combined Championships, the IFSC proceed in the same way. The above will not affect previous confirmation at previous events.*"
- In a letter dated 4 October 2019 to the JOC, Mr. Jérôme Meyer stated that the JMSCA had already secured two places for Tokyo 2020 while admitting that the previous statement made on 4 September 2019 had been incorrect. According to the Respondent, the JMSCA had already reached the maximal athlete quota at the WCH, i.e. two female and two male athletes.
- In a letter dated 3 October 2019 to the IFSC, the JOC announced its intention to support the qualification process of the JMSCA. The JOC also asked the IFSC to clarify the procedure in the IFSC Qualification System and to confirm an attached letter from the JMSCA of 3 October 2019 to the IFSC. In its letter, the JMSCA stated that it wanted to change its list of athletes who had been confirmed on 27 August 2019, i.e. keeping Mr. Tomoa Narasaki and Ms. Akiyo Noguchi (who had both been confirmed through the WCH), but withdrawing Mr. Kai Harada and Ms. Miho Nonaka from the list in order to appoint one male and one female athlete through the Host Country Places.
- On 14 October 2019, Mr. Jérôme Meyer acknowledged receipt of the letters of 3 October 2019 and informed the JOC that it was "*not able to follow on the [sic] request*", specifying that "*a withdrawn athlete cannot be confirmed again at a later stage*" pursuant to the IFSC Qualification System. He further stated that the "*the Host Country quota is a special quota introduced by the IOC, in order to secure the*

host country participation in the Olympic Games. It is not intended as a tool that allows flexibility regarding qualified athletes. In other words, if Japan qualifies and confirms one athlete, the Host Country quota is not applicable and is reallocated.”

131. In view of the above, the Panel notes that it was the Appellant’s understanding that it could flexibly qualify one specific athlete per gender by using the Host Country Places, whether or not such athlete was qualified through the qualifying events.
132. Notwithstanding the Appellant’s position towards the correspondences sent from Mr. Jérôme Meyer, the Panel is reminded that the IOC approved on 3 February 2018 the IFSC Qualification System and from that moment on, it is reasonable to believe that the Appellant should have been aware of its content. Moreover, on 10 November 2018, the Appellant and the JOC were notified of the following: “...*the official source is the IOC relevant platform for all of the NOCs. Obviously, the IFSC is in close contact with the IOC and we’ll make sure that what is displayed on our website is up to date, but in general for any official request regarding this QS should go to your NOC (JOC). This may look as a picky answer but is important as, for example, in case of issues with the QS, it’s going to be the JOC who raise the complaint to the IOC and not the JMSCA to the IFSC*”.
133. While Mr. Jérôme Meyer’s interpretation of the IFSC Qualification System may have been inaccurate, he clearly mentioned in his letter dated 10 November 2018 that the official source was the IOC platform, not his own interpretation.
134. Nevertheless, the Appellant announced on 21 May 2019 a Domestic Criteria for Tokyo 2020, which provided as follows: “*When three or more athletes have obtained a Qualification Place (same for both men and women), JOC-recommended athletes will be selected by the following method*”.
135. The Panel accepts that some of the statements made by the IFSC and its officials in the exchange of correspondence with Appellant may have been confusing for the Appellant and to some extent – perhaps – misleading. Moreover, the IFSC admitted itself that the Communications of 14 and 24 October 2019 deviated in some respects from previous information that it had provided to the JMSCA.
136. However, the Panel does not accept the Appellant’s contention according to which the Respondent induced the JMSCA and its athletes to believe its explanations, to publish the Domestic Criteria, and to prepare for the qualifying events of the OQE and the CCE. This is not what stems from the aforesaid correspondences. The Appellant was made aware that the official platform was the IOC and nevertheless chose to rely on some statements by Mr. Jérôme Meyer as the official reference for the drafting of its Domestic Criteria. This was Appellant’s choice.
137. Likewise, the Panel notes that Mr. Toshkazu Watanabe from the JMSCA was informed by Mrs. Sakura Sato on 26 August 2019 that the IFSC Qualification System imposes the “*by name system*” and that in her understanding, if the JMSCA would “*confirm this time, four persons will be confirm*”, meaning that any confirmation of an athlete at this point of time by the JOC would be final.

138. At the hearing, Mr. Toshkazu Watanabe further confirmed that the email from Mrs. Sakura Sato dated 26 August 2019 was an inquiry that he had made to Mrs. Sakura Sato. In this email, the Panel notes that Mrs. Sakura Sato mentions: “*I have once more verified our matter within the team*”. When asked why Mrs. Sakura Sato had made such mention in her email, Mr. Toshkazu Watanabe explained having heard that the JMSCA had received a different explanation about the IFSC Qualification System.
139. The Panel is of the opinion that Mr. Toshkazu Watanabe, on behalf of the JMSCA, received precise instructions from Mrs. Sakura Sato in her email of 26 August 2020. Following the email of Mrs. Sakura Sato, the Panel remarks that the JMSCA and the JOC proceeded to confirm all four Japanese athletes for Tokyo 2020, in particular two males and two females, on 27 and 30 August 2019. The Panel further notes that the JMSCA received the same information from the Director of the Tokyo 2020 Sport Entry, Ms. Melina Xanthopoulou, immediately after the WCH in August 2019, when the JOC asked whether it would have the opportunity to reconfirm a different qualified athlete afterwards.
140. On 14 October 2019, the Respondent informed the Appellant that the Host Country Places could not be used flexibly. In addition, the Respondent notified the Appellant on 25 October 2019 of the document intitled “*Qualification process to the 2020 Olympic Games Sport Climbing Illustrations*” dated 24 October 2019, which implied that athletes who belong to the JOC, which had already confirmed two quotas at the WCH, would not be qualified even if he or she was ranked in the six highest at the OQE or the highest place at the CCH.
141. In this respect, the Panel notes that, pursuant to the IFSC Qualification System, the maximum number of athletes per NOC is two men and two women. In particular, section D. QUALIFICATION PATHWAY stipulates that the “*qualification events are listed in hierarchical order of qualification*”. The Panel remarks that the WCH is the qualification event listed at the top of the list whereby “*the seven highest places athletes per gender at the World Championships will be allocated one (1) quota player, respecting the maximum quota per gender per NOC*”. In addition, the Panel underlines that the ISFC Qualification System states that the “*Host Country is guaranteed one (1) male and one (1) female athlete*” under certain conditions, and that any “*unused Host Country Place(s) will be reallocated to the next highest placed athlete, not yet qualified, in the Combined World Championships 2019 in Tokyo, respecting the maximum quota per gender per NOC*”. Consequently, Japan, as the Host Country, was only entitled to one guaranteed Host Country Place per gender if it was “*unused*”, in which case it would then be “*reallocated to the next highest placed athlete not yet qualified*” in the ranking of the WCH.
142. It appears from the evidence submitted by the Parties that four men and four women finished the WCH within the seven highest placed athletes per gender. Hence, the JMSCA reached the maximum quota places on the basis of the results obtained by the Japanese athletes at the WCH held on 20-21 August 2019. Afterwards, the JMSCA and JOC confirmed the maximum quota places of two per gender on 27 and 30 August 2019.

Because Japan, as the Host Country, had already attained its maximum quota per gender in the WCH, it could not use the Host Country Place per gender.

143. While the Appellant argues that the information it received on several occasions from the IFSC and its officials constituted a “radical alteration” of the IFSC Qualification System, the Panel does not believe that this amounted into an amendment of the IFSC Qualification System as it was not approved by the IOC. In addition, an incorrect statement by a representative of an IF does not automatically trigger the formal amendment of existing regulations. While the misleading statement by Mr. Jérôme Meyer can be criticized, it did not change the applicable regulations. Hence, the Panel finds that the IFSC Qualification System has not been subject to any amendment since its approval by the IOC on 3 February 2018.
144. Given that the IOC Qualification System Principles stipulate that the NOC can select athletes on the recommendation of a NF (i.e. the JMSCA in the present case), the JOC followed the JMSCA’s recommendation and confirmed the four Olympic-qualified Japanese athletes for Tokyo 2020 on 30 August 2019. In the Panel’s view, the confirmation of the JOC dated 30 August 2019 still exists. When asked at the hearing whether Mr. Toshkazu Watanabe knew if the JOC had ever requested the IOC or the IFSC to withdraw or cancel the letter written on 30 August 2019, he replied negatively. Consequently, the Panel concludes that the confirmation letter of 30 August 2019 has never been revoked, withdrawn, or contested. The Panel finds that, as of 30 August 2019, the JMSCA’s Olympic lineup (i.e. Mr. Tomoa Narasaki, Mr. Kai Harada, Ms. Akiyo Noguchi and Ms. Miho Nonaka) was set after having attained the maximum two quota places per gender per NOC.
145. While the Panel notes that the Appellant considers itself entitled to benefit from an exception because of the wrong interpretation, it nevertheless highlights that the JMSCA filed a request in this respect before the Respondent, which was ultimately denied.
146. Pursuant to the Qualification System Principles, *“the qualification system for each sport/discipline, once agreed by the IOC and IFs, **shall not be changed without IOC agreement and shall not be published in any other format without IOC approval.**”* (emphasis added) Accordingly, the Panel finds that the JMSCA should have lodged its request (at least also) before the JOC and the IOC, not (only) the IFSC. Throughout the proceedings, the IFSC argued that the Appellant did not designate the correct respondent and the Panel does not disagree with such argument. Indeed, the JOC sent a confirmation of the quota places on 30 August 2019. The Appellant cannot expect an amendment to the IOC rules – on the basis of the wrong interpretation of the rules reported by one of the IFSC’s officials – if the IOC is not part of the proceedings. Same, the Appellant cannot expect a Panel to cancel a decision of the JOC, without having JOC as a party to the proceedings. The Respondent is not in a position to do what it wants with the rules. The applicable IFSC Qualification System, as approved by the IOC, does not afford the NOCs or the NFs with any discretion to allocate quota places and to amend a qualification system once it has been approved by the IOC. Moreover, the Panel emphasizes on Mr. Jérôme Meyer’s comments in the letter dated 10 November 2018: *“the official source is the IOC relevant platform for all of the NOCs. (...) This may look as a picky answer but is important as, for example, in case of issues with the QS, it's*

going to be the JOC who raise the complaint to the IOC and not the JMSCA to the IFSC". It seems to the Panel as if the Respondent (alone) was the wrong party.

147. As a result, the Panel concludes that the confirmation letter of 30 August 2019 from the JOC – which is a selection decision based on the recommendation of the JMSCA that confirmed the quota places for Tokyo 2020 – shall stand.
148. The Panel, therefore, finds that the Appellant's interpretation of the ISFC Qualification System is incorrect and confirms that the IFSC Qualification System (and the IOC Qualification System Principles) must apply to the present case.
149. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the Parties to the Panel. Accordingly, all other prayers for relief are rejected.

IX. COSTS

150. Article R64.4 of the Code provides that:

At the end of the proceedings, the CAS Court Office shall determine the final amount of the costs of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expense of the CAS, and the costs of witnesses, experts and interpreters. The final account of arbitration costs may either be included in the award or communicated separately to the parties.

151. Article R64.5 of the Code provides that:

In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.

152. In consideration of the outcome of the arbitration, and noting on one side the behaviour of the parties and their representatives and on the other side that each party succeeded and lost in varying parts of this appeal, the Panel finds it just and reasonable that the costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne in equal shares by the JMSCA and IFSC. In addition, and for similar reasons, the Panel finds it reasonable that each Party bear its own legal and other costs.


ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Japan Mountaineering & Sport Climbing Association (JMSCA) against International Federation of Sport Climbing (IFSC) in the proceedings CAS 2019/A/6557 with respect to the 14 October 2019 letter from the IFSC to the Japanese Olympic Committee and the 24 October 2019 document entitled “Qualification process to the 2020 Olympic Games” is dismissed.
2. The appeal filed by Japan Mountaineering & Sport Climbing Association (JMSCA) against International Federation of Sport Climbing (IFSC) in the proceedings CAS 2019/A/6663 with respect to the document headed “*Two Medals for Japan and Six New Olympians*” of 30 November 2019 and the document headed “*Six Women Qualify for Olympics in Toulouse*” of 1 December 2019 is dismissed.
3. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne in equal shares by the JMSCA and IFSC.
4. Each party shall bear its own costs and other expenses incurred in connection with this arbitration.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 10 December 2020

THE COURT OF ARBITRATION FOR SPORT


Prof. Dr. Martin Schimke
President of the Panel


Dr Hans Nater
Arbitrator


Mr Michele A.R. Bernasconi
Arbitrator


Ms Marianne Saroli
Ad hoc Clerk