Note: This English translation is provided for informative purposes only. In case of deviations from the German version of this document, the German version shall be considered as the authoritative version.

Court of Arbitration for Nazi-looted Cultural Property (*Schiedsgerichtsbarkeit NS-Raubgut*) Rules of Arbitration

Preamble

The Federation, the *Länder* and local authorities remain committed to implementing the Washington Conference Principles on Nazi-looted Art and reaffirm the Statement by the Federal Government, the *Länder* and the national associations of local authorities on the tracing and return of Nazi-confiscated art, especially Jewish property. Public institutions holding cultural property accept responsibility for implementing these declarations by researching the collections in question and returning the cultural property identified as Nazi-looted cultural property.

In recognition of the historical responsibility and in the desire for good relations now and in the future, as well as to reinforce the implementation of the Washington Principles in Germany, the Federation, the *Länder* and the national associations of local authorities have provided for arbitration panels for Nazi-looted cultural property for cases in which returns remain in dispute following a previous procedure. The arbitration panel is an Alternative dispute resolution mechanism as referred to in the Washington Principles. Arbitration is open to those who have the cultural property in question at their disposal, including also in particular private institutions holding cultural property and private individuals, who are expressly encouraged to accept their responsibility.

Arbitration strengthens the positions of the victims and their descendants, who may unilaterally appeal to the arbitration panel following an unsuccessful previous procedure. The Central Council of Jews in Germany and the Jewish Claims Conference, together with the Federation, the *Länder* and national associations of local authorities, will jointly draw up a list of arbitrators on the basis of parity. Each party may select two arbitrators from this list.

The arbitration panel will not only make a recommendation; it will issue a decision having final and binding effect which is based on the binding Assessment Framework. The arbitration panel should at all times during the procedure endeavour to reach an amicable settlement. The persecution of the victims is to be accorded the proper attention and respect.

Section 1 Scope of application

(1) These Rules of Arbitration apply to arbitration proceedings in accordance with the Administrative Agreement establishing the "Court of Arbitration for Nazi-looted Cultural Property" of the Federation,the *Länder* and national associations of local authorities. They therefore apply to claims that cultural property was lost between 30 January 1933 and 8 May 1945 as the result of persecution under the Nazi regime on racist, political, religious or ideological grounds or as a victim on grounds of sexual orientation, and the cultural property is located in Germany when the arbitration proceedings begin.

(2) The Rules of Arbitration in the version applicable at the time the claim is submitted apply to the arbitration proceedings.

Section 2 Seat

(1) The legal entity for the institutional arbitration and its Service Desk is the German Lost Art Foundation (DZK), which has its seat in Magdeburg. The Service Desk is located in Berlin.

(2) The parties may determine the place of arbitration (*Schiedsort*) within the Federal Republic of Germany. In the absence of an agreement between the parties on the place of arbitration within the Federal Republic of Germany, the arbitration panel will determine the location; also in this case, for any proceedings before the Court of Arbitration for Nazi-looted Cultural Property the place of arbitration must be located within the federal territory the place of arbitration must be located within the federal territory. Irrespective of this, the parties may agree on a different venue to hold arbitration proceedings within the Federal Republic of Germany; in the absence of such an agreement, the arbitration panel will determine the venue within the federal territory.

(3) The responsible higher regional court as referred to in section 1062 of the Code of Civil Procedure (*Zivilprozessordnung*, ZPO) is the Frankfurt (Main) Higher Regional Court; this applies in particular in the cases of section 12 (3) and section 14 of the Rules of Arbitration and to section 1059 of the Code of Civil Procedure. This does not apply to section 1062 (4) of the Code of Civil Procedure (responsible local court).

Section 3 List of arbitrators

(1) For arbitration proceedings according to these Rules of Arbitration, a list of arbitrators is available which is binding for the parties.

(2) The Federal Government Commissioner for Culture and the Media, the *Länder* and the national associations of local authorities, as well as the Central Council of Jews in Germany and the Jewish Claims Conference nominate candidates for the list of arbitrators. These candidates must be judges or qualified to hold judicial office or have an equivalent international legal qualification as can be

established by appropriate evidence. Candidates who are not judges must also demonstrate that they have multiple years of professional experience in alternative dispute resolution. In addition, persons with expertise in German 20th-century history, with a specialisation in National Socialism, or with expertise in researching the provenance of Nazi-confiscated cultural property are to be nominated.

(3) The Federal Government Commissioner for Culture and the Media, the *Länder* and the national associations of local authorities appoint the selected arbitrators to a term of five years. This term may be renewed once by proposal for a further period of five years. If a current proceeding is not concluded within the arbitrator's term of office, the arbitrator's term of office does not end until the proceeding is concluded. The principles for selecting arbitrators and for their compensation are given in Annexes 1 and 2.

Section 4 Executive Committee

(1) The Federal Government Commissioner for Culture and the Media, the *Länder* and the national associations of local authorities, in agreement with the Central Council of Jews in Germany and the Jewish Claims Conference, appoint an Executive Committee from the list of arbitrators referred to in section 3 to a term of five years. The Executive Committee is made up of a President and a Vice-President. Their appointment may be renewed.

(2) The President represents the Court of Arbitration in public, for example by participating in conferences and responding to media enquiries, and by acting as contact person for other restitution committees. The Vice-President represents the President in the event of her or his absence.

Section 5 Service Desk

The Service Desk assists the parties before an arbitration panel is constituted and accompanies the proceedings in accordance with these Rules of Arbitration. The duties of the staff of the Service Desk include in particular screening incoming postal and electronic mail and filing them with the correct proceedings, as well as checking incoming applications and supporting documents for completeness. The Service Desk ensures that deadlines are met, takes notes, arranges for the necessary translations, manages the gathering of information according to section 20 (3) and sends out the decisions. The Service Desk keeps the files and oversees access to the files which is granted to the parties upon application. The Service Desk assists the Executive Committee with its tasks of representation. Details are governed by internal regulations.

Section 6 Parties

(1) Parties to proceedings are the party entitled to apply for arbitration and the other party.

(2) Natural and legal persons, partnerships and their legal successors who claim the loss of cultural property in accordance with section 1 (1) are entitled to apply for arbitration. However, natural and

legal persons and partnerships which have the cultural property at their disposal at the time of application, for example private collectors; galleries; and public institutions holding cultural property, in particular archives, libraries and museums, may also apply for arbitration.

(3) Public institutions holding cultural property as referred to in these Rules of Arbitration may be the institutions themselves or, if they do not have legal capacity, their legal entities.

Section 7 Previous procedure

(1) If the other party is a public institution holding cultural property, arbitration proceedings are initiated on the condition that the party entitled to apply for arbitration first refered to the institution holding cultural property and the parties did not achieve a result concerning this application. No result is achieved if, within 20 months of the first time the institution holding cultural property is contacted,
   a) the institution has not made a decision concerning the application,
   b) the parties have not reached an amicable settlement, or
   c) the institution holding cultural property has denied the application.

(2) It is the equivalent of a previous procedure in which no result is achieved as referred to in subsection (1) if the institution holding cultural property
   a) does not respond to the application within three months or
   b) has apparently not taken or announced any action within six months to examine the application.

(3) No previous procedure is needed if the institution holding cultural property informs the party entitled to apply for arbitration that it chooses to forgo one.

Section 8 Arbitration agreement

(1) By making a "standing offer", the institution holding cultural property commits to concluding an arbitration agreement in the specific individual case. If a standing offer to conclude an arbitration agreement has been made, this offer is published on the website of the Court of Arbitration for Nazi-looted Cultural Property and a corresponding arbitration agreement is made available in a German and an English version. The party entitled to apply for arbitration may accept the offer by completing and signing the arbitration agreement provided. The arbitration agreement is to be sent to the Service Desk in paper or digital form.

(2) If the institution holding cultural property has not made a standing offer to conclude an arbitration agreement, both parties must agree to arbitration by concluding an arbitration agreement. For this purpose, an arbitration agreement in a German and an English version is available to the parties on the website of the Court of Arbitration for Nazi-looted Cultural Property.

(3) If no arbitration agreement has been concluded at the time of application, the Service Desk will seek to bring about an arbitration agreement by asking the other party to agree to arbitration in the specific

case and to conclude the arbitration agreement.

Section 9 Initiating arbitration proceedings

(1) The party entitled to apply for arbitration must present her or his claim in an application to the Service Desk. The application must contain
   a) the names and addresses of the parties;
   b) the names and addresses of a counsel of the party entitled to apply for arbitration;
   c) a specific claim;
   d) facts and circumstances on which this claim may be based, in particular information about the cultural property in question, the original title, and the circumstances of the loss of property due to persecution as a result of the Nazi regime as referred to in the Assessment Framework;
   e) an explanation of the formal entitlement to apply for arbitration if the party entitled to apply for arbitration is not the victim of persecution him- or herself;
   f) if the claim is made vis-à-vis a public institution holding cultural property, a description of the previous procedure in which no result was achieved, or of the institution's decision to forgo such a procedure; and
   g) a copy of the arbitration agreement or the request that the Service Desk bring about such an agreement with the other party.

(2) The application is to be accompanied by documents and other information which make a claim at least appear to be possible according to the Assessment Framework. The application and supporting documents may be submitted to the Service Desk in paper or digital form. The Service Desk checks whether the information and the supporting documents are complete. If the application is incomplete or if documents are lacking, the Service Desk asks the party entitled to apply for arbitration to supply the missing information within a certain time limit.

(3) The Service Desk should defer the application for a reasonable amount of time to allow the parties to conclude the previous procedure, if it was not concluded in accordance with section 7 because
   a) ongoing provenance research has not yet been completed or
   b) the party entitled to apply for arbitration has not yet presented the necessary documents to the institution holding cultural property.

(4) The Service Desk forwards the application to the other party without undue delay.

Section 10 Composition of the arbitration panel

(1) The arbitration anel must be made up exclusively of members from the list of arbitrators referred to in section 3 (1).

(2) Each arbitration panel consists of five members from different disciplines. It consists of three judges or jurists who are qualified to hold judicial office or who have an equivalent international legal

qualification, as can be established by appropriate evidence, and in the latter two cases, who have multiple years of professional experience in alternative dispute resolution; and of two persons with expertise in German 20th-century history, with a specialisation in National Socialism, or with expertise in researching the provenance of Nazi-looted cultural property.

Section 11 Impartiality and independence of arbitrators, disclosure obligations

(1) The members of the arbitration panel must be impartial and independent with regard to the parties.

(2) The arbitrators selected must inform the Service Desk without undue delay that they accept the office of arbitrator and confirm that they are impartial, independent and available for the duration of the arbitration proceedings. They must disclose all facts and circumstances which, when viewed objectively, could cause reasonable doubt on the part of the parties as to their impartiality or independence. The Service Desk informs the parties and forwards them the statements and disclosures.

(3) All arbitrators have the continuing obligation, for the entire duration of the arbitration proceedings, to disclose all relevant facts and circumstances referred to in subsection (2) to the parties, the other arbitrators and the Service Desk without undue delay.

Section 12 Appointment of arbitrators

(1) In notifying the parties of the start of proceedings, the Service Desk asks each party to appoint two arbitrators from the list of arbitrators referred to in section 3 (1) within four weeks. For this purpose, the Service Desk provides the parties with the list of arbitrators. Each party appoints one arbitrator who is a jurist in accordance with the requirements in Annex 1 of these Arbitration Rules and one arbitrator who has expertise in German 20th-century history, with a specialisation in National Socialism, or with expertise in researching the provenance of Nazi-looted cultural property. If one party is made up of multiple parties, it only has the right to appoint arbitrators jointly. Each party is bound by its appointment of arbitrators as soon as its selection has been received by the Service Desk.

(2) The Service Desk may extend the time limit given in subsection (1) on request. If the Service Desk has not received one party's appointment within this time limit, the Service Desk asks the party again to provide its appointment within a certain time limit. If the party does not send its appointment to the Service Desk within the extended time period, then the head of the Service Desk selects the arbitrators by drawing lots.

(3) Within 21 days of being requested by the Service Desk, the appointed arbitrators choose from the list of arbitrators a chairperson to direct the proceedings. The chairperson should ideally be a judge; alternatively, the chairperson may be a jurist who is qualified to hold judicial office in Germany. If the four arbitrators are unable to agree on a chairperson within the time limit given in sentence 1, the

chairperson is to be chosen by the competent higher regional court at the request of one of the parties.

(4) The arbitration panel is constituted when all arbitrators have been appointed and their chairperson has been chosen. The Service Desk informs the parties that the arbitration panel has been constituted.

Section 13 Rejection of an arbitrator

An arbitrator may be rejected only if there are circumstances which give rise to reasonable doubt as to the arbitrator's impartiality or independence. The Service Desk is to be informed of the rejection and the reason for it within 14 days of the parties' being informed that the arbitration panel has been constituted according to section 12 (4) or of becoming aware of the reason for rejection. A party may reject an arbitrator whom it has appointed only on grounds which the party became aware of only after the selection. If the arbitrator does not resign her or his office as arbitrator, or if the other party opposes the rejection, the arbitration panel makes a decision on the rejection without the participation of the arbitrator in question.

Section 14 Impossibility to act of an arbitrator

If an arbitrator is unable, whether de jure or de facto, to perform her or his functions, or if she or he does not perform her or his functions within a reasonable period of time for other reasons, her or his mandate as arbitrator is terminated when she or he resigns or when the parties agree to terminate her or his mandate. If the arbitrator does not resign, or if the parties cannot agree to terminate her or his mandate, each party may apply to the competent higher regional court for a decision on the termination of office.

Section 15 Appointment of a substitute arbitrator

If the office of an arbitrator is terminated under section 13 or section 14, a substitute arbitrator is to be appointed. The substitute arbitrator is appointed according to section 12.

Section 16 Replies and other submissions by the parties

(1) The arbitration panel sets a time limit for the other party to submit a reply. When setting a time limit, the date of the other party's receipt of the application is to be taken appropriately into account. The arbitration panel decides on the form for transmitting written materials.

(2) During the arbitration proceedings, each party may alter or add to its submissions unless the arbitration panel does not allow this due to delay without a satisfactory excuse.

Section 17 Language of proceedings

(1) Arbitration proceedings are conducted in the German language.

(2) Documents, expert opinions and other written evidence in other languages may be submitted. The arbitration panel will arrange for any necessary translations.

Section 18 Procedural rules

(1) The arbitration panel should at every stage of the proceedings seek to encourage an amicable settlement of the dispute or of individual points of dispute.

(2) It is to be ensured throughout the entire proceedings that both parties have the same level of information. All written pleadings, documents and other communications presented to the arbitration panel by one party are to be brought to the attention of the other party; all expert opinions and other written evidence on which the arbitration panel may base its decision are to be brought to the attention of both parties.

(3) Each party must be given sufficient opportunity to respond to submissions made by the other party. The arbitration panel decides at its discretion on preclusions.

Section 19 Pursuit of proceedings

(1) Soon after it is constituted, as a rule within 21 days, the arbitration panel must hold a case management conference with the parties. The parties themselves and any external counsel should take part in the case management conference. The chairperson decides at her or his discretion whether parties may take part in the conference via video and audio transmission.

(2) At the case management conference, the arbitration panel discusses with the parties in particular the schedule for the proceedings, including setting a date for the oral hearing and whether expert witnesses should be consulted.

Section 20 Obtaining information

(1) The purpose of obtaining information is to establish the facts relevant for a decision on the specific object of dispute and to describe the general persecution of the party entitled to apply for arbitration or of the original owner.

(2) The arbitration panel is authorised to investigate the underlying facts of the case in addition to the information submitted by the parties.

(3) Unless otherwise agreed by the parties, the arbitration panel may appoint one or more experts to provide an opinion on certain issues to be determined by the arbitration panel, for example concerning provenance or to clarify matters of inheritance law. Further, it may request a party to provide the expert with all useful information or to submit or make available for inspection all documents or objects relevant for the proceedings. After submitting her or his written or oral report,

the expert must take part in an oral hearing if so requested by one of the parties or if the arbitration panel considers it to be necessary. During the hearing, the parties may ask the expert questions and have their own experts make statements on the disputed issues. The Service Desk transmits results of provenance research in particular to the German Lost Art Foundation for entry in the Proveana database.

Section 21 Hearing for oral argument

(1) Unless the parties agree otherwise, the proceedings before the arbitration panel are conducted as an oral hearing. The chairperson decides at her or his discretion whether to allow participation via video and audio transmission.

(2) If the parties agree and explicitly so desire, the public is allowed to attend the hearing.

Section 22 Participation and decisions of the arbitration panel

(1) As a general rule, the arbitration panel meets with all members in attendance. In agreement with both parties, the participation of one arbitrator may be waived in a justified individual case. This does not apply to the session in which the arbitration award is voted on.

(2) All decisions of the arbitration panel are made with the majority of votes of all its members.

(3) If an arbitrator refuses to participate in a vote, the remaining arbitrators may conduct the vote without that arbitrator unless the parties have agreed otherwise.

(4) The parties are to be informed in advance of the intention to vote on the arbitration award without the participation of the arbitrator who refuses to vote. With regard to other decisions, the parties are to be informed after the fact of the refusal to vote.

(5) The chairperson may decide on her or his own on individual procedural issues if the parties or other members of the arbitration panel have authorised him or her to do so.

Section 23 Documenting the proceedings

(1) Minutes of every hearing for oral argument will be recorded. The minutes will be signed by the chairperson.

(2) A file will be opened for every proceeding. This file contains in particular all information, statements, applications, reports and minutes pertaining to the proceedings. The parties may inspect the file. All minutes of the arbitration panel's internal discussions are excluded from this right of inspection.

Section 24 Default

(1) If the other party fails to respond to the application within the time limit provided in section 16, the arbitration panel may nonetheless continue the arbitration proceedings. The other party's failure does not constitute acceptance of the actual submission by the party entitled to apply for arbitration.

(2) If a party fails to appear at a hearing for oral argument or fails to submit a document as evidence within the set time limit, the arbitration panel may continue the proceedings and issue its arbitration award on the basis of the information presented.

(3) The failure is disregarded if the arbitration panel finds that it is excused. Moreover, the parties may agree on other consequences for failure.

Section 25 Concluding order

Following the last hearing for oral argument or the last written pleadings accepted, the arbitration panel declares by procedural order that the proceedings are concluded. After it has done so, written pleadings, evidence and substantiating materials may only be submitted if they are likely to fundamentally alter the facts of the case as established by the arbitration panel. The arbitration panel decides on this matter at its discretion.

Section 26 Settlement

If the parties agree to settle the dispute during the arbitration proceedings, the arbitration panel ends the proceedings. Upon application, the arbitration panel records the settlement in the form of an arbitration award using the agreed wording, as long as the terms of the settlement do not violate public policy. Such an arbitration award has the same effect as any other arbitration award in the matter.

Section 27 Issuing the arbitration award

(1) The subject of the arbitration award is the decision on just and fair solutions as referred to in no. 11 of the Assessment Framework.

(2) The decision contains, in a standard form and structure, a description of the general course of the proceedings, the facts of the case, the parties' applications and submissions, and a reasoned assessment. The arbitration panel is obligated to provide understandable and substantive reasons for its arbitration award. The reasoning must address all relevant submissions by the parties. The persecution of the party entitled to apply for arbitration or of the original owner is to be accorded the proper attention and respect.

(3) Before the arbitration award is issued, it is communicated to each of the parties in order to give them an opportunity to point out within five working days any inaccuracies or errors in the established facts of the case.

(4) The arbitration award has the effect on the parties of a final and binding court judgment.

(5) After the arbitration award has been issued, the parties may nonetheless agree on an arrangement derogating from the arbitration award, as long as no application for a declaration of the arbitration award's enforceability has been made.

Section 28 End of the arbitration proceedings

(1) The arbitration proceedings end with the final arbitration award or with a decision of the arbitration panel pursuant to subsection (2).

(2) The arbitration panel ends the arbitration proceedings by a decision (decision to end proceedings) if
   a) the party entitled to apply for arbitration withdraws the application, unless the other party objects and the arbitration panel recognises the other party's legitimate interest in the final resolution of the dispute; or
   b) the parties agree to end the proceedings; or
   c) the parties cease to pursue the proceedings despite being called on by the arbitration panel to do so, or continuing the proceedings has become impossible for another reason.

(3) The decision to end proceedings is issued without prejudice to the right of a party to re-assert its claims.

Section 29 Publication of the arbitration award

(1) The arbitration award is immediately communicated to the parties. An English translation will be prepared if one of the parties so requests. The translation is purely informational in nature and does not have the effect of an arbitration award.

(2) The decision is immediately made available to the public on the website of the Court of Arbitration for Nazi-looted Cultural Property , in a depersonalised form and on an agreed date if the parties so desire. The decision is published in German and English.

(3) The Service Desk reports the just and fair solution found to the German Lost Art Foundation for entry in its database. The parties' wish for depersonalisation is respected.

Section 30 Review procedure

The parties may challenge the arbitration award according to the rules of the Code of Civil Procedure.

Section 31 Costs

The parties do not incur any costs by referring a case to the arbitration panel. The costs of the arbitration

panel are not charged to the parties. The parties must bear any costs they themselves incur. This applies for example to the costs of legal counsel and representation.

Section 32 Application of applicable procedural law

Unless otherwise provided for in these Rules of Arbitration, the Code of Civil Procedure applies, including the provisions on arbitration proceedings in sections 1029 to 1065 of the Code of Civil Procedure. The chairperson otherwise directs the proceedings at her or his discretion.

Section 33 Publication of the Rules of Arbitration

These Rules of Arbitration are published on the website of the Court of Arbitration for Nazi-looted Cultural Property. A non-binding English translation is published there as well.