



DECISION of the FEI TRIBUNAL

on Appeal by Ms. Isheau Wong

dated 17 May 2016

In the matter of

Ms. Isheau Wong (“Ms. Wong” or “the Appellant”)

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (“FEI” or “the Respondent”)

I. COMPOSITION OF PANEL

Mr. Laurent Niddam, single member panel

II. SUMMARY OF THE FACTS

- 1. Case File:** The FEI Tribunal duly took into consideration the Parties’ written submissions and communications received to date.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Relevant Statutes/Regulations:

Statutes 23rd edition, effective 29 April 2014 (“**Statutes**”).

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2016 (“**GRs**”).

Internal Regulations of the FEI Tribunal, 2nd edition, effective 1 January 2012 (“**IRs**”).

FEI Jumping Rules 25th edition, effective 1 January 2014, updates effective 1 January 2016 ("**JRs**").

FEI Regulations for Equestrian Events at the Olympic Games 24th Edition, Effective for the 2016 Rio (BRA) Olympic Games ("**FEI Regulations for Rio 2016**").

IOC Olympic Charter, in force as of 2 August 2015 ("**Olympic Charter**").

2. The relevant Legal Provisions

GRs APPENDIX A – Definitions: "Lessee: A person or entity who receives the use and possession of leased property (e.g. Horse) from a lessor.

Owner: Person or entity having a property interest in whole or in part of one or more horses."

GRs Article 139: "1. NFs must keep a register of the Owners and lessees of Horses with official passports. Changes of Owners and records of leasing agreements must be entered in the FEI and/or national passport and authenticated by the stamp and signature of an NF official.

2. The nationality of a Horse is that of its Owner or of the Lessee, where a lease is current, or of the country in which the company owning or leasing it is registered. A company may, however, own a Horse in partnership with an individual.

3. When one or more Horses belong to a partnership of Owners of different nationalities, the Owners must declare to the FEI, before making the first entry, the nationality under which the Horse or Horses will compete and that nationality must be entered in the FEI and/or national passport. The Horses must retain that nationality until the partnership is dissolved or the Horses are sold. Any consequent change of nationality must be reported to the FEI.

4. Horses entered for the Olympic Games must be the property of Owners of the same nationality as the Athlete by 15th January of the year of the Games (see Olympic Regulations).

5. Athletes may take part in all Events except Olympic Games with Horses belonging to Owners of a different nationality (see also Article 118 Person Responsible)."

FEI Regulations for Rio 2016 Article 606.1.1: "To be eligible for participation in the Equestrian Events at the Olympic Games, Athletes and Horses must comply with all current FEI Regulations as well as Rules 40 & 41 of the Olympic Charter and its Bye-Laws pertaining to the IOC Eligibility Code and Nationality (see **Annex A**)."

FEI Regulations for Rio 2016 Article 606

"2. Horses

(...)

2.2 Ownership

2.2.1. Horses entered for the Equestrian Events at the Olympic Games must have been registered with FEI as property of owners of the same nationality as the Athlete, by **15 January 2016**.

2.2.2. Horses, with multinational ownership, must be registered with FEI by **15 January 2016** (as per above paragraph), under the name of the nation for which the Horse will compete during the Olympic Games.

2.2.3. National Federations (NFs) are responsible to ensure that Horses which do not meet ownership requirements as laid down by FEI, are not entered for the Equestrian Events at the Olympic Games.

2.3. Registration of Athletes and Horses

All Athletes and Horses must be registered with the FEI in 2016 before they can be permitted to take part in the Equestrian Events at the Olympic Games. For registration of Athletes and Horses with the FEI see GRs.

2.4. Passports

Any Horse entered for the Equestrian Events at the Olympic Games must have a valid FEI Passport or an FEI approved national passport with a valid FEI Recognition card as means of identification and to establish ownership. These documents must be duly completed at the time of the Competitions."

FEI Regulations for Rio 2016 Article 620.3: "Horses entered for the Olympic Games must be the property of Owners of the same nationality as the Athlete by 31st December of the year preceding the Games.

For the 2016 Olympic Games the relevant date is 15 January 2016."

Olympic Charter – Eligibility Code – Rule 40: "To be eligible for participation in the Olympic Games, a competitor, coach, trainer or other team official must comply with the Olympic Charter, including the conditions of eligibility established by the IOC, as well as with the rules of the International Federation ("IF") concerned as approved by the IOC, and competitor, coach, trainer and other team official must be entered by his NOC.
(...)"

Olympic Charter – Bye-Law to Rule 40: "1. Each IF establishes its sport's own eligibility criteria in accordance with the Olympic Charter. Such criteria must be submitted to the IOC Executive Board for approval.

2. The application of the eligibility criteria lies with the IFs, their affiliated national federations and the NOCs in the fields of their respective responsibilities.

(...)"

Olympic Charter – IOC Entries – Bye-Law 4 to Rule 44: "As a condition precedent to participation in the Olympic Games, every competitor shall comply with all provisions contained in the Olympic Charter and the rules of the IF governing his sport.

(...)"

FEI Code of Ethics: "A. DIGNITY

1. Safeguarding the dignity of the equine and human Athlete is a fundamental requirement of equestrianism.

2. There shall be no discrimination between the human Athletes on the basis of race, gender, ethnic origin, religion, philosophical or political opinion, marital status or other grounds."

Statutes Article 38.1: "Subject to Articles 38.2 and 38.4, the FEI Tribunal shall decide all cases submitted to it by or through the Secretary General, whether Appeals from or matters not otherwise under the jurisdiction of the Ground Jury or Appeal Committee. These cases may be:

- (i) Any infringement of the Statutes, General Regulations, Sport Rules, or Procedural Regulations of a General Assembly or of violation of the common principles of behaviour, fairness, and accepted standards of sportsmanship, whether or not arising during an FEI meeting or Event;
- (ii) Any issue of interpretation of the Statutes, General Regulations, and Sport rules;
- (iii) Notwithstanding anything to the contrary in this Article, the FEI Tribunal may review and decide upon any matters involving abuse of horses."

GRs Article 165: "1. An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible (see paragraph 2 below):

(...)

1.2 With the FEI Tribunal against Decisions of the Appeal Committee or any other person or body.

(...)

4. If there is no Appeal Committee, Appeals to the FEI Tribunal must be in writing, signed and accompanied by supporting evidence in writing or by the presence of one or more witnesses and must reach the FEI Tribunal no later than fourteen (14) days after the end of the Event. So far as

Competitions are concerned, the right of Appeal is limited to questions of eligibility of an Athlete or Horse and questions involving the interpretation of Sport Rules.”

IRs Article 17.1: “In accordance with Article 36 of the FEI Statutes, the FEI Tribunal has the competence to hear and determine any matter properly submitted to it, including, but not limited to, those matters specified in Article 163 (Protests) and Article 165 (Appeals) of the FEI General Regulations and all disputes and procedures arising under the Equine Anti-Doping and Controlled Medication Regulations.”

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties’ written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 The Appeal relates to the participation of the Appellant’s Horse called Quilan with FEI ID 103LV78 (the **“Horse”**) in the Jumping event at the 2016 Rio Olympic Games (**“Rio 2016”**) under Chinese Taipei flag.
- 1.2 On 13 January 2016, *i.e.*, 2 days prior to the 15 January 2016 deadline set out in Articles 139 of the GRs and 620.3 of the FEI Regulations for Rio 2016 (together referred to as **“Horse Nationality Rule”**), the FEI send a “FEI Update” reminding National Federations about the relevant articles, requirements and responsibilities regarding horses’ nationality at the Olympic Games (Appellant Exhibit 12). The FEI Update states as follows in relevant parts:

“(…)

- *Only Horses owned by Owner(s) having the same nationality of the Athlete (i.e. not horses leased) can participate at the Olympic Games Rio 2016 (“Rio 2016”).*
- *The Owner of the Horse and its nationality must be entered by NFs in the FEI Database by 15 January 2016.*
- *At the time of entering the Owner and nationality of the Horse, NFs must print the sticker produced by the system. This sticker needs to be stuck in the FEI Document (Passport/Recognition Card) and stamped by the NF.*

- *If the nationality of the Horse is changed between 15th January 2016 and Rio 2016 the Horse will not be eligible to compete at Rio 2016 (instead Owners can be changed but the nationality of the Horse must be maintained after 15th January 2016 in order to be eligible for participation at Rio 2016).*
- *The nationality of the Owner of a Horse competing at Rio 2016 must be the same as the nationality of the Athlete riding the Horse.*
- *As per the FEI General Regulations, "Owner" means a person or entity having a property interest in whole or in part of one or more horses.*
- *The Horse may be owned by individual(s) and/or company(ies) and/or by a partnership of individual(s) and/or company(ies).*
- *If the Horse is owned by a company, the nationality of the Horse is that of the country where the company is registered. The name of the company and its nationality must be entered in the FEI Database by 15th January as mentioned above.*
- *When a Horse is owned by a company it is not mandatory to enter the name of an individual (with legal ownership in the company) in the FEI Database by 15 January.*

(.....)

PARALYMPIC GAMES – INFORMATION ON OWNERSHIP OF HORSES

(....)

B) Nationality of Horses

- *The Nationality of the Owner of a Horse competing in the Paralympic Games does not need to be the same as the nationality of the Athlete riding the Horse."*

1.3 As indicated on its passport, "Epona 309 B.V." ("**Epona**") was registered as the owner of the Horse on 14 December 2015 and the Horse's nationality was indicated as "NED"; on 26 January 2016, the Appellant and Epona were registered as co-owners of the Horse, and the Horse's nationality was changed from "NED" to "TPE." Thus, according to its passport, the Horse was owned on 15 January 2016 by Epona, a Dutch registered company.

1.4 On 22 January and on 5 February 2016, - upon previous request by the Appellant (as outlined below to the extent necessary) - the FEI decided not to allow a late and exceptional change of nationality for the Horse, *i.e.*, from Dutch nationality to Chinese Taipei nationality, for participation at Rio 2016 under the Chinese Taipei flag after the expiration of the 15 January 2016 deadline (the "**FEI Decision**"). The FEI letter of 5 February 2016 states as follows:

"(...)

This applicable deadline is expressly set forth in Article 139.4 of the FEI General Regulations (which states "Horses entered for the Olympic Games must be the property of Owners of the same nationality as the Athlete by 15th January of the year of the Games (See Olympic Regulations).") and in Article 620.3 of the FEI Regulations for Equestrian Events at the Olympic Games (which states "Horses entered for the Olympic Games must be the property of Owners of the same nationality as the Athlete by 31 December of the year preceding the Games. For the 2016 Olympic Games the relevant date is 15 January 2016"). These provisions have been approved by the FEI General Assembly and, therefore, in the interest of fairness, uniformity and good governance the FEI must apply the rules in the same way for all Athletes.

It is regrettable that Ms Isheau Wong (hereinafter your "Client"), her entourage and the Chinese Taipei National Federation were unaware of Article 139.4 (as set out above) and Article 139.2 of the FEI General Regulations (which states "The nationality of a Horse is that of its Owner of the Lessee, where a lease is current, or of the country in which the company owning or leasing it is registered") when the Horse was purchased. While this rule only applies for the Olympic Games, it is not correct to characterise it as "exceptional"; this is not a new rule and has applied for at least the last 4 editions of the Olympic Games.

Even though it is the responsibility of each Athlete (and their National Federation) to be familiar with the applicable FEI Rules and Regulations, the FEI did its best to ensure that the National Federations were reminded of the applicable rules by sending an FEI Update to all FEI National Federations on 13 January 2016. This FEI Update, inter alia, clearly set out the provisions of the aforementioned articles.

The FEI Update also set out the practical implications of these articles, explaining that "If the nationality of the Horse is changed between 15 January 2016 and Rio 2016 the Horse will not be eligible to compete at Rio 2016 (instead Owners can be changed but the nationality of the Horse must be maintained after 15th January 2016 in order to be eligible for participation at Rio 2016)". Given that, as a matter of fact and law, as of 15 January 2016 the Horse was owned by the Dutch company Epona 309 B.V., any change of the Horse's nationality after that date, such as the requested change to reflect your Client's nationality (Chinese Taipei), would have the effect of rendering the Horse ineligible to compete in Rio 2016.

The FEI's IT Department has confirmed that the FEI Update was indeed sent to and received by the Chinese Taipei Federation.

Please kindly note that your Client is eligible to represent her country, Chinese Taipei, in Rio 2016 with the horse Zadarijke V (FEI ID 102WM64)."

2. Procedural Background

- 2.1 On 19 March 2016, the Appellant lodged an Appeal (“**the Appeal**”) in accordance with Article 165 of the GRs and Article 17 of the IRs against the FEI Decision.
- 2.2 On 8 April 2016, the FEI provided its Answer to the Appeal.
- 2.3 On 18 April 2016, the Appellant indicated that she would be ready to renounce her request for a hearing if she was allowed to reply in writing to the FEI’s Answer to the Appeal. On 19 April 2016, the Tribunal, agreed to the Appellant’s request and also allowed the FEI, in turn, to respond to the Appellant’s reply.
- 2.4 On 29 April 2016, the Appellant submitted her Retort to the FEI Answer.
- 2.5 On 9 May 2016, the FEI responded to the Appellant’s Retort.

3. Written submissions by the Appellant

- 3.1 In essence, the Appellant requested the Tribunal (i) to decide that the Appeal has been filed in due course and met the formal requirements imposed by the GRs; (ii) to cancel the FEI Decision; and (iii) to order that any reference to Epona as owner shall be removed from the Horse’s passport, and that the Appellant shall be registered as the sole owner of the Horse since 13 December 2015.
- 3.2 Together with her Appeal, the Appellant submitted various documents and statements including, among others, the ones referred to above and below.
- 3.3 Mr. P. Groenenboom, tax adviser at Van Heugten & Dekker, made a declaration dated 16 March 2016 (Appellant's Exhibit 5a) in which he stated that:

- "- Ms. Isheau Wong in person purchased the horse Quinlan from Kleer Investments B.V. on December 14, 2015;*
- Ms. Isheau Wong in person has not been registered for Dutch VAT purposes;*
- Ms. Isheau Wong owns 100% of the shares of Epona 309 BV, a Dutch based and Dutch registered legal entity;*
- Epona 309 BV is registered with the Dutch tax authorities for VAT purposes;*
- For the purpose of reclaiming Dutch VAT only, seller Kleer Investments B.V. has invoiced to Epona 309 BV the sale price due by Ms. I. Wong;*

- *Although the invoice has been sent to Epona 309 BV, the horse has been purchased for and on behalf of Ms. Isheau Wong. Therefore, Ms. Isheau Wong is the legal sole owner of Quinlan, since the date of the purchase, i.e. as of 14 December, 2015."*

- 3.4 The Appellant also submitted documentation (Appellant Exhibit 4) showing that the company Epona has been registered in Arnhem, the Netherlands, on 30 September 2013, that the Appellant was its sole shareholder and General Director (*algemeen bestuurder*). According to that exhibit, the company's activity under European classification No 0143 is the raising of horses and other equines.
- 3.5 The Appellant provided an invoice for the acquisition of the horse dated 14 December 2015 (Appellant's Exhibit 3a) from Kleer Investments B.V. to Epona in an amount of EUR 400,000 plus 21% VAT, *i.e.*, for a total amount of 484,000 Euros. This invoice was for the payment of the first part of the purchase price of the Horse. The invoice further referred to the agreement that if the Horse would qualify for the Rio 2016 Olympic Games, an additional amount of EUR 150,000 (not including VAT) could be invoiced at the time when the Horse would be transported to Brazil.
- 3.6 Notwithstanding the invoice issued by Kleer Investments, its Director, Mr. Kees Kleer, made a declaration dispatched on 17 March 2016 to the legal advisor of the Appellant (Appellant's Exhibit 5b) in which he stated:

"To whom it may concern,

We hereby confirm that we sold the horse Quinlan (FEI passport number 103LV78) to Ms Isheau Wong in December 2015.

For and on behalf of Kleer Investments B.V.

Kees Kleer, director

[signature]"

- 3.7 Ms. Rita Shou-fan I-Wong, Appellant's mother, made a declaration dispatched on 17 March 2016 to the legal advisor of the Appellant (Appellant's Exhibit 3b) in which she stated:

"To Whom It May Concern:

I do hereby certify that I, Rita Shou-fan I-Wong, financed the purchase by my daughter Isheau Wong of the horse Quinlan in December 2015

Signed

Rita Shou-fan I-Wong"

- 3.8 In an unsigned letter dated 27 January 2016 (Appellant's Exhibit 2), Ms. Jiska Ros, Coordinator of the Dutch National Federation (KNHS) (the "**NED-NF**"), stated that, on 14 December 2015, the owner of the Horse requested a change of ownership in the FEI Recognition Card of the

Horse. That the owner accidentally wrote down that the passport had to be under Dutch nationality; that this was not the right nationality; that the nationality had to be Chinese Taipei. Finally, that on the day prior to her statement, *i.e.*, on 26 January 2016 (erroneously written "26 December 2016"), the ownership was changed again to the right one.

- 3.9 In total, the Appellant provided two FEI-Recognition cards for the Horse; one dated 13 December 2015, requested by GDS Training, listing Epona as the owner of the Horse, and listing "NED" under nationality (Appellant's Exhibit 6); and another without date and exhibit number, requested by the Appellant, listing the Appellant and Epona as owners, and stating "TPE" under nationality.
- 3.10 The Appellant further submitted a letter by the Chinese Taipei Equestrian Federation (the "**TPE-NF**"), dated 4 February 2016, and a letter by the Chinese Taipei Olympic Committee (the "**TPE-NOC**"), dated 1 March 2016 (Appellant's Exhibits 8 and 9 respectively). The TPE-NF claimed that it did not receive the FEI Reminder of 13 January 2016. That, since the Horse was registered with the TPE-NF in December 2015, the TPE-NF had "naturally assumed" that the Horse had been registered to the Appellant who bought the Horse. That, since the TPE-NF had previously never been represented in any Olympic Games, the TPE-NF had not been aware of "this regulation specific to the Olympic Games." That however there was no doubt that the Appellant and her family had bought the Horse in order to compete in Rio 2016 and to represent Chinese Taipei.
- 3.11 The TPE-NOC explained that due to "an administrative error" the Horse was registered only to the Appellant's company, *i.e.*, Epona, with no mention that she was the sole owner of the company. That even though the Horse was registered to a Dutch company, it was without any doubt owned by a Chinese Taipei national, namely the Appellant, since it was purchased by her. Finally, that the Appellant should not be penalized for an inadvertent mistake.
- 3.12 In her Statement of Appeal, the Appellant alleged that the NED-NF considers that when a horse is purchased by a company fully owned by a rider, the rider is personally the owner of that horse. For the Appellant, the decisive parameter is to determine whether the purchase was made for and on behalf of the rider or if the horse was bought as an investment by the company itself. The Appellant added that in order to be able to reclaim Dutch VAT, the seller issued its invoice to Epona, the Dutch company fully owned by the Appellant. However, Epona never intended to be a party to the sale contract, which the seller knew.
- 3.13 On 13 December 2015, the assistant of her trainer filed the necessary forms to change of name of the Horse's owner with the NED-NF. According to the Appellant however, the assistant did not mention that although the invoice was to be issued to Epona, the legitimate owner was Ms. Wong alone, and that she should have been mentioned at the very least as co-owner according to the "details of ownership" mentioned in the passport.

- 3.14 For the Appellant moreover, since it was the first time that a Taiwanese athlete is qualified for the Olympic Games in the discipline of jumping, none of her entourage, including the TPE-NF, was aware that the Horse had to have her nationality.
- 3.15 In addition, the Appellant argued that the TPE-NF never received prior to 21 January 2016 *"any information or reminder that it was an absolute must that for the Olympics, horses were registered under the name of a person or company having the same nationality as the athlete and not under the name of a company held by the same athlete."*
- 3.16 The Appellant also considers that since the TPE-NF referred to the Horse as *"our Olympic horse,"* and that the Horse had been administered by the TPE-NF since it was acquired, implies that it belonged to a Chinese Taipei national, *i.e.*, herself.
- 3.17 More specifically, the Appellant argued that **(a)** ownership of a horse follows private law rules and was not subject to registration, and that **(b)** the rule on equal nationality, *i.e.*, the rider and his or her horse, was not based on the Olympic Charter, and its purpose was discriminating since athletes taking part in the Paralympic Games did not have to follow that same rule.
- 3.18 **(a)** With regards to the Appellant's first argument, the Appellant argued that the FEI – based on the information in the Horse's passport – considered that the Horse belonged to Epona, a Dutch company fully owned by her. That under Dutch law (same principles as in Swiss Law) ownership of an animal was transferred when two conditions are met: a cause (in this case the sale), and the transfer of possession. That, since both the seller and she, who argued that Epona acted for and on her behalf, and as Epona B.V. never had possession of the Horse, she was the Horse's sole owner since 13 December 2015. Further, since all parties (the seller, Epona and she) agreed, a third party, such as the FEI, could not question her rights.
- 3.19 That, indeed, from 13 December 2015 to 25 January 2016, Epona was registered as the owner; that however the passport contained wrong data and had to be corrected. In addition that, even if the FEI passport was considered as a public registry under Art. 9 of the Swiss Civil Code – which the Appellant did not consider to be the case – it would only presume who the owner was, but such presumption would remain rebuttable. Furthermore, that the registration of the name of an owner in the FEI passport could not transfer ownership per se. On the contrary, the transfer of ownership was subject to property law. That in the Netherlands and in Switzerland the registration in any registry was not a condition for the transfer of an animal or of a movable asset to be valid and effective (as opposed to the transfer of real estate).
- 3.20 FEI regulations however contained no provisions on how to correct wrong data entered into the horse passport. In this respect, she suggested that the Tribunal applied by analogy the provisions of the Federal Ordinance on the land Registry (Articles 131 et seq., esp. 132 para.3 and 140),

according to which wrong information mentioned in the registry had to be crossed off and it had to be replaced by the correct information, the crossing off assessing the total absence of judicial effect of the information removed.

- 3.21 That on that basis, the Appeal shall be admitted and the Horse's passport corrected; Epona shall be removed and replaced by the Appellant as owner since 13 December 2015. That the refusal of the FEI to correct the identity of the Horse's owner was ill-founded and far too formalistic ("*formalisme excessif*"), a term that had been defined as such in case law of the Court of Arbitration for Sport ("CAS"), which had found that "*the aims of sporting justice shall not be defeated by an overly formalistic interpretation of the FIFA Regulations which would deviate from their original intended purpose*" (among others, CAS awards TAS 2010/A/2056, 22 June 2010, nr. 45; CAS 2009/A/1757, 30 July 2009, nr. 31).
- 3.22 **(b)** With regards to her second and subsidiary argument, the Appellant argued that the IOC itself did not know why the FEI had adopted a rule imposing that the horse had to have the same nationality as the rider.
- 3.23 That, depending on the country, domesticated animals were considered as movable assets (a "thing", belonging to a person) or as a living being subject to rules applicable to property by analogy only. In this respect the Appellant provided two documents purporting to explain the ownership rights under Dutch Civil Law (Appellant's Exhibits A and B). The Appellant argued that, if horses were considered as a "thing," the rule imposing that horses have the same nationality as its riders would breach the Olympic Charter, since all athletes taking part in the Olympics had the right to use their equipment, regardless of the country of origin of such equipment. That, if horses were considered as living beings subject to property law by analogy (which was the case under Swiss law, Article 641a SCC), the rule imposing nationality was nevertheless groundless for horses, as they were mobile and not geographically attached. They were not citizen of a specific country, by *jus soli* or *jus sanguinis*. The test to define the nationality of a horse was therefore artificial and went far beyond Rule 41 of the Olympic Charter. That, whatever the status of an animal, a horse was not and will never be the competitor in the Olympic Games, as according to the Olympic Charter, the Olympian is a human being, *i.e.*, a "physical person".
- 3.24 The Appellant further argued that the Horse Nationality Rule was discriminating for two reasons. First, that – as outlined by the FEI in its communication of 13 January 2016 – the rationale behind the rule was that horses could not be leased for the Olympic Games. That, whereas this was not the "grammatical sense of the rule", which does not impose that the horse belonged to the rider, and that if the contrary was the case, the rule would be severely discriminating against riders who did not have the means of buying a horse of a high quality to take part in the Olympic Games. Second, that for the Paralympic Games, it was not compulsory for horses to have the same nationality as its riders, and that

therefore *"the valid athletes were discriminated towards the impaired athletes."*

- 3.25 To conclude, the Appellant argued that the Horse was her property since 13 December 2016, the rule imposing that horses had to have the same nationality as its riders did not originate in the Olympic Charter, and that therefore such rule *"emanated from the FEI and that such requirement was artificial and discriminating."*
- 3.26 In response to the FEI Answer to its Appeal (as outlined below), the Appellant argued in its Retort of 9 March 2016 that the FEI maintained that the Horse had another nationality than herself, since the horse's nationality was solely based on the information mentioned in the passport for horses. That such arguments amounted to stating that ownership derived from the passport, in other words that a horse was to be compared to real estate, aircrafts or ships, that the passport was a public Register, and that transfer of ownership happened only upon modification of such register. That – as she previously explained – ownership of an animal derived from private law rules and the FEI passport for horses was not a register kept by a State in which registrations have a constitutive effect. That it was unquestionable that she was the owner of the Horse, and that the passport had to be corrected. The Appellant emphasized that she did not request a change of nationality, but a mere modification of incorrect information in the Horse's passport so that it matched reality.
- 3.27 With regards to the FEI's arguments concerning the purpose of the nationality rule, *i.e.*, to prevent that horse owners would sell their horses close to the start of the Olympic Games and thus depriving the riders and/or the teams from the opportunity to ride them during the Olympic Games, the Appellant argued that she had difficulties in understanding why then such rule was not imposed for the World Equestrian Games, for example. That she became the owner of the Horse in December 2015 in order to train with the Horse well in advance of the Olympic Games, and that her request that the Horse's passport was rectified was not meant to and did not deprive another athlete or team from participating in the Olympic Games.

4. Answer by the FEI

- 4.1 The FEI requested the Tribunal to:
- " (a) *Dismiss Appeal on its merits; and*
(b) *Confirm the FEI Secretary's Decision of 22 January 2016*
(c) *Determine that the Appellant shall bear the costs of Appeal proceedings and make a contribution towards the FEI's legal costs."*
- 4.2 The FEI stated that the Tribunal had jurisdiction over the case at hand pursuant to Article 38.1 of the Statutes and Article 165 of the GRs.
- 4.3 The FEI requested the Tribunal to uphold the FEI Decision and that the 15 January 2016 deadline applied to the Appellant in the same manner as the

deadline has been applied and respected by riders and National Federations since, at least, 1971.

- 4.4 The FEI argued that the Appellant in her submission seemed to have mixed different concepts under one single umbrella, namely "ownership of a horse." The FEI, as an international sport governing body, has neither authority nor jurisdiction to determine the legal ownership of a horse; legal ownership of a horse can only be determined by judicial authorities of the relevant country subject to the applicable law. For this reason, the FEI never discussed or contested the ownership of the Horse.
- 4.5 Instead what is important to understand is that – pursuant to Article 137.4 of the GRs – the registration of horses is totally and solely the responsibility of the National Federations. It is the responsibility of National Federations to issue horses passports for those horses required to have one, and for ensuring that horse passports were correctly completed (including to ensure the correct ownership and nationality) as specified in the FEI Rules.
- 4.6 For the FEI, the Horse Nationality Rule is only related to the nationality of a horse, and not to its ownership. Further, the Horse Nationality Rule is crystal clear when referring to a horse owned by a company: when a horse is owned by a company, for organisational and administrative sporting purposes, the FEI rules establish that the nationality of the horse is that of the country in which the company owning the horse is registered (a Dutch registered company in the case at hand).
- 4.7 The FEI further argued that, if the ownership information was wrong – as claimed by the Appellant – the way of correcting it was through the National Federation responsible for the administration of the Horse (the Chinese Taipei National Federation from 17 December 2015 until 15 January 2016), which could correct the information via very simple administrative paperwork. The FEI never objected to the correction of the owner information in the Horse's passport, which in the instant case has been actually modified on 26 January 2016. However, as the regulatory deadline for confirming the nationality of the Horse for the purpose of the Olympic Games, *i.e.*, 15 January 2016, had expired, the National Federation could correct the information in the passport for the future, but unfortunately the Horse was not eligible to compete at Rio 2016 under the Chinese Taipei flag.
- 4.8 The FEI also pointed out to a perceived incongruity in the Appellant's submission where she requested to have the Horse's passport corrected and her name indicated as owner instead of Epona, but with the change made at her request on 26 January 2016 (erroneously written "25 January 2016") the Appellant is indicated as co-owner with Epona who was not removed as owner of the Horse.
- 4.9 In addition, the FEI argued that the establishment of rules setting out the terms and requirements that applied for specific FEI Competitions and observance of these rules by athletes shall not be considered as an "overly formalistic interpretation" of the FEI as argued by the Appellant. Instead,

such rules and deadlines shall be considered as a fundamental, uniform and fair way of instituting clear and fair rules governing the sport competition.

- 4.10 The CAS case law provided by the Appellant in this respect precluded an overly formalistic interpretation of the Regulations which "would deviate from their original intended purpose". The FEI however, was only and exclusively respecting the regulatory deadline as agreed and approved by its National Federations members, and by doing that, the FEI was respecting the original intended purpose of such regulatory deadline.
- 4.11 Consequently, it would be the non-respect of such deadline that would cause the FEI to deviate from the original intended purpose of the rule, which was none other than to ensure and guarantee that horses competing at the Olympic Games will be ridden by athletes with the same nationality and that the applicable nationality was confirmed by a certain deadline, *i.e.*, 15 January 2016.
- 4.12 Regarding the Appellant's subsidiary arguments, the FEI argued that according to the Bye-law to Rule 40 of the Olympic Charter each International Federation established its own sport's rules for participation in the Olympic Games, and further that the IOC had reviewed the FEI Olympic Rules and has never raised any questions about the Horse Nationality Rule.
- 4.13 Further that a horse was not considered as "an equipment" – as suggested by the Appellant, but was considered as an athlete as describe in the FEI Values, which read as follows: "*Complicity with the Animal. Equestrianism is the only sport that involves two athletes, equine and human. It is the successful partnership between these two elements; the relationship of confidence and respect that is built up between them, that makes the sport so exceptional.*" The rule in the Olympic Charter regarding equipment was clearly meant to refer to sporting equipment such as tennis rackets, boats, bikes etc.
- 4.14 The FEI further argued that it was the responsibility of each Athlete (and their National Federations) to be familiar with the applicable FEI Rules and Regulations (and to follow and be aware of the updates and news proactively communicated by the FEI). Nonetheless, the FEI did its best to ensure that the National Federations were reminded of the applicable rules by sending an "FEI Update" on 13 January 2016 to all FEI National Federations, before the expiration of the deadline, setting out clearly, *inter alia*, the application of the Horse Nationality Rule. The FEI added that, contrary to the Appellant's allegation, the TPE-NF did receive the FEI Update via its general email address provided to the FEI on 13 January 2016, although the email was only opened and read on 26 January 2016.
- 4.15 With regards to the Appellant's discrimination claim, the FEI argued that the Horse Nationality Rule was in force and existed in the FEI for the last 45 years, since at least 1971. The rules have been applied therefore for at least eleven (11) editions of the Olympic Games. The Horse Nationality Rule for the Olympic Games has never been contested and was widely known and accepted by all FEI National Federations.

- 4.16 With respect to the argument of the Appellant that this was the first time ever for a Chinese Taipei participation in equestrian in the Olympic Games, the FEI is of the view that precisely because of that, everyone including the Appellant, her entourage and the TPE-NF, should have shown even more diligence and been more careful in learning applicable rules.
- 4.17 Furthermore, the existence of the deadline in the Horse Nationality Rule was based on sporting reasons in order to ensure the regularity of the equestrian competitions; a fundamental role of the International Sport Federations confirmed by the Court of Justice of the European Union in its Judgement of 13.4.2000 (Case C-176/96 paragraphs 53 and 54). That the rationale behind the deadline in the Horse Nationality Rule was to avoid that horse owners, potentially motivated by speculative and non-sporting interest, would sell their horses to third parties as the Olympic Games are getting close, with the disastrous result that individual riders and/or teams already qualified would be dissolved and would not have the opportunity to compete in the Olympic Games.
- 4.18 The FEI also explained that the reason why the Horse Nationality Rule only applies to Olympic Games and not to Paralympic Games is because in the Paralympic Games, the commercial interest and monetary speculation of horses simply did not exist.
- 4.19 Moreover, the FEI argued that the law may provide rules under which seemingly unfair, unjust or even unequal treatment was justifiable. The non-discrimination principle required the equal treatment of an individual or group irrespective of a certain personal characteristics; equal treatment meant that similar situations (such as the participation at Rio 2016) shall be treated alike and dissimilar situations (such as participation at the Paralympic Games 2016) could be treated differently.
- 4.20 In this respect, a discriminatory situation would be created towards those 3 National Federations that, not having respected the 15 January 2016 deadline to confirm the nationality of horses for participating at Rio 2016, have accepted the negative answer of the FEI to make an exception for a late change of nationality of the horses.
- 4.21 Finally, the FEI argued that the Horse Nationality Rule has been approved by the FEI General Assembly, *i.e.*, by all National Federations members of the FEI and therefore, in the interest of fairness, uniformity and good governance, the FEI has to apply the rules in the same way for all athletes.
- 4.22 Finally, the FEI raised the following potential consequences of upholding the appeal and obligating the FEI to accept a late change of nationality:
- " i. What would the FEI do with other National Federations that have already applied for a late change and have been denied?
 - ii. Shall the FEI accept all late requests?
 - iii. Where would the FEI establish the limit and draw the line for late nationality changes?

- iv. What would prevent a National Federation or an athlete from requesting a change of nationality even at a time very close to Rio 2016?
 - v. Would not this be seen unfair by all other National Federations that have complied with the Horse Nationality Rule?
 - vi. Would not the FEI, by not applying the Horse Nationality Rule, be deemed to be overruling the FEI General Assembly by not applying a rule that it has been approved by the FEI members?"
- 4.23 On 9 May 2016, in its response to the Appellant's Retort, the FEI addressed the main - in the view of the FEI - "inaccuracies" of the Appellant's Retort. The FEI pointed out that it never discussed the ownership of the Horse, whether it belonged to the Appellant or to Epona, and emphasised that the case at hand was not related to the ownership of the Horse but to its nationality to compete at the Olympic Games, more specifically to the sport nationality of the Horse.
- 4.24 The FEI further explained that the case at hand could simply be summarized that the Appellant was asking the FEI not to apply to her an existing rule that had been in force for more than forty (40) years, democratically approved by all National Federations. In this respect the FEI further argued that - as previously submitted - according to Bye-law to Rule 40 of the Olympic Charter, each International Federation has the right and authority to establish its sport rules for participation in the Olympic Games. Therefore, the responsibility for establishing the rules is not within the remit of the IOC but of the International Federations. Furthermore, the FEI argued that, contrary to what happens in the Olympic Games, where a quota limiting the number of athletes is established by the IOC, there were no quotas of participation to compete at the FEI World Equestrian Games™; that therefore the Horse Nationality Rules was not applicable to the FEI World Equestrian Games™.
- 4.25 Moreover, the FEI argued that - as previously submitted - by applying the Horse Nationality Rule the FEI is not sanctioning the Appellant; the FEI was just merely applying, for the sake of good governance, transparency, guarantee of fair play and assurance of equal conditions for all FEI members, an existing and approved rule in the same manner that it has been applied to all other Athletes.
- 4.26 The FEI also mentioned that - as it previously submitted - if the FEI Tribunal were to uphold the Appeal and oblige the FEI to accept a late change of nationality of the Horse after the expiration of the 15 January 2016 deadline, a ruling that would go against the will and resolution of the FEI General Assembly.
- 4.27 Finally, the FEI repeated the potential consequences of upholding the appeal and obligating the FEI to accept a late change of nationality, as set out above in Paragraph 4.22.

5. Jurisdiction

The Tribunal has jurisdiction over the matter pursuant to the Statutes, GRs and IRs, and its jurisdiction has not been challenged by the parties.

6. Admissibility of the Appeal

In accordance with Article 38.1 of the Statutes, Articles 156.9 and 165 of the GRs and Article 17 of the IRs, the Appeal is admissible as it arises from a Decision taken by the FEI Secretary General, and is not excluded under Article 165.2 of the GRs.

7. Decision

- 7.1 As outlined above, the Parties have presented various arguments, documents and evidence in support of their respective claims and defences. The Tribunal has carefully considered, examined and assessed all such arguments, facts and evidence presented. Some are cited or noted in this decision, while other may not be expressly mentioned but this should not be construed, however, as if they have been ignored or not taken into account. The Tribunal wants to make clear that it has read, duly considered and taken into account all the material submitted in this appeal, even if not every point or piece of evidence has been replicated herein.
- 7.2 The Appellant raised many arguments in support of its claim that the FEI erred in rejecting her request to be registered as the owner of the Horse as of 13 December 2015. Thus, the first issue to be determined in this case is whether Ms. Wong became the owner of the Horse, as alleged, on or about 13 December 2015 or at a later time, on or before 15 January 2016.
- 7.3 There is no agreement between the Parties as to whether the Appellant became the owner of the Horse. The FEI made two seemingly contradictory statements, indicating **(i)** that it does not take any position as to whether the Appellant was the owner of the horse,¹ and **(ii)** that *"the argument about horses leased is completely irrelevant to this case as the Horse is actually owned by the Appellant"* (emphasis added).² Based on the second statement, the Appellant argues in her Retort that the FEI has admitted that she is the owner of the Horse.³ The FEI however, in its Answer to the Retort, maintains that it never discussed the ownership of the Horse, whether it belongs to the Appellant or to Epona.⁴

¹ FEI Answer to Appeal, Paragraphs 22-26

² FEI Answer to Appeal, Paragraph 34.4.a.

³ Retort, page 2, 4th full paragraph

⁴ FEI Response to Retort, Paragraph 1

- 7.4 Based on the above, the Tribunal cannot consider that there is an agreement between the Parties as to the actual ownership of the Horse, particularly since, as the FEI pointed out, the FEI cannot deal with 134 different national legal systems.⁵ The FEI cannot thus opine one way or another, and the Tribunal will therefore determine the ownership issue based on the evidence on the record of this case.
- 7.5 For the Appellant, the acquisition of an ownership right over the Horse is governed by Dutch law pursuant to Article 100 of the Swiss Private International Law Act (the "**PILA**") as the Horse was in the Netherlands at the time of the sale. The FEI did not address the issue and the Tribunal is not convinced that there is a conflict of law issue in the instant case as all relevant participants are either Dutch or Dutch residents (Epona, Kleer Investments B.V. and the Appellant) and the Horse, object of the sale agreement, was physically located in the Netherlands.
- 7.6 But assuming that an issue of private international law would need to be resolved in this case, it is not disputed that ownership of the Horse was acquired through a contract of sale. It is therefore the law applicable to the contract of sale for the Horse that needs to be determined. The Tribunal agrees with the Appellant that Dutch law applies. That is not only because of Article 100 of the Swiss PILA, which the Tribunal is not convinced is either applicable by or binding upon this Tribunal, but under conflict of law rules generally applied in contracts for the sale of goods.⁶ These rules usually designate the law of the seller's domicile,⁷ *i.e.*, Dutch law in the contemplated transaction.
- 7.7 According to the Appellant, the transfer of ownership of a movable thing (and a horse is legally qualified as a movable thing) requires two conditions under Dutch law; namely: **(i)** a cause, which in this case is the contract of sale of which the Horse is the object; and **(ii)** a transfer of possession of the Horse to the new owner.⁸
- 7.8 The Tribunal has carefully read and taken cognizance of Exhibits A and B submitted by the Appellant in support of this position, and notes that the FEI has neither objected nor commented on the Appellant's contentions regarding the above requirements under Dutch law. Since the literature of a general nature submitted by the Appellant does not obviously contradict her position, and in want of any objection from the FEI, the Tribunal will accept that under Dutch law, applicable to the transaction

⁵ FEI Answer to Appeal, Paragraph 23

⁶ While one may feel it inappropriate to refer to a horse as a "*good*" or a "*thing*," particularly in the equestrian world, a domesticated horse is nonetheless considered as such from a legal point of view. Thus the sale of a horse is governed by rules applicable to sales of goods and the determination of the law applicable to the sale of a horse is the law otherwise applicable in a sale of goods.

⁷ See, *e.g.*:

- Article 3 of the 1955 Hague Convention on the Law Applicable to International Sale of Goods, which is in force in Switzerland (PILA article 118) but not in the Netherlands;

- Article 4 (a) of EC regulation No 593/2008 of 17 June 2008 on the law applicable to contractual obligations (Rome I) applicable in the Netherlands.

⁸ Appeal, page 14, 2nd full paragraph

regarding the Horse, a transfer of ownership requires a sale and a transfer of possession of the object of the sale.

- 7.9 Regarding the sale agreement itself, it is not contested that the Horse was sold in December 2015 by Kleer Investments B.V., and that the seller issued an invoice to Epona in the amount of EUR 400,000 plus VAT (EUR 484,000 in total).⁹ The invoice also provided that an additional EUR 150,000 (not including VAT) would become due if the Horse was to qualify for the Olympics, and that this amount shall be paid at the time the horse is transported to Brazil. The question is whether the Horse was sold to Epona or to the Appellant.
- 7.10 On the face of it, the Horse was sold to Epona, to whom the invoice was issued to, and who will be able to reclaim the VAT on the purchase. The Appellant and the seller consider however that this was not the real and common intent of the parties to the sale agreement, with the Appellant submitting that Epona acted for and on behalf of the Appellant who received financing from her parents. Moreover, the Appellant considers that Epona never had possession of the Horse, contrary to the Appellant herself, and concludes that the FEI cannot question the Appellant's rights since all involved parties are in agreement, *i.e.*, the seller, Epona and the Appellant.¹⁰
- 7.11 The standard to be applied by the Tribunal in assessing facts and evidence is the preponderance of the evidence; *i.e.*, whether a fact, situation or allegation is more likely true than not. Based on this standard, the Tribunal is not convinced that the evidence on the record supports the position of the Appellant. First and foremost, documentary evidence is in stark contradiction with the declarations of various parties, some of which have a vested interest in the outcome of this case. These parties include the Appellant herself, her mother and Epona, of which the Appellant is the sole shareholder and General Director. The documentary evidence that contradicts such declarations includes in particular the invoice issued by the seller of the Horse, the FEI passport as it stood between 14 December 2015 and 26 January 2016, and various positions and statements set out in the Appellant's submissions, as well as the declaration of her tax advisors.
- 7.12 At this juncture, and before going any further, the Tribunal wishes to dispel any potential misgiving regarding its reference to the FEI passport of the Horse in the previous paragraph. The FEI passport of the Horse, as it stood during the relevant time, is only one of the elements taken into account by the Tribunal in its decision, and is giving credence to the proposition that the Horse was sold to Epona and not to the Appellant. The Tribunal does not mean, does not say and does not hold that this document establishes or is required to establish legal title over the Horse. The Tribunal does not take a position on this particular issue even though it was extensively briefed by the Appellant, because the Tribunal does not consider that its ruling on this issue would be necessary and relevant in

⁹ Appellant's Exhibit 3a

¹⁰ Statement of Appeal, page 14, 3rd full paragraph

deciding this case. In other words, a ruling one way or another would not be outcome determinative.

- 7.13 The important parameter to the decision of the Tribunal is that the Appellant made the clear and conscious decision in December 2015 to acquire the Horse through Epona. She did so, apparently on the advice of her tax advisors, Messrs. Van Heugten & Dekker, in order to be able to reclaim the Dutch VAT on the purchase of the Horse. This was confirmed both in her Statement of Appeal,¹¹ and also clearly by Messrs. Van Heugten & Dekker in their affidavit.¹² The purpose of channelling the purchase of the Horse through Epona in order to reclaim Dutch VAT is clear evidence for the Tribunal that Epona was jointly intended by buyer and seller to be the party acquiring the Horse. Otherwise, the transaction would need to be considered as a sham transaction concluded for the purpose of avoiding the payment of taxes. This, however, is neither alleged nor evidenced in this case, and therefore the Tribunal will not entertain or consider as a possibility that the transaction was a sham transaction.
- 7.14 As to the declaration of the seller issued within the framework and for the purpose of this case, that it sold the Horse to the Appellant,¹³ such declaration cannot override the fact that it issued an invoice to Epona for EUR 400,000 (plus VAT) that also referenced a further obligation to pay an additional EUR 150,000 (plus VAT) if the Horse was to qualify for the Olympics. As there is no allegation nor evidence that the seller issued a fake invoice, the Tribunal finds no legitimate reason to engage in that speculative route and can therefore only consider this invoice to reflect the true agreement of the parties that the Horse was sold to Epona.
- 7.15 In order to dispel any potential misunderstanding, the Tribunal wishes to emphasize that it finds nothing wrong with the fact that the purchase of the Horse was optimized by using Epona, which is a legal entity owned by the Appellant and which has an equestrian-related registered activity. But then, the Appellant cannot legitimately say that the Horse was sold to her personally. The Horse was acquired by Epona, which is an independent entity with a separate legal personality and a separate patrimony, distinct from those of the Appellant. It is irrelevant that the Appellant is the one hundred percent owner of Epona.
- 7.16 The Tribunal cannot and will not entertain the proposition that the acquisition of the Horse for which Epona received an invoice from the seller in order to reclaim the VAT from the Dutch tax administration and thus necessarily entered the purchase in its books, was a sham transaction. Moreover, the fact that the financing of the purchase came apparently from the Appellant's family is not relevant as a company may receive financing from its shareholders or from third parties. In such situations, the financing party does not become owner of whatever may have been acquired by the company using such financing.

¹¹ Statement of Appeal, Page 3, paragraph 12

¹² Appellant's Exhibit 5a

¹³ Appellant's Exhibit 5b

7.17 If the Tribunal were to decide otherwise, the Tribunal would arguably have to consider, for the purpose of the matter at bar, that the acquisition contract was most probably null and void as made in violation of Dutch tax regulations. However, in interpreting parties' intention, an interpretation that validates their agreement is to be preferred to an interpretation that nullifies it. That outcome would be mandated in particular because the relevant Dutch tax regulations are necessarily falling within the category of overriding mandatory provisions (*lois de police*) as contemplated in Article 9 of the Rome I Regulation, particularly since the law applicable to the acquisition of the Horse is Dutch law, all relevant parties are Dutch or Dutch resident, and the Horse is located in the Netherlands. Article 9 of the Rome I Regulation reads as follows:

"Article 9

Overriding mandatory provisions

1. *Overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social or economic organisation, to such an extent that they are applicable to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.*
2. *Nothing in this Regulation shall restrict the application of the overriding mandatory provisions of the law of the forum.*
3. *Effect may be given to the overriding mandatory provisions of the law of the country where the obligations arising out of the contract have to be or have been performed, in so far as those overriding mandatory provisions render the performance of the contract unlawful. In considering whether to give effect to those provisions, regard shall be had to their nature and purpose and to the consequences of their application or non-application."*

7.18 In light of the above, neither this Tribunal nor, arguably, the FEI, the NED-NF and/or any other NF could legitimately consider that the buyer of the Horse and its owner could be the Appellant. Should it be otherwise in light of the evidence available in this case, it would mean that this Tribunal, the FEI, the NED-NF and/or any other NF, would be giving effect to what would effectively be a tax avoidance scheme. This, in the opinion of the Tribunal, cannot be. And thus, this Tribunal holds that the Horse could have been acquired only by Epona and not by the Appellant, lest the transaction was a sham transaction. But as the Tribunal indicated before, there is no reason to consider the transaction as such and therefore Epona was the buyer of the Horse at the relevant time within the meaning of all relevant FEI regulations.¹⁴

¹⁴ The Tribunal is aware that the FEI and the NFs are not expected to engage in extensive legal and factual due diligence to determine the ownership of a horse. However, when available evidence points out, as in the instant case, to a specific ownership, neither the FEI nor the NFs may legitimately ignore such evidence.

- 7.19 The Tribunal will now address the second condition that, according to the Appellant, is required to perfect the transfer of ownership under Dutch law; namely, the handing over of possession over the Horse. The Appellant claims that she and not Epona had possession of the Horse. The Tribunal disagrees. According to Epona's corporate documentation submitted by the Appellant, Ms. Wong is not only the sole shareholder of Epona but is also its General Director.¹⁵ In that corporate capacity as General Director, Ms Wong has power and authority to represent Epona; and thus, her taking possession of the Horse was necessarily done on behalf of Epona since it was Epona who acquired the Horse from the seller.
- 7.20 Since the Tribunal has determined that the ownership of the Horse passed from the Seller to Epona and not to the Appellant, it follows that the passport did not contain, as alleged by the Appellant, wrong data. It follows further that the Appellant's request that this Tribunal shall "*order that any reference to Epona 309 B.V. as owner is removed from Quinlan's passport Nr. 103LV78 and that Ms. Isheau Wong is registered as sole owner since 13 December, 2015*" is, and can only be, rejected.
- 7.21 The Appellant also challenged the decision of the FEI to correct the identity of the Horse's owner on its passport as "*far too formalistic*." In support of this argument, the Appellant refers to a couple of CAS awards castigating excessive formalism in the interpretation of sport regulations when such interpretation would deviate from the intended purpose of the rule.¹⁶ Put differently, a rule is a mean to an end and shall not become the end itself. While the Tribunal can associate itself with such policy statement under appropriate circumstances, the argument is not apposite in the present case.
- 7.22 That is because the issue at hand is not, as posited by the Appellant, to correct a mistake, clerical or otherwise, for which this Tribunal may have had to enquire whether an issue of "*form over substance*" arose. In the matter at bar, the Tribunal has determined that the Horse was not acquired by the Appellant and thus, even if the FEI had been "*far too formalistic*," an enquiry into the matter would not affect the outcome of the case. That is because the Horse could not have been legitimately registered under the Appellant's name in the FEI passport anyway, since the Tribunal has determined that the Horse had not been acquired by the Appellant. As intellectually challenging as the issue of form over substance and excessive formalism may be, its determination is not outcome determinative in the instant case, and thus the Tribunal does not have to make a determination and rule on this issue.

¹⁵ Appellant's Exhibit 4

¹⁶ Statement of Appeal, page 14, 7th full paragraph

7.23 The Appellant also alleged that the NED-NF considers that when a horse is purchased by a company fully owned by a rider, the rider himself or herself is the owner.¹⁷ In support for that proposition, the Appellant refers to a letter dated 27 January 2016 from the NED-NF to Ms. Victoria Rydborn of the FEI.¹⁸ The letter reads as follows:

<i>"date</i>	<i>subject</i>	
27-01-2016	FEI-registration	Quinlan
103LV78		

Dear Victoria,

We would like to inform you about the horse Quinlan 103LV78.

The owner of the horse came at our office at 14th of December 2015 for an owner change in the FEI Recognition Card of the horse. Accidentally she wrote down that the passport had to be on the Dutch nationality. This was not the right nationality. It had to be Chinese Taipei.

Yesterday (26th of December (sic) 2016) we have changed the owner again into the right one.

We hope it is okay for the FEI that the passport was a little bit later on the right nationality because of the Olympic Games in Rio.

If you have any questions, don't hesitate to contact us.

Kind regards,

*Jiska Ros
Coordinator KNHS
Identification and Registration for KNHS and FEI*

7.24 The Tribunal does not read this letter to support the Appellant's proposition that the NED-NF has a policy of considering the rider as owner of a horse purchased by a company fully owned by that rider. What the letter says is that the Appellant allegedly made a mistake on 14 December 2015 by writing down the Dutch nationality, which should have been instead Chinese Taipei. The NED-NF then modified the passport and changed the nationality of the Horse to "TPE," assumedly as per under Articles 139.2 and 139.3 of the GRs (restated in next paragraph) since the Appellant was also added as co-owner. The Appellant may have become a co-owner of the Horse by the time the passport was modified on 26 January 2016, hence legitimating the modification of the passport and of the Horse nationality under Article 139 of the GRs.

¹⁷ Statement of Appeal, Page 2, paragraph 6

¹⁸ Appellant's Exhibit 2

7.25 Assuming the NED-NF had such policy of considering the rider as owner of a horse purchased by a company fully owned by that rider, such policy would contradict Article 139 of the GRs, and in particular Article 139.2, pursuant to which when a horse is owned by a company, it has the nationality of the country where the company is registered. Article 139 of the GRs is referred to in Section III. 2. above but the Tribunal finds it useful to restate it at this stage. Article 139 of the GRs reads as follows:

Article 139 - Owners and Lessees of Horses

1. *NFs must keep a register of the Owners and lessees of Horses with official passports. Changes of Owners and records of leasing agreements must be entered in the FEI and/or national passport and authenticated by the stamp and signature of an NF official.*
2. *The nationality of a Horse is that of its Owner or of the Lessee, where a lease is current, or of the country in which the company owning or leasing it is registered. A company may, however, own a Horse in partnership with an individual.*
3. *When one or more Horses belong to a partnership of Owners of different nationalities, the Owners must declare to the FEI, before making the first entry, the nationality under which the Horse or Horses will compete and that nationality must be entered in the FEI and/or national passport. The Horses must retain that nationality until the partnership is dissolved or the Horses are sold. Any consequent change of nationality must be reported to the FEI.*
4. *Horses entered for the Olympic Games must be the property of Owners of the same nationality as the Athlete by 15th January of the year of the Games (see Olympic Regulations).*
5. *Athletes may take part in all Events except Olympic Games with Horses belonging to Owners of a different nationality (see also Article 118 Person Responsible).*

7.26 The Tribunal can understand that NFs may probably have to rely on appearance or *prima facie* evidence, as well as on declarations from owners or presumptive owners making a declaration of ownership. However, the general policy alleged by the Appellant of considering that a horse can have the nationality of the owner of the entity actually owning a horse would be in clear contradiction with applicable sport rules and regulations. It is not for this Tribunal to recognize and give effect to such practice or NF's policy going *contra legem*, even if such practice or policy had been convincingly evidenced, which it has not been in the case at bar in any event.

7.27 Indeed, even assuming that such practice or policy would be in force at the NED-NF or at other National Federations, it is not because a rule has

been regularly breached that the breach becomes acceptable and the breached rule shall then be ignored. As long as a rule is on the books, this Tribunal shall give effect to it. If any of the various rules set out in Article 139 of the GRs are not satisfactory, it is not for this Tribunal to modify them through an act of judiciary activism and substitute its own judgement to that of the decision-making body of the FEI representing all National Federations, *i.e.*, the FEI General Assembly. The FEI has statutory mechanisms based on democratically agreed principles to address real or perceived inadequacies in its rules. It is through those mechanisms that a rule should be changed, not by this Tribunal.

- 7.28 The Appellant raised two alternative arguments, objecting **(i)** that the horse nationality rule was not based on the Olympic Charter and thus artificial, and **(ii)** that the rule discriminates against able-bodied athletes, as it does not apply to the Paralympic Games.¹⁹ If the Tribunal has properly understood the purpose of those arguments, what the Appellant is apparently asking, is for this Tribunal to disregard the FEI Olympic regulatory framework and effectively nullify part of this framework. This request is misguided.
- 7.29 Regarding Appellant's first alternative argument that the horse nationality rule of the FEI is not based on the Olympic Charter, the Appellant correctly states that a horse does not have a nationality as a human being does since, indeed, a horse is legally considered as a "thing" and thus not capable of being recognized as a citizen or a national of a State in the common understanding of the terms or concepts. However, the terminology used under FEI regulation when referring to the nationality of a horse is not meant to equate a horse with a human being for the purpose of determining its nationality. This would clearly not be possible, at least for the time being, under the legal framework generally applicable across the States of this world.
- 7.30 Shortly summarized, the FEI so-called "horse nationality rule" as applied in respect of the Olympic Games, is a rule whereby the horse is to be owned by an owner of the same nationality as the rider. It is this rule that the Appellant has an issue with, considering it to be "artificial" as it is not based on the Olympic Charter and thus, according to the Appellant, the rule should apparently be disregarded. The Tribunal disagrees.
- 7.31 The Appellant referred to and quoted the introduction to the Olympic Charter,²⁰ which the Tribunal feels shall be restated at this juncture. The Introduction reads as follows:

Introduction to the Olympic Charter

The Olympic Charter (OC) is the codification of the Fundamental Principles of Olympism, Rules and Bye-laws adopted by the International Olympic Committee (IOC). It governs the organisation, action and operation of the Olympic Movement and

¹⁹ Statement of Appeal, Pages 15-16

²⁰ Statement of Appeal, Pages 11-12

sets forth the conditions for the celebration of the Olympic Games. In essence, the Olympic Charter serves three main purposes:

- a) The Olympic Charter, as a basic instrument of a constitutional nature, sets forth and recalls the Fundamental Principles and essential values of Olympism.*
- b) The Olympic Charter also serves as statutes for the International Olympic Committee.*
- c) In addition, the Olympic Charter defines the main reciprocal rights and obligations of the three main constituents of the Olympic Movement, namely the International Olympic Committee, the International Federations and the National Olympic Committees, as well as the Organising Committees for the Olympic Games, all of which are required to comply with the Olympic Charter*

7.32 It appears clearly from its Introduction, but also from the Rules and Bye-Laws to such Rules that the Olympic Charter does not aim at ruling in minute details the intricacies of each one of the Olympic disciplines; this is left to each of the International Federations. As pointed out by the FEI, under Rule 40 of the Olympic Charter (dealing with the participation to the Olympic Games) and the Bye-Law to that Rule, each International Federation establishes its sport's rules for participation in the Olympic Games. It was therefore legitimate and expected for the FEI to devise such rules, including such rules challenged by the Appellant.

7.33 As provided under Rule 40 of the Olympic Charter and its Bye-Law, these rules had to be reviewed and approved by the IOC. There is no indication from the evidence on the record, nor to the best knowledge of this Tribunal, that the sport rules of the FEI for participation in the Olympic Games (including the horse nationality rule) were not reviewed by the IOC or that the IOC objected to them. It logically follows that having been scrutinized and having passed muster with the IOC, these rules are more likely than not to be in compliance with the Olympic Charter, and the Appellant has not demonstrated convincingly and to the satisfaction of the Tribunal under the relevant standard of proof that the FEI rule on horse nationality violates the Olympic Charter.²¹

7.34 The Tribunal will now address the Appellant's second alternative argument that able-bodied athletes are allegedly discriminated against because the horse nationality rule does not apply to the Paralympic Games. Discrimination is a heavily loaded word or concept conveying in its everyday meaning an idea of injustice and unfairness. But discrimination in that everyday meaning shall not be confused or conflated with different treatments applying to different situations, even when there are similarities between these different situations.

²¹ As already indicated, the relevant standard of proof is the preponderance of the evidence, *i.e.*, whether a fact, situation or allegation is more likely true than not.

- 7.35 And there are indeed similarities between the two situations: Athletes are riding horses at international Games in both the Olympic and Paralympic Games. But there stops the similarities; participation in the Paralympic Game cannot be equated with participation in the Olympic Games. Otherwise able-bodied athletes and athletes with disabilities would be, arguably, competing against each other at the same Games. Athletes are different with regards to their functional abilities, various competition grades exist in the Paralympic Games, and, as pointed out by the FEI, the financial speculation on horses in the Paralympic Games do not exist as is the case for horses capable of Olympic performances.
- 7.36 The Tribunal finds therefore nothing shocking in the applicability of different participation rules for the Paralympic and for the Olympic Games. There is no discrimination, neither in the legal nor in the "everyday" meaning of the word or concept. Even assuming, for the sake of argument, that there would be have been actionable discrimination (which for this Tribunal is clearly not the case) it would not be for this Tribunal to decide which set of rules shall be aligned with the other. Should it be the rules applicable to the Paralympic Games or those applicable to the Olympic Games that should be changed. The responsibility for this determination befalls upon the legislative body of the FEI and not this Tribunal.
- 7.37 Based on the above and for the reasons set forth herein, the Tribunal therefore decides as follows:
- 1. The Appeal of Ms. Isheau Wong is rejected.**
 - 2. The Parties shall bear their own costs and expenses.**
- 7.38 According to Article 168 of the GRs, this Decision is effective from the date of oral or written notification to the affected party or parties.
- 7.39 According to Articles 165.1.3 and 165.6.1 of the GRs, this Decision can be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

V. DECISION TO BE FORWARDED TO:

- a. The Parties: Yes**
- b. Any other: NED-NF**

FOR THE PANEL



Single member panel, Mr. Laurent Niddam