Arbitration CAS 2015/A/3879 Malaysian Tenpin Bowling Congress (MTBC) v. Asian Bowling Federation (ABF), award of 14 August 2015

Panel: Prof. Ulrich Haas (Germany), Sole Arbitrator

Bowling
Disciplinary measure against a member federation
Scope of the arbitration clause
Waiver of the prerequisite of exhaustion of internal remedies
No waiver of the right to appeal
Standing to be sued
Duty for a decision to be reasoned
Legal basis required for a disciplinary measure

1. **Members of an International Federation (IF) submit to the IF rules and regulations and, thus, are bound to the arbitration clause contained in the IF Statutes. Where the arbitration clause in the IF's Statutes refers to a *"controversy"*, respectively a *"dispute between member federations"*, any dispute between members is covered by the arbitration clause *rationae materiae*.**

2. **In principle the parties can agree on procedural aspects of the arbitration procedure. They can provide – e.g. – that the proceeding be conducted in a specific language or they can agree on the time limit to file an appeal. The parties can also agree to refer a case directly to the CAS without exhausting the internal legal remedies of the respective federation. When executing such a procedural agreement no formal requirements need to be observed.**

3. **The mere fact for a party not to participate in the disciplinary process of the opposing party and in particular not to file a response does not amount to a waiver of its right to appeal. There is no authority to this effect, nor does this follow from any federative rules or regulations or general principles of law.**

4. **In the absence of a clear statutory provision regulating the question of standing to be sued in an appeal arbitration procedure, the question must be resolved on the basis of a weighting of the interests of the persons affected by said decision. The question, thus, is whether the entity issuing the disciplinary measure qualified under Swiss law as a "resolution of an association" ("Vereinsbeschluss") wants to modify the legal sphere between itself and its (indirect) members or whether it wants to regulate the legal sphere between its members. While in the first case the appeal against the resolution ("Vereinsbeschluss") would have to be lodged certainly against the entity that has issued the decision, the situation is far from clear in the second alternative. Cases in which a third person interferes with the legal spheres of others are quite frequent. One**

such example is legal representation. In this regard, an association has standing to be sued, where the international federation, when issuing its decision on appeal by a member of the association, did not intend to regulate or modify its legal relationship with the said member. Instead, the international federation only wanted to assess and determine whether or not the association was entitled to issue a disciplinary measure against its member. Thus, the international federation, in issuing the decision, assumed a role of a third party akin to an agent or an expert evaluator.

5. **A decision of a sports organisation – in particular in a proceeding lasting for several years and involving multiple rounds of submissions – requires a (short) reasoning that enables the addressee to understand the findings and the reasoning of the association tribunal. However, according to constant CAS jurisprudence, procedural flaws in a lower instance do not affect a *de novo* hearing before the CAS.**

6. **In order for a disciplinary measure to be proper, there must be a sufficient legal basis that entitles the sanctioning body to issue a penalty. In this regard, a penalty is lawful where the executive committee of an association acted within the frame of penalties provided for by the applicable rules.**

I. THE PARTIES

1. **Malaysian Tenpin Bowling Congress** (hereinafter referred to as "Appellant" or "MTBC") is the governing body of tenpin bowling in Malaysia and a member of the Asian Bowling Federation.

2. The **Asian Bowling Federation** (hereinafter referred to as "Respondent" or "ABF") is an international governing body of the sport of tenpin bowling. It promotes and fosters the interest in amateur tenpin bowling tournaments and competitions in particular in Asia. ABF is a member of the World Tenpin Bowling Association ("WTBA") and a member of the Fédération Internationale des Quilleurs (hereinafter referred to as "FIQ" – nowadays also known as "World Bowling"). The ABF is recognized by FIQ as the Asian Zone governing body of the sport of tenpin bowling.

II. THE DISPUTE BETWEEN THE PARTIES

3. The circumstances stated below are a summary of the main relevant facts, as submitted by the Parties in their written submissions or in the evidence given in the course of the proceeding. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

4. From 21th March to 1th of April 2006 the Appellant organized the 29th Malaysian International Open Tenpin Bowling Championship in Kuala Lumpur (hereinafter referred to as the "Competition").

5. The Tournament Rules for the Competition provided that there will be a cash award of RM 50,000 for any participant who first achieved a "perfect game" during the master finals in the Competition. A "perfect game" is the highest score possible in a game of bowling. In tenpin bowling the highest possible score is 300, achieved by bowling twelve strikes in a row in a single game.

6. On 31 March 2006, Mr Syed Ibrahim – a bowler from the UAE (hereinafter referred to as "the Bowler") – achieved the "perfect game" during the final leg of the Competition. However, instead of being awarded the prize money foreseen in the Tournament Rules, the Bowler was given a Canon printer by the event organiser (MTBC). According to the Appellant the participants in the Competition had been informed upon arrival that the Tournament Rules contained a mistake and that the award for achieving the "perfect game" was a Canon printer instead of cash. This fact – according to the Appellant – had been communicated to all participants before the Competition commenced.

7. On 2 April 2006, the Bowler lodged a protest with the tournament chairman of the Malaysian International Open Tenpin Bowling Championship.

8. By e-mail dated 2 April 2006 and addressed to the MTBC, the President of the Emirates Bowling Federation, Mr Mohammed A. Alkhaja, intervened on behalf of the Bowler in order to protect the latter's rights. The e-mail reads – inter alia – as follows: *"… One of our national team bowlers: Syed Ibrahim has scored a perfect game and according to the tournament rules, he should get RM 50,000. When he claimed, it was rejected. UAE Bowling Federations reserves its rights to protect their bowler and therefore, please intervene".*

9. On 3 April 2006 Mr Sidney Tung, the President of the Appellant, on behalf of MTBC responded to the Emirates Bowling Federation by e-mail as follows:

   "… The offer of RM50,000 to the first bowler to achieve a PERFECT GAME … was actually a paragraph included in our last year's bulletin which was used by my assistant to amend and send out as this year's bulletin to all participating countries and on the website by mistake. The fact is that we were unable to get a sponsor for the RM 50,000 perfect game award this year, hence we put up a poster on the first day of the Tournament (placed right behind the Squad entry counter) that the Perfect Game bowl during the Master Finals will get only a Canon printer, and did not mention anything about the RM 50,000 cash award. Same thing was included in our souvenir program books printed in advance and distributed to all participants during the entire tournament …".

10. On 10 April 2006, the President of the Emirates Bowling Federation responded to the Mr Sidney Tung be e-mail as follows.

    "Having talked to Syed Ibrahim, he disagrees with you that he accepted your apology and further he claims statement put in the MTBC website is not his statement … your explanation in your email is totally

unacceptable. As the tournament was sanctioned by WTBA and ABF, Emirates Bowling Federation is referring the matter to … the President of the Asian Bowling Federation".

11. With e-mail dated 12 April 2006, Mr Sidney Tung wrote back to Mr Mohammed A. Alkhaja as follows:

"… My explanation to Syed Ibrahim was done right in front of Life President of ABF Mrs. Vivien Fung on the next day of the Masters Final … although no email was sent to all participating countries, we did put up poster at the center from the first day of the Tournament … and printed in our souvenir program book published and distributed during the entire tournament, that the perfect game award would be a Canon printer. Further announcement was made everyday by our tournament Directors … If Syed chooses not to accept our apology for sending out of the wrong information in our first bulletin in February, there is nothing we can do …".

12. On 30 April 2006, the Emirates Bowling Federation filed a protest against MTBC with the President of the Respondent. In its submission the Emirates Bowling Federation stated that the invitation, rules and price list to the Competition clearly included a cash prize of RM 50,000 for a perfect game in the finals and that an error in the format should have been instantly notified to all Asian Federations. According to the Vice President of the Emirates Bowling Federation setting up posters and making announcements before each squad informing of the change of prize for the perfect game in the official bowling centre was not the correct procedure to follow, as the Bowler would not have gone to the Competition if he had known of the changed prize. Therefore, the Bowler – according to the Emirates Bowling Federation – was entitled to get the RM 50,000.

13. On 19 May 2006, the Respondent informed the Appellant – *inter alia* – of the written protest lodged before it.

14. On 17 October 2006 the Respondent informed the Appellant as follows:

"We received a letter from the Emirates Bowling Federation informing us that MTBC has not paid the prize money … to their bowler Syed Ibrahim … We would like to remind you that the decision of the 19th ABF General Assembly was that the prize money must be paid to the bowler otherwise, ABF will have no alternative but to suspend all sanctioning of the international tournaments organized by MTBC or sanctioned by MTBC in Malaysia. Subsequently, we regret to inform you that we could not sanction the 7th Milo International Junior All Stars or any other international tournaments organized in Malaysia in future until this issue has been resolved".

15. On 18 October 2006 the Appellant requested that the minutes of the 19th General Assembly of the Respondent be forwarded to it.

16. On 21 February 2007 the President of the Respondent informed the members of its Executive Committee that he proposed to set up a Dispute Resolution Panel (hereinafter referred to as "Dispute Resolution Panel" or "DRP") to resolve the dispute between the Bowler and the MTBC. He proposed to establish a Panel comprising three members of the Executive Committee from three different ABF Zones (Mr Popov: Chairman, Mr. Gunawan and Mr. Haridi: both members of the Panel). Furthermore, the letter to the members of the Executive

Committee read as follows: *"I would greatly appreciate it if you would fill in and return the attached reply form indicating whether or not you agree to the establishment of the Panel and appointment of the Panel Members on or before February 25, 2007, failing which you will be deemed to have agreed to the said Panel and appointments"*.

17. On the same day the Respondent informed the Appellant of its decision to further review the claims made by the Emirates Bowling Federation and its Bowler and to lift the suspension of all international tournaments organized or sanctioned by the Appellant and to reinstate all Asian Ranking points until further notice.

18. On 3 March 2007 the Respondent advised the Appellant as follows:

"After going through the minutes … there was no motion put on the floor during the General Assembly and subsequently no vote taken on the captioned issue. Therefore, the letters to the MTBC dated October 17, 2006 and November 20, 2006 incorrectly state that the General Assembly had decided to impose the sanctions on the MTBC when in fact it was the Executive Committee which decided in Jakarta that MTBC must pay the … prize money to Mr. Syed Ibrahim … and should MTBC fail to do so, ABF would not sanction any international tournament organized or sanctioned by MTBC. The Executive Committee therefore had authority to lift the ban on sanctioning all international tournaments organized by MTBC".

19. On 7 March 2007, the Respondent informed the Appellant that it had – in relation to the establishment of the DRP – invited the Bowler to submit full written details of the alleged dispute. Furthermore, the letter states as follows:

"With reference to the MTBC's letter dated 3 March, 2007, we have not received any information or notification from WTBA on the matter of MTBC's appeal against the sanctions previously imposed on MTBC. As these sanctions have now been lifted in full, any MTBC appeal to the WTBA in relation to those sanctions must now be considered to be discontinued. No appeal can lie where the decision initially appealed against has been revoked".

The letter continues by stating as follows: *"As explained … the Panel has not been established to adjudicate or arbitrate on disputes of commercial nature. Nonetheless, the ABF has full power and authority to conduct all such investigations it considers reasonably necessary in relation to any and all suspected breaches of the rules and regulations of Tenpin Bowling … It is a matter for the ABF, acting reasonably but otherwise entirely within its discretion, to grant or withhold its sanction, or to impose conditions, or to otherwise regulate the conduct of tournament organizers who are found to have breached the rules or brought the sport into disrepute. Accordingly, the ABF is fully empowered to establish the Panel to investigate the alleged dispute between Mr. Ibrahim and MTBC"*.

20. With letter dated 19 March 2007 the Respondent informed the Appellant that the Bowler had submitted full written details in relation to his claim. Furthermore, the Respondent invited the Appellant to file its written submission defending the dispute/claim before 29 March 2007.

21. On 27 March 2007, the Appellant filed its submission with the DRP.

22. On 12 April 2007, the DRP rendered its decision (referred to as the Findings and Determination of the Dispute Resolution Panel of the Asian Bowling Federation). In its decision the DRP states – *inter alia* – as follows:

> *"… An Open Tournament organised by a member federation of the ABF … must be sanctioned by the ABF and the WTBA in accordance with the rules and procedures set out in Section 3 of the WTBA Statutes. MTBC applied for ABF and WTBA sanctioning … In particular, Section 3.7.3(a) of the WTBA Statutes requires such member federation to ensure that all requirements of the "sanctioned" status are met … The 2006 Tournament was sanctioned by the ABF and WTBA on the basis that, amongst others, there would be a Perfect Game Award of RM 50,000. This 'sanctioned status' was granted almost two months prior to the Tournament. Although MTBC became aware … that there was a real risk the Perfect Game Award of RM 50.000 would be replaced with that of a Canon printer valued at RM 899 … it failed to take adequate action to address the consequences … As MTBC was fully aware that an RM 50,000 cash prize was an important consideration for bowlers in deciding whether or not to participate in the 2006 Tournament, the Panel finds that MTBC deliberately omitted to notify all competitors (including Mr Ibrahim) of this material change to the Perfect Game Award so as to ensure that the top amateur-status bowlers … still attend the 2006 Tournament".*

23. In addition, the DRP found in its decision that it was precluded from making a determination as to whether or not the Bowler was entitled to any or all of the RM 50,000 as this was a purely commercial matter. However, the Panel found that the Appellant had misled ABF and WTBA by listing the RM 50,000 as a secured prize for the "Perfect Game Award" and not specifying that it was conditional upon securing respective sponsorship. The DRP found that failing to take adequate actions to address the consequences of replacing the cash prize with a printer and failing to provide competitors in advance with a reasonable opportunity to decide whether or not to participate in the 2006 Tournament constituted a violation of sec. 3.7.3 (a) of the WTBA Statutes and Playing Rules. Furthermore, the ABF found that sec. 3.7.3 (c) of the WTBA Statutes and Playing Rules had been violated by the Appellant by failing to notify ABF and WTBA in writing of the change of prize for the Perfect Game. Such behaviour of the Appellant – according to the DRP – had the effect of bringing the sport of tenpin bowling in Asia in disrepute. The DRP, therefore, determined that:

(a) A formal ABF Dispute Resolution Committee (together with all relevant ancillary powers) be established;

(b) A formal ABF Disciplinary Committee (together with all relevant ancillary powers) be established;

(c) MTBC to present to the ABF, within 21 days of the date hereof, written response to the Panel's findings on MTBC's breach of WTBA tournament sanctioning rules, regulations and protocols;

(d) the panel's findings on MTBC's breaches of the various WTBA tournament sanctioning rules, regulations and protocols be addressed and finally determined by the ABF Disciplinary Committee, to comprise of the following three members:

(i) a Chairman (being an ABF Vice President); and

(ii) two members appointed by the ABF President (who shall be members of the ABF Executive Committee or any individual conferred Honorary Life status of the ABF);

(e) following receipt of MTBC's written response, the Disciplinary Committee convenes in a convenient location to deliberate on the same, and to issue its final determination within 21 days of receipt of MTBC's written response; and

(f) The ABF President be authorised and empowered by the ABF Executive Committee to accept or reject, on behalf of the ABF Executive Committee the final determination of the Disciplinary Committee".

24. On 26 April 2007, the Respondent informed the Appellant about the Findings and Determination of the DRP. Furthermore, the Respondent advised the Appellant that the above Findings and Determinations had been "unanimously adopted" by the ABF Executive Committee at its meeting in Kuwait on 14 April 2007. In particular it was decided there that:

"1 ABF is precluded from making a determination on the dispute between Mr Syed Ibrahim and MTBC relating to the RM 50'000 'Perfect Game Award' for the reasons set out in the Panel's findings and determinations; and

2 MTBC submits to ABF, within 21 days of the date of this letter, written response to the following breaches by MTBC of the WTBA's tournament sanctioning rules, regulations and protocols;

(a) breach of Section 3.7.3 (a) of the WTBA Regulations and Playing Rules; and

(b) breach of Section 3.7.3 (c) of the WTBA Regulations and Playing Rules; and

(c) appeals procedure of the 29th Malaysian International Open Bowling Championship does not conform to Section 3.10 of the WTBA Regulations and Playing Rules; and

(d) failure to disclose to ABF and WTBA, at the time of application of tournament sanctioning in respect of the 29th Malaysian International Open Bowling Championship, conditional nature of the RM 50'000 "Perfect Game Award"; and

(e) failure to provide ABF, WTBA and all registered competitors adequate written notice of material change to the "Perfect Game Award" a reasonable time prior to commencement of the 29th Malaysian International Open Bowling Championship notwithstanding MTBC's knowledge of such material change at least one week prior to commencement thereof.

The relevant findings of the Panel, together with MTBC's written submissions, will be considered by a Disciplinary Committee to comprise Mr Alex Popov (Chairman), Mr Kyohei Akai and Mr. Farouk Haridi. The final decision of the ABF on this matter will be made shortly thereafter".

25. With letter dated 31 May 2007 the Respondent reminded the Appellant of its letter of 26 April 2006, in which MTBC had been requested to submit within 21 days a written response to the Disciplinary Committee. The Responded advised the Appellant that it had not received any written submission so far. It informed the Appellant that the Disciplinary Committee would *"in due course convene to consider the matter and make appropriate recommendations"*.

26. On 25 February 2008 the Respondent informed the Appellant that to date it had not received any written submissions by the Appellant and that in the meantime the Disciplinary Committee had made the following recommendations endorsed by the Executive Committee in its 15th meeting held in Hong Kong on 24 February 2008:

"(1) That MTBC be fined the sum of RM 50,000 … being equivalent to the 300 Perfect Game Award offered by ABFs sanctioning of the Malaysian International Open Bowling Competition 2006, payment to be made within 7 days from the date of notification to the MTBC and received by ABF latest by 3 March 2008 …".

27. With letter dated 28 February 2008 the Appellant informed the ABF that it will pay the fine. However, the letter also stated that *"for avoidance of doubt, it is to be made clear and understood that in the event that WTBA decides the appeal in favour of MTBC holding that ABF's decision is wrong, the said RM 50,000 is to be refunded in full … to the undersigned".*

28. On 11 August 2008 the Appellant appealed to the WTBA against the decision of the Respondent dated 25 February 2008 referring to sec. 1.4.2 (d) of the WTBA Statutes and Playing Rules and seeking the following relief:

"A. That based on the submissions set out above it should be ordered by the WTBA that all decisions of the ABF in the Kuwait Exco Meeting and the Hong Kong Exco Meeting together with all findings, decisions and determinations of its Dispute Resolution Panel and Disciplinary Committee, are invalid in law, null and void and not binding on the Appellant and ought to be dismissed with costs to be paid forthwith.

B. That based on the submissions set out above the Respondent should be ordered by the WTBA to forthwith refund the sum of RM 50,000.00 to the Appellants together with interest thereon and the prevailing rate of fixed deposits interest from a reputable commercial bank from the date it was paid to the Respondent until realization in full.

C. That this appeal ought to be allowed with costs on a solicitor-client basis to be paid forthwith".

29. The Presidium of the WTBA heard the matter on 7 October 2008 and issued on 16 October 2008 a decision that reads – *inter alia* – as follows:

"1 WTBA Statute 1.4.8(b) sets forth the manner of dispute resolution as follows:

b) For tournaments approved by WTBA or Zones disputes are to be resolved as described in Chapter 3, with the WTBA Presidium making all final decisions.

2. Any appeal to WTBA in instant case is governed by WTBA Rule 3.10, which is set forth as follows:

3.10 Appeal procedures

3.10.1 Any appeal from the decision of tournament management shall, within one week, be directed to the national federation within whose jurisdiction the tournament was conducted.

3.10.2 The national federation shall, within two weeks, review the appeal and make its decision. …

3.10.3 An appeal of that decision may be directed to the WTBA Presidium within two weeks, and its decision shall be final …

3. As MTBC chose to establish a separate appeal process under Rule 17(f) of the Championship rules, two separate and alternative courses of appeal are authorized to the parties, one under Rule 17(f) of the Championship rules, and the other under WTBA Statute 3.10.

4. The athlete chose to appeal under Rule 17(f) of the Championship rules.

5. At no time prior to April 3, 2008 did either party attempt to appeal to the WTBA or its Presidium.

6. MTBC's appeal to WTBA is not timely filed under WTBA 3.10. …

Therefore, based upon the foregoing Findings and Conclusions of Law, the WTBA Presidium determines that this appeal before it is dismissed, for lack of jurisdiction".

30. On 16 December 2008 the Appellant lodged an appeal with the FIQ Presidium against the above decision of the WTBA Presidium, submitting – inter alia – that *"the WTBA Presidium had wrongfully summarily dismissed … [the Appellant's appeal], … because WTBA 3.10 does not apply in this case and MTBC had correctly brought its appeal to WTBA under Rule 1.4.2 (d) of the WTBA Regulations. … there is no time limit for appeals under Rule 1.4.2 …".* The Appellant sought the following relief from the FIQ Presidium:

"a) That the WTBA Decision be dismissed and the costs of this appeal to the FIQ Presidium to be paid by ABF to MTBC forthwith; and

b) That the ABF Decision be dismissed and that the seven issues set out in page 3 and 4 of MTBC's Statement of Case for determination be answered in the ***negative****, and*

c) That the relief sought by MTBC in paragraphs A, B and C of its Statement of Case, at pages 19 and 20, be allowed as claimed therein".

The appeal by the Appellant was brought by virtue of Art. III sec. 3.2 (c) and Art. V sec. 5.1 (b) of the FIQ Statutes and By-Laws.

31. On 21 April 2010, FIQ informed the Appellant of the agreement adopted during the FIQ Presidium meeting celebrated on 25 February 2010 regarding the Appellant's appeal (dated 16 December 2008) against the findings and conclusions of the WTBA Presidium dated 16 October 2008. By virtue of Art. V sec. 5.1 (b) of the FIQ Statutes the FIQ Presidium decided that it did *"not consider itself to be the competent authority to hear the appeal presented by the MTBC since the WTBA should emit a decision before the case reaches the jurisdiction of the FIQ Presidium … Therefore the WTBA's decision dated 16 October 2008 … has been considered by the FIQ Presidium as null and void".*

32. Furthermore the letter advised that the appeal

"shall thus be lodged back to the WTBA which should pronounce a resolution on the matter. … The FIQ Presidium has decided to file the case back to WTBA on the basis of the following fundamental procedural grounds:

"a) (…) Considering that the MTBC is a full member of the WTBA, by virtue of the WTBA Regulations, namely Article 1.4.2 d), it has the right to appeal to the WTBA Presidium. Therefore it may be concluded that the Appeal filed by MTBC cannot be dismissed for lack of jurisdiction...

b) (…) In this case … the Appeal of the MTBC to the WTBA should be seen as a simple appeal against the decision adopted by the ABF EXCO Meeting – such appeal, filed under Article 1.4.2d) is in the jurisdiction of the WTBA to resolve".

c) (…) The FIQ Presidium is further of the view that Article 3.10 of the WTBA Regulations does not apply to the appeal at hand (filed under 1.4.2 d) of the WTBA Regulations and Playing Rules), since this provision "rather contemplates the rights of defence and rights of appeal of the person or body who appeals against the

tournament management or the national federation within whose jurisdiction the tournament was conducted" and not "the rights of appeal of … the national federation within whose jurisdiction the tournament was conducted". In conclusion, the FIQ Presidium finds that the "proceedings started by the MTBC relate to decisions taken by the ABF and tot the ABF's decision to impose a penalty". In addition, the FIQ Presidium found that WTBA should – due to inconsistencies contained in its findings and conclusions – "consider revising some elements contained … [therein]," namely its statement that "at no point did either party object to such appeal proceeding, nor at any point in 2006 or 2007 did either party appeal to the World Tenpin Bowling Association (WTBA)".

33. On 29 September 2010 the WTBA informed the Appellant that its Presidium had heard the *"appeal of ABF's decision to impose a penalty in the matter of the 300 game bowled in the 29th Malaysian International Open Bowling 2006"* and that it denied MTBC's appeal, because *"the prize of RM 50'000 … was included in the tournament rules approved by ABF and WTBA, and that there was no subsequent approval of any amendments of that award through ABF or WTBA".*

34. On 12 October 2012 the Appellant filed an appeal to FIQ against the decision of WTBA dated 29 September 2010.

35. With letter dated 11 March 2013, the Appellant inquired with the FIQ as to the status of the proceedings.

36. With letter dated 28 March 2013 the FIQ advised the Appellant as follows:

"First, there is no FIQ Presidium. The Body formerly known as the Presidium was revised to the FIQ Executive Board … May I assume your intention is to appeal to this body? Second, the FIQ Executive Board now meets only once a year … Third, I am uncertain as to the statute that MTBC is following to process this appeal. Please advise of the statute, FIQ or WTBA, under which this matter is being brought forward".

37. On 23 May 2013 the Appellant in response to FIQ's letter advised as follows:

"… we note in passing that the new FIQ Statutes provide for the establishment of a Joint Arbitration Commission ("JAC") to adjudicate cases of disputes and controversies between member federations and membership disciplines … we note that the FIQ Statutes are silent on the procedure as to how the JAC is constitutes and how its members are appointed … our client is pursuing its appeal to the FIQ by virtue of Sections 3.2(c) read with 5.1(b) of the FIQ Statutes. Clearly, these provisions clothe the FIQ with jurisdiction to hear our client's appeal".

38. With letter dated 7 August 2014 the Chairman of the JAC (who is now representing the Respondent before CAS) outlined to the Parties the procedure moving forward. In particular, he informed the Parties that the matter will be decided without a formal hearing, but on papers submitted to the JAC.

39. On 16 October 2014 , the Appellant wrote to the FIQ as follows:

"We maintain the view that until the panel has been fully constituted, the remaining panel members lack jurisdiction to issue directions on procedural matters … Furthermore, the appointments of Mr Steven Smith and Me Alix de Courten are still under scrutiny, precluding the panel from issuing any directions at this instant until

the matter is successfully resolved. … The prolonged delay in the appointment of the 3rd panel member by the JAC coupled with the silence in resolving the valid appointments of Mr Steven Smith and Me Alix de Courten as panel members, is delaying the entire process and is of deep concern to the MTBC. … In light of the above, … if a suitable appeal panel cannot be properly constituted and be ready to proceed before the end of November 2014, that consent be given for this matter to be immediately submitted by way of appeal to The Court of Arbitration for Sport (CAS) for resolution".

40. On 4 November 2014 the President of the FIQ wrote to the Parties – *inter alia* – as follows:

"… I note that Claimant … has suggested the possibility of the parties bypassing the hearing and decision process at the FIQ level and proceeding to the Court of Arbitration for Sport. Subject to the input of the Hearing Panel, the FIQ has no objection to this proposal as long as (i) this proposal is agreed upon by both MTBC and ABF, and (ii) the parties enter into a brief agreement on terms and conditions for this bypass that are acceptable to FIQ. The Asian Bowling Federation is kindly directed to respond to this proposal within 15 days of the date of this letter. …"

41. On 17 November 2014 the Chairman of the JAC wrote to the Appellant that

"… I have been provided with a copy of correspondence from a representative of the ABF agreeing to your proposal that the parties in this matter proceed directly to CAS … I will cause to be prepared a short understanding among the parties that would allow the parties to bypass the FIQ Joint Arbitration Commission and proceed directly to CAS …".

42. On 2 December 2014 the Chairman of the JAC confirmed in a memorandum signed by him (hereinafter referred to as "the Memorandum") as follows:

"This matter has come before the FIQ Joint Arbitration Commission ("The Commission") pursuant to section 3.2 (c) of the FIQ Statutes. Despite some delays in replacing the representative to the Commission from the Asian Zone, the Commission is fully constituted and is prepared to render a decision on this matter in accordance with the FIQ Statutes. However, in order to avoid the expense of proceeding through the Commission review, and in order to proceed most expeditiously to the Court of Arbitration for Sport ("CAS"), the Parties have agreed (and FIQ has approved) to bypass the Commission's review and proceed directly to CAS for a final determination of this matter, as called for under section 5.1 (b) of the FIQ Statutes. To that end, the Commission has agreed to dismiss this matter and allow the Parties to proceed directly to CAS. Therefore, the Joint Arbitration Commission hereby vacates this matter per the agreement of the Parties and further authorizes the Parties to proceed directly to CAS in lieu of the Commission deliberating over the materials submitted by the Parties ad rendering a decision in this matter. The Commission hereby certifies to CAS that the Parties and FIQ have all agreed to this procedure, and the Parties should not be prevented from proceedings directly to CAS on the basis of not having exhausted all remedies internal to FIQ".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

43. The proceedings before the CAS can be summarized in their main parts as follows:

44. On 20 December 2014, the Appellant filed its Statement of Appeal referring to Art. R48 of the Code of Sports-related Arbitration, 2013 edition (hereinafter referred to as the "CAS Code") with the Court of Arbitration for Sport (hereinafter referred to as "CAS") against *"the whole of the decision of the ASIAN BOWLING FEDERATION given on 25.2.2008"*. The Appellant requested the appointment of a sole arbitrator, three names were suggested, and that the procedure be a "document only" arbitration procedure.

45. On 24 December 2014, the CAS Court Office acknowledged receipt of the Appeal and invited the Appellant to provide the CAS with three additional original copies of the Statement of Appeal within one week. Furthermore, the Appellant was invited to file its Appeal Brief (Art. R51 of the CAS Code) within 10 days following the expiry of the time limit for the appeal.

46. On 2 January 2015, the Appellant submitted its Appeal Brief together with the requested additional copies of the Statement of Appeal.

47. By letter of 7 January 2015, the CAS Court Office informed the Parties that the present arbitration has been assigned to the Appeals Arbitration Division of the CAS and will therefore be dealt with according to Art. R47 et seq. of the CAS Code. Pursuant to Art. R55 of the CAS Code, the CAS Court Office invited the Respondent to submit an Answer (containing a statement of defence, any defence on lack of jurisdiction, any exhibits or specification of other evidence upon which the Respondent intends to rely, the name(s) of any witnesses and experts) within 20 days. The Respondent was also invited to inform the CAS Court Office within 7 days of receipt of said letter whether it agreed to the appointment of a sole arbitrator.

48. By letter dated 14 January 2015, the Respondent confirmed the receipt of the letter of the CAS Court Office dated 7 January 2015. By fax dated 16 January 2015 the Respondent agreed for the matter to be heard by a sole arbitrator and requested that this matter be decided based on the written submissions provided by the Parties, and, if preferred by the arbitrator, supplemented by a one hour "oral argument" involving counsels for the Parties, but excluding witness testimony. No hearing should be held in view of the small amount of money at stake in this matter. The Respondent objected to the Appellant's candidates to act as sole arbitrator and suggested in return that the sole arbitrator be appointed by the President of the Division, as provided for in Art. R54 of the CAS Code.

49. By fax of 20 January 2015, the CAS Court Office acknowledged receipt of the Respondent's letters.

50. By fax of 22 January 2015, the Appellant agreed to a Sole Arbitrator to be nominated by the President of the Division and to "document only" arbitration.

51. On 23 January 2015, the CAS Court Office acknowledged receipt of the Appellant's letter dated 22 January 2015. By letter dated the same day the Respondent filed a copy of its counsel's power of attorney to represent it in this matter.

52. On 29 January 2015, the Respondent filed its Answer to the Appellant's Appeal Brief.

53. By letter dated 4 February 2015, the CAS Court Office acknowledged the receipt of the Respondent's Answer and invited the Appellant to provide the CAS Court Office with a reply strictly limited to the question related to the (alleged) lack of jurisdiction raised by the Respondent. The Appellant was given a deadline of 7 days upon receipt of the present letter.

54. On 12 February 2015, the Appellant filed its submission on jurisdiction with CAS.

55. On 17 February 2015, the CAS Court Office acknowledged receipt of the Appellant's submission on jurisdiction and reminded the Parties of Art. R56 of the CAS Code, which restricts the possibilities of the Parties to supplement or amend their submissions.

56. On 19 February 2015, the CAS Court Office acknowledged receipt of the Appellant's payment of its share of the advance costs and informed the Parties that the Sole Arbitrator appointed to decide the present case was Ulrich Haas, Professor of Law in Zurich, Switzerland.

57. On 4 March 2015, both Parties expressed their agreement with the appointment of the Sole Arbitrator.

58. With fax dated 13 April 2015, the Appellant requested – with reference to Art. R56 of the CAS Code – to be given *"leave to file a limited reply submission for onward referral if required to the Arbitrator"*.

59. On 15 April 2015, the Parties were advised by the CAS Court Office that Dr. Yael Strub, attorney-at-law in Zurich, had been appointed as ad hoc clerk in this matter.

60. On 28 April 2015, the CAS Court Office invited the Respondent on behalf of the Sole Arbitrator to submit its position/observations on the Appellant's request for a second round of written submissions within a week from receipt of the present letter. The CAS Court Office informed the Parties that the Sole Arbitrator intents in any event to invite the Parties to answer a list of questions that will be submitted to them in due time and that the Sole Arbitrator will decide at a later stage whether a preliminary decision will be issued in this case.

61. On 4 May 2015 the Respondent filed its objection to a second exchange of written submissions.

62. On 11 May 2015 the Sole Arbitrator informed the Parties that he did not consider the circumstances raised by the Appellant to be "exeptional" within the meaning of Art. R56 of the CAS Code and, therefore, denied a second exchange of written submissions. Consequentely, the Sole Arbitrator excluded the Appellant's letter of 13 April 2015, as far as it actually completed its appeal brief, from the CAS file. With the same letter the Sole Arbitrator – in application of Art. R44.3 of the CAS Code (applicable by reference of Art. R57 and R56 of the CAS Code) issued a detailed list of questions/procedural directions to the Parties.

63. On 26 May 2015, both Parties submitted their answers to the Sole Arbitrator's letter dated 11 May 2015.

64. On 12 June 2015 the Sole Arbitrator issued an Order of Procedure by which the Parties *inter alia* confirmed that their rights to be heard had been respected. The Appelant signed this Order on 16 June 2015, while the Respondent signed it on 17 June 2015.

IV. PARTIES' RESPECTIVE REQUESTS FOR RELIEF AND BASIC POSITIONS

65. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

4.1 The Appellant

66. In its Statement of Appeal dated 28 September 2012 and in the Appeal Brief dated 2 January 2015, the Appellant submitted the following requests for relief[1]:

> *"1. (a) that the decision of the ABF imposing the fine of RM 50,000 together with the sanctions imposed by the letter of 25th February 2008 be set aside;*
>
> *2.(b) that the ABF should be ordered to forthwith refund the sum of RM 50,000 to the Appellant together with interest thereon at the prevailing rate of fixed deposit interest from a reputable Hong Kong commercial bank from the date it was paid to the ABF until payment in full;*
>
> *3.(c) hat the costs of MTBC's appeal to WTBA Presidium dated 11th August 2008 (amounting to RM 10,633.00) and the costs of MTBC's appeal to the FIQ dated 21th April 2010 (RM 3,435.00) totalling RM 14,068 be ordered to be paid by the ABF to MTBC forthwith as reimbursement for actual legal costs incurred; and*
>
> *4. (d) that the costs of MTBC's appeal to FIQ amounting to RM 28,000.00 be ordered to be paid by the ABF to the MTBC forthwith as reimbursement for actual legal costs incurred and*
>
> *5. (e) that the costs of MTBC's (this) appeal to CAS be granted to MTBC according to the discretion of the Honourable Court (as this Honourable Court deems fit)".*

The object of the Appellant's appeal is *"the whole of the decision of the ASIAN BOWLING FEDERATION given on 25.2.2008".*

67. In respect to the matter of jurisdiction the Appellant submits the following motions to the CAS:

[1] Insofar as the requests in the Appeal Brief differ, this is evidenced by parentheses.

"A. The Court of Arbitration for Sport dismisses the Respondent's preliminary objection and orders that it has jurisdiction to decide on the appeal filed on 20th December 2014 by MTBC against the decision rendered on 29th September 2010 by the WTBA;

B. The Court of Arbitration for Sport proceeds expeditiously with the appointment of an arbitrator to hear and adjudicate on the Appellant's appeal to CAS and to attend to all ancillary matters thereto; and

C. The costs of the hearing of the Respondent's preliminary objection be costs in the cause to be determined by the appointed arbitrator at the hearing of this arbitration".

68. The Appellant's submissions with respect to the **CAS jurisdiction** can be summarized in essence as follows:

- The Appellant bases the jurisdiction of the CAS on the Memorandum (which is signed by the Respondent's representative who then acted as the Chairman of the JAC). The Appellant submits that the purpose of this document was to facilitate direct access for the Parties to the CAS.
- The Appellant further submits that the Chairman of the JAC in his correspondence dated 17 December 2014 had confirmed that he had been provided with a copy of correspondence from a representative of ABF agreeing to the Appellant's proposal to refer the matter directly to the CAS. The Memorandum was then drafted by the Chairman of the JAC as a direct consequence thereof. According to the Appellant the Memorandum constitutes a legal and binding arbitration agreement concluded between the Appellant and the Respondent to refer this case directly to the CAS.
- Furthermore, the Appellant rejects the Respondent's allegation that it failed to participate in the disciplinary process. Instead, the Appellant submits that the whole process had been challenged by it and is now challenged in this final appeal to the CAS. The Appellant points to the Memorandum, which expressly provides that the Parties *"have all agreed to this procedure and the Parties should not be prevented from proceeding directly to CAS on the basis of not having exhausted all remedies internal to FIQ"*.
- The Appellant rejects the Respondent's allegation that this *"matter was referred to ABF as a disciplinary matter"* (see paragraph 31 of the Answer Brief). According to the Appellant this matter started as a commercial contractual matter by the Bowler and his federation. The Appellant submits that the Respondent was precluded from adjudicating on this (commercial) matter as it had no jurisdiction and should have referred the Bowler to the civil courts. No formal disciplinary proceeding was initiated by the Respondent against the Appellant in the first instance. According to the Appellant the Respondent took it upon itself to find fault with the MTBC in the midst of a commercial matter that was brought before it.
- The Appellant rejects Respondent's argument that by failing to respond to ABF's letter dated 26 April 2007 it waived its right to appeal to CAS. According to the Appellant it did not submit to these proceedings because it challenged the legality of these proceedings. The Respondent nevertheless went on with these disciplinary proceedings and rendered a decision, with which the Appellant complied under protest. According to the Appellant any suggestion that these disciplinary proceedings were not exhausted is misleading. The

Appellant further submits that also the Respondent failed to file a reply. In the proceedings before the FIQ the Respondent chose not to respond to the Appellant's Statement of Appeal dated 12th October 2012. However, if such failure does not qualify as a waiver of the right to appeal to CAS the same must be true for the Appellant.

- The Appellant further claims that the Respondent has never raised the argument of an alleged lack of jurisdiction throughout the internal appeal proceedings. The Respondent has never before challenged any domestic body's rulings concerning the matter at hand (WTBA, FIQ), claiming that the Appellant has failed to participate in the "disciplinary process".
- The Appellant submits that the Chairman of the JAC certified in the Memorandum that the Parties *"have all agreed to this procedure, and the Parties should not be prevented from proceedings directly to CAS on the basis of not having exhausted all remedies internal to FIQ"*. This is all the more important as the JAC Chairman, who drafted and signed the Memorandum, is now acting as the counsel for Respondent.

69. The Appellant's submissions in **support of its requests** on the merits can be summarized in essence as follows:

(1) The Bowler failed to comply with Rule 17(f) of the approved Tournament Rules. This provision reads as follows:

"Any matter arising and not covered in these Tournament Rules will be decided by the Tournament Chairman, the Tournament directors or the Tournament Committee whose decision shall be final subject only to appeal to the MTBC Council. Such appeal should be made in writing and within 48 hours of the decision by any of the above.

Notwithstanding the above, an appeal for (typographical error which should read "from") the Decision of the MTBC may still be lodged with the Asian Bowling Federation through the MTBC and within 30 days of the MTBC Council's decision".

- The Appellant submits that the dispute in question arose from the Bowler's complaint in relation to his perfect game on 31 March 2006. However, the Bowler should have been prevented to bring the matter forward, since the complaint by the Bowler (and his national federation) was filed after the deadline according to Rule 17 (f) of the Tournament Rules had elapsed.
- Furthermore, the Appellant submits that the Bowler failed to exhaust all the domestic remedies available under Rule 17 (f) of the Tournament Rules. The Bowler bypassed the proper procedure by not appealing against the Tournament Chairman's decision to the MTBC Council first and then to the ABF. In light of Rule 17 (f) of the Tournament Rules the Appellant is of the view that the Respondent should have dismissed the Emirates Bowling Federation's complaint.
- The e-mail correspondence (between 2 and 10 April 2006) between the president of the Emirates Bowling Federation (Mr Mohammed A. Alkhaja) and the president of the MTBC (Mr Sidney Thung) lacks formality. There was never a proper call for a MTBC Council meeting and no MTBC Council meeting was ever held in the matter. The e-mail correspondence between the Emirates Bowling Federation and

Mr. Thung cannot be considered as a proper appeal according to Rule 17 (f) of the Tournament Rules.

- The Appellant's Tournament Rules were approved by ABF and WTBA. Therefore, there is no lack of conformity with the WTBA Statutes and Playing Rules. Nevertheless, even if the appeal procedure was compliant with sec. 3.10 of the WTBA Statutes and Playing Rules, any appeal against a decision of the tournament management would have first to be dealt with at the level of the national federation within whose jurisdiction the tournament was conducted, and only a further appeal could then have been lodged with WTBA Presidium. In light of sec. 3.10 of the WTBA Statutes and Playing Rules, the Bowler did not comply with the rules and, therefore, the DRP should have dismissed the Bowler's complaint.

(2) The 14th and the 15th Executive Committee Meeting of the Respondent lacked the required quorum. Thus, there was no legal basis to pass the resolution for appointing the Disciplinary Committee and any of the other decisions made during these meetings.

- A meeting of the ABF Executive Committee requires – according to the ABF Constitution – that six members be present and ready to proceed. At the Kuwait Executive Committee Meeting (14 April 2007) 8 members present. Referring to the Robert rules of Order, 10th edition (hereinafter the "Robert Rules") the Appellant submits that the required quorum was not met at that time. Three members of the DRP (Alex Popov, Farouk Haridi, Kyohei Akagi) were – according to the Appellant – ineligible to vote by virtue of the Robert Rules (namely according to page 394 of the 10th edition) as *"no member should vote on a question in which he has a direct or pecuniary interest not common to other members of the organization"*. In the Appellant's view these three members had a direct interest as their findings and recommendations were to be discussed and decided at the Executive Committee Meeting. Mr. Nathan (President of the Appellant) was conflicted and excused himself from the meeting and another member (Salman Abdul Ghani) had already left the meeting before the matter at hand was discussed. Thus – according to the Appellant – only 3 members were left who were eligible to vote. The Appellant concludes that, therefore, at the 14th Executive Committee Meeting in Kuwait the required quorum was not met and that as a result thereof the decisions made in said meeting relating to the fine of RM 50,000 imposed on MTBC are null and void.
- At the Executive Committee Meeting in Hong Kong (24 February 2008), the recommendations of the Disciplinary Committee (which had been appointed at the 14th Executive Committee Meeting in Kuwait) were adopted. According to these recommendations the Appellant was – *inter alia* – fined with RM 50,000 and no further tournaments of MTBC would be sanctioned and any ABF sanctioning which has already been given would be withdrawn from any MTBC tournament until the fine was paid. The Appellant questions the legal validity of these decisions made by the Executive Committee. The Appellant states that eight members were present at the Hong Kong Executive Committee meeting of which only four were eligible members. One of the members, being a representative of the Appellant, was not eligible, because he must be qualified as an interested party. Further three members were not eligible since they were members of both the Disciplinary

Committee and the DRP. Thus, the Hong Kong Executive Committee meeting was – for the same reasons as mentioned above – not properly constituted. However, with the quorum not being met, the decisions taken at this meeting must be deemed to be null and void.

(3) The composition of Disciplinary Committee was improper and contrary to the Robert Rule, since the members of the Disciplinary Commission were identical to the DRP. Therefore, the appointment of the Disciplinary Committee was null and void.

- The Appellant refers to the Robert Rules, according to which *"a Special Committee appointed to hear a trial should be composed of persons different from those of the preliminary investigating committee"*. It follows from this provision – according to the Appellant – that, in principle, the two formal bodies should be separately constituted. The underlying idea – according to the Appellant – is that a decision taken should be reviewed or heard afresh by persons with independent minds whose views are not influenced by the participation in earlier proceedings. The Appellant submits that this principle has been breached in the case at hand.
- The Appellant refers to paragraph 7.3 of the minutes of the 14th Executive Committee Meeting where Mr. Jeff Chue, legal advisor, explained that there are two kinds of Disciplinary Committees – one type that comes to a finding and determines the sentence and another type that makes a decision and a recommendation to the Executive Committee. According to the Appellant it was obvious that the Respondent intended the Disciplinary Committee to be of the second type since it was only entitled to make findings and recommendations to the ABF Executive Committee. The Appellant states that the proposal to appoint the same DRP members to the Disciplinary Committee cannot be justified with the familiarity of the Panel members with the case. On the contrary, the very familiarity with the case should have barred those persons from being appointed to the Disciplinary Committee, whose members were supposed to form their own opinion, based on the findings and recommendations of the Panel. For these reasons the Appellant states that the appointment of the same three persons as members of the Disciplinary Committee should be considered null and void.

(4) The WTBA failed – in its decision dated 16 October 2008 and 29 September 2010 – to address the merits of the substantive issues of law and procedure raised by the Appellant and also failed to address the aspect of whether the persons who sat in the DRP were eligible to sit in the Disciplinary Committee.

- The first WTBA decision (with which it pronounced its lack of jurisdiction) was considered by FIQ as null and void and the matter was referred back to WTBA. The second decision of the WTBA Presidium of 29 September 2010 was a brief note that said that the appeal had been dismissed. According to the minutes of the Presidium meeting on 11 August 2010 the Presidium had decided to reject the appeal because the changes in the announced prize had been done without any contact and approval from ABF and/or WTBA even though the tournament (including the playing rules and prizes) had been initially approved by WTBA. The Appellant is of the view that this decision lacks any serious independent consideration of the issues brought up by the Appellant, the report of the ADP

dated 12 April 2007 or any substantive issues of law. The Appellant submits that the WTBA Presidium *"had simply taken the easy way out by following the ABF decision"*.

4.2 The Respondent

70. In its Answer to the Appeal dated 29 January 2015 the Respondent filed the following prayers for relief:

"ABF respectfully requests MTBC's appeal be denied, and that CAS award the ABF its attorney's fees and costs, and its share of the arbitrator's costs and corresponding administrative fees, in this matter, as well as any other orders which CAS may deem to be appropriate".

71. The Respondent objects to the **jurisdiction of the CAS**:

"ABF asserts that CAS does not have jurisdiction in this case due to that fact that MTBC failed to participate in the ABF's disciplinary process".

The Respondent's submissions in support of the CAS' lack of jurisdiction can be summarized in essence as follows:

- The Respondent points out that the matter at hand was referred to it as a disciplinary matter and states that the proceeding is based on the Appellant's failure to notify the Respondent or WTBA of the change of the Tournament Rules.
- The Respondent refers to its letter to the Appellant dated 26 April 2007 where the Appellant was given 21 days to file a response. The Respondent concludes that since the Appellant never supplied the Respondent with a response, the Appellant failed to participate in the process and hereby waived its right to appeal this matter to CAS. The lack of participation is – according to the Respondent – also a lack of exhaustion of internal remedies. Therefore, the appeal must be dismissed.

72. The Respondent's submissions in **support of its requests** on the merits can be summarized in essence as follows:

(1) According to the Respondent, the object of the Appellant's appeal is a decision of the ABF as upheld by the WTBA.

- The Appellant misunderstands the nature of the decision that is the object of the matter in dispute in this procedure. Whether the Bowler failed to meet certain deadlines when protesting against decisions of the tournament management or whether he followed the applicable procedure is of no relevance in the context of the present procedure since the matter in dispute here is ABF's decision to impose a fine of RM 50,000 on the Appellant. The dispute in question, thus, is of a purely disciplinary nature and is based on Art. X sec. 2 and 3 of the ABF Constitution. Therefore, the Appeal at hand is an appeal in a disciplinary proceeding under the Respondent's Constitution and not an appeal relating to a (commercial) dispute between the Appellant and the Bowler.

- The Respondent submits that the Emirates Bowling Federation wrote an e-mail on behalf of the Bowler to the MTBC on the same day the decision was comunicated to the Bowler. The Respondent qualifies this as an appeal within 48 hours according to Art. 17 (f) of the Tournament Rules. On 10 April 2006, the Emirates Bowling Federation wrote a second e-mail which – according to the Respndent – must be regarded as an appeal lodged within the 30-day period mentioned in Art. 17 (f) of the Tournament Rules. Therefore, the Respondent notes that even if this matter were considered as an appeal in the context of the Bowler's challenge, the deadlines were met and the Bowler followed the rules according to Section 17 of the Tournament Rules. This determination of the DRP was never disputed by the Appellant.

(2) As the Appellant is a member of WTBA, in addition to the rules and regulations cited in the decision, the laws of the US apply, since the WTBA has its seat in the US and as the Appellant is technically appealing a decision of the WTBA. Alternatively, since ABF is domiciled in Hong Kong, and the Appellant is a member of the Respondent, the laws of Hong Kong should apply.

- Referring to US case law (as well as CAS jurisprudence), the Respondent submits that an association may adopt constitutions and by-laws and has the right to interpret and administer the same (reference to Givens vs. Marion Superior Court, 117 N.E. 2d 533, 555 [Ind. 1954]). The Respondent also refers to a US case in which the court stated that courts have to exercise restraint in the analysis an association's actions (reference to Art Gaines Baseball Camp, Inc. vs Houston, 500 S.W.2d 735, 740-41 [Mo App.1973]). According to the case cited, an action cannot be considered as *"arbitrary and capricious"* if there is room for two opinions on the matter. On this basis the Respondent concludes that a member of the association may not challenge the decision of the association's elected representatives *"by arguing that the decision in error does not represent the 'best' decision"*. The Respondent also refers to CAS jurisprudence and points out that the CAS has also accepted "this general rule", and concludes that the burden of proof to show that the actions of ABF and WTBC were arbitrary and capricious and the decisions lacked a rational basis lies with the Appellant.

(3) According to the Respondent, the dispute was addressed on two occasions, i.e. by the DRP on the one hand (to investigate and attempt to resolve the Dispute between the Appellant and the Bowler), and the Disciplinary Process on the other hand (to deal with possible violations of the Respondent's and WTBA's Regulations). After the DRP – *inter alia* – concluded that the Appellant violated sec. 3.7.3 (a) and (c) of the WTBA Statutes and Playing Rules, it recommended that a formal Disciplinary Committee be established to look into this disciplinary matter. According to the Respondent, this way of procedure is in line with its Constitution, which grants to the Executive Committee the authority to impose a penalty and to determine the nature and extent of any such penalty in case the Constitution or by-laws are violated by any of its members.

(4) In case of a violation of the Respondent's Constitution or of the WTBA Statutes and Playing Rules, no further sanctioning of tournaments is possible and any previous sanctioning of tournaments must be withdrawn. A failure to comply with Tournament

Rules and/or arrangements to which sanctioning has already been granted is a violation of the WTBA Statutes and Playing Rules and of Respondent's Constitution. Thus, the Respondent concludes that it was entitled to impose a disciplinary measure on the Appellant. This disciplinary procedure (for failing to comply with the WTBA Statutes and Playing Rules and the Respondent's Constitution) is independent from the dispute between the Appellant and the Bowler. The Respondent submits that – with respect of the disciplinary procedure – it had set the Appellant a time limit of 21 days to provide evidence, arguments or any other pertinent information . Furthermore, the Appellant – who failed to respond within the deadline – was reminded that no response had been received so far. The Appellant did not respond to both requests for information. Based on the report of the DRP and the Disciplinary Committee's recommendation and taking into account the Appellant's lack to participate in the disciplinary proceeding, the Respondent is of the view that the disciplinary measure imposed upon the Appellant was neither arbitrary nor capricious but, instead, was issued on a rational basis.

(5) According to the Respondent, the Appellant's objection that the Executive Committee failed to meet the quorum at the 14th Executive Committee Meeting must be rejected. There were 8 members present at said meeting. A quorum of six members is required by the Respondent's Constitution (Art. VII sec. 2 [g]). Therefore, it is undisputed that when the meeting started the quorum was met. Even if one member left during the course of the meeting, there was still the required minimum of six members present. The Respondent rejects the Appellant's argument that four members had a conflict of interests for a number of reasons.

- With reference to the Robert Rules of Order (Newly Revised 2004, p. 13) the Respondent states that in respect of the quorum only the physical presence of the members is of significance. Thus, only in case the members had left the room, the Executive Committeee meeting would have failed to comply with the quorum. However, this was not the case. The Respondent denies that a possible conflict of interest has any influence on the quorum and points out that no authority exists supporting such assertion.
- Furthermore, there was – according to the Respondent – no conflict of interests. The Robert Rules (section 45, p. 407) provide that *"no member should vote on a question in which he has a direct presonal or pecuniary interest not common to other members of the organization… However, no member can be compelled to refrain from voting in such cirumstances"* (emphasis added). The Respondent submits that Mr. Popov, Mrs. Akagi and Mr. Haridi did not have a direct personal interest in the outcome of the matter. The fact that they served on the DRP – according to the Respondent – does not imply a personal interest. According to the Respondent, the measures taken by the members of the DRP are comparable to those of a board's sub-committee. In the context of their function these members obtain information that makes them well versed in the matter. However, this does not lead to a *"direct personal"* interest of these members. In addition, the Respondent concludes that neither the Robert Rules nor the Respondent's Constitution has a provision that requires recusal in the event of a personal interest. If a member cannot be compelled to refrain form voting, neither can his presence be ignored for the purpose of determining a qorum.

(6) The Respondent also rejects the Appellant's submission that the required quorum was not met at the 15th Executive Committee Meeting. According to the Respondent the same arguments set forth above apply here. There were eight members (physically) present at the 15th Executive Committee Meeting. Furthermore, the Respondent submits that Mr. Popov, Mrs. Akagi and Mr. Haridi did not have a direct personal interest in the matter at stake and, thus, no conflict of interest existed. The Respondent continues to add, that even if there was a conflict of interests these members of the DRP would not have had to abstain from voting.

(7) The Respondent objects to the Appellant's argument that the members of the DRP were not eligible to sit on the Disciplinary Committee.

- According to the Respondent there are no constitutional provisions which prohibit members of the DRP from serving as members on the Disciplinary Committee nor are there any principles of law against it.
- The Respondent states that the only requirement provided for in the applicable rules is that the Disciplinary Committee be comprised of a Chairman (who is Vice President of the Respondent) and of two additional members who are appointed by the Respondent's President.
- The passage cited by the Appellant from the Robert Rules, indicating that the members of a hearing panel *"should not"* serve on the investigatory body, is – according to the Respondent – of no avail here, since neither the DRP nor the Disciplinary Committee were hearing panels. Instead, both of them served as investigatory bodies making recommendations to the Executive Committee that had to be adopted by the latter.
- Furthermore, the Respondent points out that the Robert Rules do not forbid a dual service of the members. The Robert Rules only recommend to the members of the hearing body to refrain from serving also on another body.
- In addition, the Respondent is of the view that the Appellant waived any right to object to the composition of the Disciplinary Committee by not participating in the disciplinary process.

(8) Finally, the Respondent also objects to the Appellant's argument that WTBA failed to properly address the merits of the dispute in its decision.

- The Respondent submits that the Appellant did not participate in the disciplinary process. In particular, the Appellant failed to file any requests, information or evidence to substantiate why it has not violated any ABF or WTBA Rules. Therefore, when adopting the recommendations of the DRP and the Disciplinary Committee, the WTBA properly assessed the merits of the case. This is all the more true since the Appellant was required to obtain the approval of the Respondent and of WTBA to change its playing rules. By not requesting any approval from ABF and/or the WTBA the Appellant violated various ABF and WTBA rules.

V. PRELIMINARY NOTE: THE MATTER IN DISPUTE

73. The Parties' battle on this matter arising from the Competition has already been going on for many years. Numerous submissions have been exchanged and numerous decisions have been issued. Therefore, the Sole Arbitrator finds it helpful to particularize what the matter in dispute before the CAS is about, prior to analyzing the legal and factual questions raised by the Parties.

74. The Appellant requests the CAS in its Statement of Appeal *"that the decision of the ABF imposing the fine of RM 50,000 together with the sanctions imposed by the letter of 25th February 2008 be set aside"* and that the Respondent be *"ordered to … refund the sum of RM 50,000 to the Appellant"*. In his letter dated 11 May 2015 the Sole Arbitrator invited the Parties to clarify the object of the appeal, in particular *"whether the present appeal … shall be considered as directed exclusively against ABF's decision or as directed against the ABF's decision as well as against its confirmation by WTBA"*. In response to this letter the Appellant stated as follows: *"… the MTBC submits that the present appeal filed by it, is an appeal against the ABF's decision as well as against the decision of the WTBA which affirmed the ABF's decision"*. The Respondent stated in response to the Sole Arbitrator's letter that *"the appeal filed by MTBC is an appeal against ABF's decision, on 24 February 2008"* and that *"WTBA's decision on 29 September 2010 was a step in the internal appeals process of the 24 February 2008 ABF decision. Because the parties agreed to bypass the next step in the internal appeals process … the WTBA's 29 September 2010 decision currently stands as the final decision on the validity of ABF's decision. As a procedural matter … MTBC is appealing the WTBA's decision, but as a substantive matter, the only issue to resolve is whether ABF's decision was proper"*.

75. It appears from the Parties' responses that according to their common understanding the matter in dispute is an appeal directed against both ABF's decision dated 24 February 2008 and WTBA's decision dated 29 September 2010 (which affirmed the ABF's decision).

VI. CAS JURISDICTION

76. As Switzerland is the seat of the arbitration and neither of the Parties is domiciled in Switzerland, the provisions of the Swiss Private International Law (PILA) on international arbitration apply (cf. Art. 176 para. 1 PILA). In accordance with Art. 186 of the PILA, the CAS has the power to decide upon its own jurisdiction.

77. Art. R27 of the CAS Code provides that the Code applies whenever the Parties have agreed to referring a sports-related dispute to the CAS. Such disputes may arise out of a contract containing an arbitration clause, or be the subject of an arbitration agreement, or involve an appeal against a decision rendered by a federation, association or sports-related body whose statutes, regulations or other specific agreement provide for an appeal to the CAS. Therefore, in order for the CAS to have jurisdiction to hear an appeal, it is necessary that either

- the statutes or regulations of the sports federation to which the Parties have submitted *expressly* provide for an arbitration clause referring the matter in dispute to the CAS, or
- the Parties enter into a *specific* arbitration agreement referring the matter in dispute to the CAS.

A. Is there an Arbitration Clause in the applicable Rules and Regulations?

78. According to the Appellant's letter to FIQ dated 23 May 2013, the Appellant pursued its appeal to FIQ by virtue of Art. III sec. 3.2 read together with Art. V sec. 5.1 of the FIQ Statutes.

Art. V sec. 5.1 of the FIQ Statutes reads as follows:

"The Executive Board shall direct the work of FIQ as follows: … The Court of Arbitration for Sport shall be used as the final forum to resolve all disputes between the FIQ and/or the membership disciplines and/or member federations and/or individuals and/or third parties. WTBA and WNBA shall form a joint Arbitration Commission which shall hear disputes referred under section 3.2 lit. c".

Art. III sec. 3.2 (c) of the FIQ Statutes reads as follows:

"Each member federation shall have the right to: … appeal to the joint Arbitration Commission in cases of controversies …".

79. The Sole Arbitrator notes that the Appellant and the Respondent are both members of the FIQ. It follows from Art. III sec. 3.2(c) of the FIQ Statutes that members have a right to appeal to the Joint Arbitration Commission (JAC) in case of controversies. The latter is an organ of the FIQ. Sec. 5.1 of Art. V of the FIQ Statutes provides that the CAS shall be used as the final forum to resolve all disputes between (inter alia) member federations. That the CAS shall be used as the final instance to resolve disputes is reiterated in Art. I of the FIQ Statutes, which reads as follows:

"The decisions of the FIQ are final. Any dispute relating to their application or interpretation may be resolved by the FIQ Executive Board and, in certain cases, by arbitration before the Court of Arbitration for Sport (CAS)".

80. That the CAS is the judicial body to finally resolve disputes between – inter alia – members is also evidenced when looking into the history of the provisions. Art. V section 5.1 (c) in the version in force 2001 reads as follows:

"It shall also have authority to hear and determine disputes between FIQ members or between FIQ members and the membership disciplines (WTBA, WNBA and their Zones/Sections). Provided, however, that the IOC Court of Arbitration for Sport shall be used as the final forum to resolve all disputes between FIQ and/or membership disciplines and/or national federations and/or individuals and/or third parties" (see annex W to the Appellant's submission dated 26 May 2015).

81. The interpretation of the rules followed here is obviously also the view held by FIQ. The latter is evidenced in the Memorandum dated 2 December 2014. Furthermore, this interpretation is also in line with the understanding of the Parties as can be seen by looking at the abundant correspondence submitted to the Sole Arbitrator.

82. To conclude, therefore, it follows from the FIQ Statutes that they provide for an arbitration clause in favour of the CAS.

B. Have the Parties submitted themselves to the arbitration clause contained in the FIQ Statutes?

83. In order for the arbitration clause in the applicable rules and regulations of the FIQ to be binding on the Parties, they must have submitted themselves to the respective rules. According to the website of World Bowling/FIQ, the Appellant is a member of the FIQ. This is also in line with Art. III sec. 3 of the FIQ Statutes that provides that national tenpin organizations may be admitted to FIQ membership. The Respondent, as well, is a member of World Bowling/FIQ (see http://www.abf-online.org/about/about.htm). By virtue of being members both Parties have submitted to the FIQ rules and regulations and, thus, both are bound to the arbitration clause contained in the FIQ Statutes.

84. Whether or not the submissions of the Parties to the arbitration clause contained in the FIQ Statutes complies with the formal requirements contained in Art. 178 para. 1 of the PILA can be left unanswered here, since neither of the Parties has objected to the formal validity of the arbitration agreement at any moment throughout the procedure.

C. Is the matter in dispute covered by the arbitration clause?

85. Finally, the Sole Arbitrator observes that the matter in dispute is covered by the arbitration clause *rationae materiae*. The arbitration clause in the FIQ Statutes refers to a *"controversy",* respectively a *"dispute between member federations"* (Art. V sec. 5.1 of the FIQ Statutes). As stated above, both Parties are members of the FIQ.

VII. ADMISSIBILITY

A. Time limit

86. Art. R49 of the CAS Code provides that – in the absence of any other provisions in the statutes and/or regulations of the federation – the time limit for appeal is twenty-one days. The Chairman of the JAC Panel issued the Memorandum allowing the Parties to proceed directly before CAS on 2 December 2014. The Statutes of FIQ do not provide for a time limit to lodge an appeal before CAS nor did the parties agree to any time limit in the Memorandum. Hence, since the Appellant filed its Statement of Appeal on 20 December 2014, the prescribed deadlines were observed in the case at hand and, thus, the appeal has been filed in time.

B. Exhaustion of Internal Legal Remedies

87. Art. R47 of the CAS Code requires that the Appellant must have exhausted *"the legal remedies available to him prior to the appeal"* to the CAS. This prerequisite is not a matter of jurisdiction, but a matter of admissibility of the appeal. Thus, in case the Appellant has not exhausted the (internal) legal remedies available to it, the appeal must be rejected as (temporarily) inadmissible. In the case at hand, the Parties have not exhausted the internal remedies available to them at the FIQ level, since FIQ (JAC) has not issued any decision in this matter according to Art. III sec. 3.2 read together with Art. V sec. 5.1 of the FIQ Statutes. However, the Sole Arbitrator holds that the Parties, in principle, can waive the prerequisite of having to exhaust all internal

remedies. It appears in the case at hand that the Parties – with the consent of FIQ – have agreed to such a waiver and, thus, are entitled to proceed with their matter directly before the CAS.

88. In coming to this conclusion, the Sole Arbitrator takes into account that the Parties – in principle – can agree on procedural aspects of the arbitration procedure. They can provide – e.g. – that the proceeding be conducted in a specific language or they can agree on the time limit to file an appeal. In the Sole Arbitrator's view the Parties can also agree to refer a case directly to the CAS without exhausting the internal legal remedies of the respective federation. When executing such a procedural agreement no formal requirements need to be observed. In particular, the formal requirements for an arbitration agreement (Art. 178 para. 1 of the PILA) do not apply by analogy to these kinds of procedural agreements, since the observance of those strict requirements is only required with respect to the waiver of *judicial* remedies before state courts (Swiss Federal Tribunal – SFT 131 III 137). However, no such formal requirements apply in the context of a waiver with respect to the association's internal proceedings. Thus, it suffices to establish the will of the Parties, i.e. whether or not they agreed to bypass the FIQ instance (i.e. the JAC) in the case at hand.

89. The Sole Arbitrator finds that this is the case in the present matter. This follows from the Parties' written submissions dated 26 May 2015. In its letter to FIQ dated 16 October 2014 the Appellant requested the FIQ that *"consent be given to the parties for this matter to be immediately submitted by way of appeal to the Court of Arbitration for Sport … for resolution"*. FIQ accepted the Appellant's proposal in its letter dated 4 November 2014 *"as long as (i) this proposal is agreed upon by both MTBC and ABF, and (ii) the parties enter into a brief agreement on terms and conditions for this bypass that are acceptable to FIQ …"*. On 17 November 2014, the Chairman of the JAC (and now legal counsel of the Respondent) confirmed in a letter sent to the Appellant that he has *"been provided with a copy of correspondence from the representative of the ABF agreeing to … [the] proposal that the parties … proceed directly to CAS"*. The FIQ consented to the agreement between the Parties by redacting the Memorandum, which expressly provides that *" … in order to avoid the expense of proceeding through the Commission review … the Parties have agreed (and the FIQ has approved) to bypass the Commission's review and proceed directly to CAS for a final determination of this matter, as called for under Section 5.1 (b) of the FIQ Statutes. To that end, the Commission has agreed to … allow the Parties to proceed directly to CAS"*.

C. Waiver of the Right to Appeal

90. The Respondent submits that the CAS is prevented from entertaining the Appellant's appeal because the latter failed to properly participate in the Respondent's disciplinary process. In particular, the Respondent submits that the Appellant failed to respond to the Respondent's letter dated 26 April 2007, in which the Appellant had been invited to submit within 21 days a written response to the Disciplinary Committee. This behaviour – according to the Respondent – amounts to a waiver of the Appellant's right to appeal, which renders the appeal inadmissible. Alternatively, the Respondent submits that by not participating in the proceedings the Appellant failed to exhaust all internal remedies.

91. The mere fact that the Appellant did not file a response does not amount to a waiver of its right to appeal. The Respondent did not cite any authorities to this effect. Nor does this follow from

any federative rules or regulations or general principles of law. In addition, the Respondent, in its letter dated 26 April 2007, did not warn the Appellant that failure to submit a response would amount to or entail, a waiver of the Appellant's right to appeal. On the contrary, with letter dated 31 May 2007 the Respondent advised MTBC that the Disciplinary Committee would *"in due course convene to consider the matter and make appropriate recommendations"*. It follows from this letter that the Respondent itself – at least at that stage – did not deem that the Appellant was waiving its right to appeal. The same is true when looking at the Respondent's letter dated 25 February 2008 by which the Appellant was informed that the Respondent had endorsed the recommendations made by the Disciplinary Committee. This letter makes no reference to any alleged waiver by the Appellant of its right to appeal. Finally, also in state court proceedings the fact that a party does not timely file its response does not automatically lead to a waiver of the right to appeal (cf., e.g., Art. 147 sec. 2 and 3 of the Swiss Civil Procedure Code – "CCP" – which states that the proceedings shall continue without the act defaulted on unless the law provides otherwise and that court shall draw the parties' attention to the consequences of default).

92. Furthermore, contrary to what the Respondent submits, the above behaviour of the Appellant cannot to be construed as a failure to exhaust the internal legal remedies, either. In fact, the Appellant did exhaust the internal remedies. The Appellant appealed against

- the Respondent's decision dated 24/25 February 2008 (annex N to the Appeal Brief; annex 10 to the Answer to the Appeal Brief) to WTBA on 11 August 2008 (annex P to the Appeal Brief),
- the WTBA's decision for lack of jurisdiction to FIQ with appeal dated 16 December 2008 (annex R to the Appeal Brief; annex 15 to the Answer to the Appeal Brief).
- Following the Appellant's appeal, FIQ considered the WTBA decision as null and void and referred the case back to WTBA with decision dated 21 April 2010 (annex S to the Appeal Brief; annex 16 to the Answer to the Appeal Brief). When WTBA issued its second decision dated 29 September 2010 (annex T to the Appeal Brief), the Appellant also appealed against this decision to the FIQ on 12 October 2012 (annex C to the Statement of Appeal).
- Following the Memorandum dated 2 December 2015 (in which the Parties agreed to bypass the FIQ procedure), the Appellant immediately lodged its appeal to CAS.

93. To conclude, therefore, the Sole Arbitrator finds that there is no decision of ABF, WTBA or FIQ that remained undisputed/un-appealed by the Appellant. Thus, the Sole Arbitrator concludes, that the Appellant did exhaust all internal remedies by challenging every decision rendered by any decision body in this matter.

VIII. APPLICABLE LAW

94. Pursuant to Art. R58 of the CAS Code, the Panel shall decide the dispute

"… according to the applicable regulations and, subsidiarily, the rules of law chosen by the parties or, in absence of such a choice, according to the law of the country in which the federation, association or sports- related body

has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

95. The Parties are in agreement that the "applicable regulations" within the meaning of the above provision are the Statutes of FIQ as well as the rules and regulations of the Respondent and WTBA.

96. As for the *"rules of law chosen by the parties"*, the Parties disagree on the applicability of the so-called "Robert Rules of Order". While the Appellant submits that the Robert Rules form part of the rules of law chosen by the Parties, the Respondent objects to this. The Respondent, in particular, submits that it never consented to the application of the Robert Rules in these proceedings. In particular, the Respondent submits that the reference to the Robert Rules in its submissions was only intended to rebut Appellant's submissions, but did not imply any consent in relation to their application.

97. The Sole Arbitrator notes that the Respondent, in para. 80 of the Answer to the Appeal Brief, referred to the *"Robert Rules, cited by MTBC"*. However, the Sole Arbitrator also notes that the Respondent referred to the Robert Rules in para. 84 of its answer and that, moreover, it was the Respondent who filed an excerpt of the Robert Rules as an exhibit with the CAS. Furthermore, the Respondent referred to the Robert Rules again in para. 87 of its answer. It appears from the above that the Respondent, when referring to and analysing the Robert Rules, not only reacted or replied to allegations by the Appellant, but instead based its own argumentation upon those rules, thereby clearly conveying the impression that it considered the Robert Rules to be applicable to the matter. Therefore, the Sole Arbitrator finds that an implicit common understanding can be derived from the Parties' submissions before him, according to which the Robert Rules apply to the case at hand.

98. The Sole Arbitrator further notes that also the WTBA in their regulations refer to the Robert Rules. In addition, Art. X sec. 10.13 of the FIQ Statutes mention the Robert Rules, as well. The provision reads as follows:

> *"If the Statutes are silent as to any procedural aspect of any action or meeting hereunder, the procedures of the latest edition* of *Robert Rules of Order shall control such procedures".*

99. It appears from the above that the Robert Rules must be considered as a kind of universally applicable "standard" in the sport of bowling. This is all the more true since Art. III sec. 3.1 (e) ii of the FIQ Statutes provides that the rules and regulations of members of FIQ shall not contradict FIQ rules.

100. Finally, the Sole Arbitrator notes that the Parties have agreed to the application of Swiss Law on a subsidiary basis, i.e., inasmuch as no guidance is to be found in the "applicable regulations" and in the Robert Rules.

IX. STANDING TO BE SUED

A. Preliminary Remarks

101. The question of standing to be sued is a matter related to the merits. This follows from the jurisprudence of the Swiss Federal Tribunal ("SFT"). The latter has held in a decision (SFT 128 II 50, 55) as follows:

> *"Sur le plan des principes, il sied de faire clairement la distinction entre la notion et de légitimation active ou passive (appelée aussi qualité pour agir ou pour défendre; Aktivlegitimation oder Passivlegitimation), d'une part, et celle de capacité d'être partie (Parteifähigkeit), d'autre part. La légitimation active ou passive dans un procès civil relève du fondement matériel de l'action; elle appartient au sujet (actif ou passif) du droit invoqué en justice et son absence entraîne, non pas l'irrecevabilité de la demande, mais son rejet".*

102. In the case at hand, it appears questionable whether the Respondent has standing to be sued, since the latest decision made in this matter was not issued by the Respondent, but by WTBA. However, the appeal is not directed against WTBA. It follows from the prerequisite in Art. R47 of the CAS Code, according to which an appellant must exhaust the internal remedies before bringing a case before CAS, that it is – in principle – the final decision of a sports body that forms the object in an appeal arbitration procedure. Since the "final decision" within this meaning is a decision of the WTBA, the question arises whether or not the Respondent is the proper entity to be sued.

103. Neither the FIQ Statutes nor the WTBA Statutes and Playing Rules or the Respondent's Constitution specify against whom an appeal must be directed (once the internal remedies have been exhausted). In the absence of any provision in the *"applicable regulations"* and the *"rules of law chosen by the parties"*, the Sole Arbitrator reverts to Swiss law, which is applicable on a subsidiary basis (see supra no. 98).

B. Swiss Law Perspective

104. The question of who has standing to be sued in an appeal arbitration procedure is not an easy one to answer. Disciplinary measures such as the one at stake – are qualified according to Swiss law as a "resolution of an association" (Vereinsbeschluss) within the meaning of Art. 75 of the Swiss Civil Code (hereinafter referred to as "CC"). The Sole Arbitrator notes that Art. 75 CC is silent on who is the appropriate defendant of such a resolution ("Vereinsbeschluss"). The provision states as follows:

> *"Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof".*

105. The Sole Arbitrator holds that in the absence of a clear statutory provision regulating the question of standing to be sued, the question must be resolved on the basis of a weighting of the interests of the persons affected by said decision. The question, thus, is whether the entity issuing the resolution ("Vereinsbeschluss") wants to modify the legal sphere between itself and its (indirect) members or whether it wants to regulate the legal sphere between its members.

While in the first case the appeal against the resolution ("Vereinsbeschluss") would have to be lodged certainly against the entity that has issued the decision, the situation is far from clear in the second alternative. The Sole Arbitrator notes in that respect that cases in which a third person interferes with the legal spheres of others are quite frequent. One such example is legal representation. The representative (agent) acts primarily within a foreign legal sphere, i.e., the legal sphere of the principal and his contractual partner. Disputes concerning alleged defects of the representative's declaration of will, however, must be resolved between the principal and his contractual partner. The representative himself is not a party to such legal proceedings. This holds even true if the representative not only acts with authority and on behalf of one of the parties, but also if the representative is authorized to represent both parties. The same principles still apply if the power of representation was granted (entirely or also) in the representative's own interests. Another example of a third party interfering with the legal sphere of others is expert evaluation (cf. Art. 189 CCP). The typical task of the expert evaluator is to determine with binding effect some (or all) of the relevant facts in a dispute opposing the two parties that have submitted themselves to the mandate of the expert evaluator (cf. KuKo ZPO-SCHMID, 2nd edition, Basel 2014, Art. 189 No. 1). The CCP provides that an expert evaluation loses its binding effects (in relation to the legal sphere of the parties) in case of serious deficiencies (Art. 189 para. 3 CCP). The provisions of the CCP do not provide who has standing to be sued in case a party challenges the binding effect of the expert evaluation. It is undisputed, however, that defects of the expert evaluation cannot be challenged through an appeal lodged against the expert. Instead, it is the other party that has submitted to the expert evaluation that has standing to be sued and must defend the declaration of will of the evaluator.

106. In view of the above, the Sole Arbitrator holds that the ABF has standing to be sued, since WTBA, when issuing its decision on appeal by the MTBC, did not intend to regulate or modify its legal relationship with MTBC. Instead, the WTBA only wanted to assess and determine whether or not ABF was entitled to issue a disciplinary measure against the Appellant. Thus, WTBA, in issuing the decision, assumed a role of a third party akin to an agent or an expert evaluator. Therefore, whether ABF was entitled to issue the disciplinary measure is a matter that must be determined between ABF and MTBC only. Thus, ABF has standing to be sued in this matter.

X. (OTHER QUESTIONS PERTAINING TO THE) MERITS

A. Nature of the Dispute

107. In its written submission dated 26 May 2015, the Appellant confirmed that the Appeal is against *"ABF's decision [dated 24 February 2008] as well as against the decision of WTBA which affirmed the ABF's this decision"*. Furthermore, the Appellant explained that *"it is exercising its right of appeal for the return of the sum of RM 50,000 paid by MTBC by way of fine to the ABF"*.

108. The Respondent agreed, in its written submission dated 26 May 2015, that the *"present appeal filed by MTBC is an appeal against ABF's decision, on 24 February 2008, to adopt the recommendations of the ABF Disciplinary Committee, namely the imposition of sanctions on MTBC"*. According to the Respondent, the Appellant is appealing the WTBA decision dated 29 September 2010 from a

procedural point of view, while, as a substantive matter, the only issue to resolve is whether the ABF decision dated 24, respectively 25 February 2008 was proper.

109. The nature of the dispute here at stake follows from the contents of the appealed decision. On 25 February 2008, the Respondent advised the Appellant that the Disciplinary Committee had presented its recommendations to the ABF Executive Committee and that the latter had adopted said recommendations. The recommendations provided for a fine to be imposed on the Appellant in the amount of RM 50,000. In case the Appellant should fail to pay the fine, it was forewarned that additional "penalties" might be imposed (in particular no further sanctioning of MTBC tournaments, withdrawal of sanctioning from any MTBC tournament which had already been obtained, and suspension of membership). There can be no doubt that this decision is of a disciplinary nature and that it is solely directed against the Appellant. There is no indication whatsoever that this decision is also directed at the Bowler or that the decision was meant to regulate the relationship between the Bowler and the Appellant.

110. Since the decision is solely disciplinary in nature and only directed against the Appellant, it is immaterial – when examining the lawfulness of this decision – whether or not the Bowler failed to comply with Rule 17 (f) of the approved Tournament Rules (failure to comply with the time limits and failure to exhaust all internal remedies available under Rule 17 (f)), i.e. whether or not the Bowler had a right of action against MTBC and/or whether he exercised such a right in a proper way and within the prescribed deadlines. The question whether or not the Appellant may be sanctioned for an (alleged) breach of the ABF Constitution or regulations is completely independent of the Bowler's alleged failure, when pursuing his commercial interests, to comply with the procedure provided for in the Tournament Rules. Therefore, the Sole Arbitrator will not further investigate the Bowler's claim, since the disciplinary measure issued against the Appellant is neither dependent on nor otherwise linked to the commercial dispute of the Bowler.

111. In order to ascertain whether the disciplinary measure can be qualified as proper, the Sole Arbitrator will look at the following issues:

- Is there a sufficient legal basis for the disciplinary measure in the rules and regulations of the ABF?
- Are the substantive requirements of the (applicable) legal basis fulfilled?
- Are there any procedural defects when applying the legal basis, and what impact do these procedural deficiencies have on the CAS proceeding? and, finally
- Is the penalty imposed upon the MTBC in line with the legal basis and is it proportionate?

B. Legal Basis

112. In order for the decision of the ABF dated 24 February 2008 to be proper, there must be a sufficient legal basis that entitles the ABF to issue a penalty against MTBC. In this respect reference is made to Art. X sec. 1-3 of the ABF Constitution, which provides as follows:

"1. All member federations are required to observe the terms of this Constitution and any additional rules, regulations or requirements, which from time to time may be introduced by the General Assembly or the Executive Committee or by the WTBA or the FIQ.

2. The penalties that may be imposed by the Asian Bowling Federation in respect of any failure by a member federation to observe the terms of this Constitution or any by-laws shall include (but are not limited to) fines, withholding sanctioning of international tournaments under Article XI herein or suspension or termination of membership of the Asian Bowling Federation.

3. The decision as to whether or not to impose a penalty and the nature and extent of any such penalty is to be made by the Executive Committee. The rules and procedure applicable to disciplinary proceedings conducted by the Executive Committee shall be provided for in by-laws".

113. According to Art. XI (e) of the ABF Constitution the ABF may *"at any time withdraw its sanction of any tournament if:*

1. *tournament sanctioning requirement(s) set out herein or in by-laws have been or are likely to be breached; and/or*
2. *tournament playing rules and/or arrangements approved upon sanctioning by ABF have not been or are unlikely to be complied with; and/or*
3. *disciplinary decisions of the Executive Committee have not been complied with; and/or*
4. *it is likely that not doing so would adversely affect the interests of the sport of bowling and/or the Federation and/or member federations".*

114. For certain international events, Art. XI of the ABF Constitution also states that the sanctioning of WTBA must be sought and obtained and that the organizing member federation has also to comply with the relevant rules and procedures set out in Chapter 3 of the WTBA Statutes and Playing Rules (Art. XI (c) and (d) sec. 4 of the ABF Constitution).

115. The Sole Arbitrator notes that the ABF Constitution provides for a sufficient legal basis to impose penalties on its members through its competent body which is the Executive Committee (Art. X sec. 1-3 of the ABF Constitution).

C. The Substantive Prerequisites of the Legal Basis

116. According to Art. X sec. 2, a "penalty" can only be imposed if a member federation failed *"to observe the terms of this Constitution or any by-laws"*. In a case where the sanctioning of a tournament by WTBA is also required (see Art. XI), the member association has to comply not only with the ABF Constitution and by-laws, but in addition with Chapter 3 of the WTBA Statutes and Playing Rules. In other words: the obligations of a national federation vis-à-vis the ABF are supplemented by Chapter 3 of the WTBA Statutes and Playing Rules if the National Federation requires the sanctioning for a tournament within the meaning of Art. XI sec. 1 (d) of the ABF Constitution.

117. It is undisputed that the 29th Malaysian International Tournament (the Competition) was a tournament to which bowlers from more than one Zone were invited or otherwise accepted to

participate. Therefore, Art. XI (c) and (d) sec. 4 apply to the Competition. Consequently, according to Art. XI (d) sec. 4 of the ABF Constitution, the Appellant was not only required to comply with the rules and regulations of the ABF, but, in addition, also with Chapter 3 of the WTBA Statutes and Playing Rules. Thus, the Respondent was entitled to impose "penalties" if any of the above rules and regulations were breached by the Appellant.

118. Sec. 3.7 of the WTBA Statutes and Playing Rules sets out the *"obligations and liabilities"* of the various stakeholders in WTBA-approved international tournaments. Sec. 3.7.3 of the WTBA Statutes and Playing Rules specifically addresses the *"obligations and liabilities"* of the *"national federations"*. According to sec. 3.7.3 (a), national federations are required to process the Zone Tournament Application and to make sure that all requirements will be met. Furthermore, sec. 3.7.3 (c) of the WTBA Statutes and Playing Rules provides a duty of the national federation to inform the Zone and the WTBA in case of *"problems related to the tournament"*. In addition, sec. 3.7.2 of the WTBA Statutes and Playing Rules contains the *"obligations and liabilities"* of the tournament organizers.

119. It may be questionable whether the duty of a national federation to *"make sure that all requirements will be met"* (sec. 3.7.3 [a] of the WTBA Statutes and Playing Rules) refers only to the "Approval Requirements" as per sec. 3.5 of the WTBA Statutes and Playing Rules or to all provisions in the Tournament Rules that were submitted to, and approved by, the Zone and the WTBA. In any event, the MTBC breached its duty according to sec. 3.7.3 (c) of the WTBA Statutes and Playing Rules to inform the Zone and the WTBA. This duty arises whenever there is *"a problem … related to a tournament"*.

120. The fact that a prize that was advertised in the Tournament Rules was either not secured or by a "clerical mistake" published in the Tournament Rules is a "problem" within the meaning of sec. 3.7.3 (c) of the WTBA Statutes and Playing Rules. The Sole Arbitrator insofar refers to the Findings and Determinations of the DRP dated 12 April 2007 which he finds to be convincing. The DRP found, in particular, that

> *"A bowler who is affiliated to a national member federation of the ABF is, in principle, eligible to compete in an Open Tournament* [such as the Competition][2] *sanctioned by the ABF and WTBA. However, bowlers competing in Open Tournaments … generally do so in their individual capacities and with minimal financial assistance (if at all) from the relevant affiliated member bowling federations. In other words, it is the norm rather than the exception that a bowler is solely responsible for all costs and expenses associated with participating in an Open Tournament … As top amateur-status bowlers compete regularly in Open Tournaments, the costs associated with their participation are quite substantial. … Top amateur-status bowlers such as Mr Ibrahim therefore choose to compete in Open Tournaments which offer substantial cash prizes with the reasonable expectation of winning prize monies so as to be able to recoup participation costs. With almost 15 Open Tournaments and many other Championship Tournaments staged in Asia alone in 2006, the prize element of Open Tournaments is therefore an important consideration for top amateur bowlers such as Mr Ibrahim. … The … [Competition] was sanctioned by the ABF and WTBA on the basis that, amongst others, there would be a Perfect Game Award of RM 50,000. This 'sanctioned' status was granted almost two months prior to the … [Competition]. Although MTBC became aware, at least one week prior to the commencement of the …*

[2] Inserted for better understanding.

[Competition], that there was a real risk the Perfect Game Award of RM 50,000 would be replaced with that of a Canon printer … and that in all likelihood this material change to the Perfect Game Award would have major consequences, it failed to take adequate action to address the consequences and has not provided any written report on this issue to ABF or WTBA up to this day. MTBC … is fully aware that cash prizes constitute a major component of an Open Tournament sanctioned by the ABF and WTBA. Replacing the RM 50,000 cash prize with that of a Canon printer constituted material change to the … [Competition] which MTBC was obliged to notify the ABF and WTBA in writing. A material change of this nature invariably altered the 'sanctioned' status of the … [Competition], and would have necessitated further action by the ABF and WTBA had they been made notified beforehand".

121. Consequently, the Sole Arbitrator finds that the Appellant violated sec. 3.7.3 (c) of the WTBA Statutes and Playing Rules. In principle, a penalty requires that the member was at fault, i.e. that it breached the applicable rules with fault or negligence. In the case at hand, the MTBC acted – undoubtedly – with negligence. This is so even if one were to accept the explanation given by the MTBC, according to which the Perfect Game Award was from the outset a Canon printer and that the mistake occurred inadvertently by using the prize list of the 28th Malaysian Open Tournament as a template for creating the prize list of the Competition. Even so MTBC would have been aware of the "problem" at least a week prior to the Competition and, therefore, could have easily fulfilled its obligations under the applicable regulations (which it did not). Consequently, the Sole Arbitrator finds that the ABF Executive Committee was entitled to impose a penalty on the Appellant based on Art. X sec. 2 of the ABF Constitution.

D. Procedural issues

122. The Appellant submits that the decision of the ABF must be annulled also for various procedural reasons. At the outset, the Sole Arbitrator refers to his mandate in these proceedings. According to Art. R57 of the CAS Code he has full power to review the facts and law. Accordingly, this is a hearing *de novo*. According to constant CAS jurisprudence the effect of such a *de novo* hearing is that procedural flaws which occurred in a lower instance are cured before the CAS, since the latter completely re-hears the dispute (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Alphen aan den Rijn 2015, Art. 57 no. 12 et seq., 24 et seq.; 30). As a result, possible deficiencies – as denial of justice, or procedural irregularities – are unfortunate but without any effect in light of the *de novo* decision of CAS (MAVROMATI/REEB, op. cit., Art. 57 no. 24 et seq. with reference to CAS 2011/A/ 2343, no. 48 and no. 30 with reference to CAS 2006/A/1153, para. 54; CAS 2008/A/1480, no. 71). To conclude, therefore, the Sole Arbitrator fails to see in what way the procedural flaws raised by the Appellant have any effect on the procedure before him. On a purely subsidiary basis, therefore, the Sole Arbitrator discusses the following issues:

a) No opportunity to defend the charges

123. The Appellant alleges that the decision of the ABF is procedurally flawed because it did not have an opportunity to defend itself against the charges raised in the Respondent's letter dated 26 April 2007. The ABF Constitution does not provide for a specific procedure for disciplinary cases. However, the Sole Arbitrator holds that – even in the absence of specific rules – the basic

notions of fairness and procedural justice were observed. In particular, the Sole Arbitrator notes that the Appellant was informed by the Respondent of all procedural steps that were taken in the course of the proceedings and, by the letter of 26 April 2007, was not only informed of the breaches alleged against it but also provided with the opportunity to be heard on these charges.

b) Irregular composition of the Executive Committee

124. According to Art. X sec. 3 of the ABF Constitution, the ABF Executive Committee is the competent body to impose penalties. The Appellant submits that the Executive Committee was irregularly composed when it adopted the findings and the recommendations of the DRP. In this context the Appellant refers to Art. VII sec. 2 (g) of the ABF Constitution, which states that six members have to be present and ready to proceed to form a meeting of the Executive Committee. According to the Appellant, the required quorum was neither met at the ABF Executive Committee Meeting held in Kuwait on 14 April 2007 nor at the Executive Committee Meeting of 24 February 2008. The Appellant deduces this from the Robert Rules. In the Sole Arbitrator's view a distinction must be made between the quorum necessary to hold a meeting (of the Executive Committee) and the eligibility of the individual members to cast a vote. With respect to the quorum necessary to hold an Executive Committee meeting, the ABF Constitution requires the physical presence of six members (Art. VII sec. 2 [g]). In light of the clear and unambiguous wording of this provision it follows that the required quorum at both Executive Committee Meetings (14 April 2007 and 24 February 2008) was met. As to the eligibility of the individual member of the Executive Committee to cast a vote, the ABF Constitution does not provide for a specific rule. The Robert Rules state that *"no member should vote on a question in which he has a direct personal or pecuniary interest not common to the other members"*. It is obvious that no "personal pecuniary interest" is at stake here. The Sole Arbitrator, however, also fails to see why members of the Executive Committee would have had "a direct personal interest" when casting their vote, since the resolution did not affect them personally in any way. Whether or not the Executive Committee adopted the findings of the DRP did not affect or alter the personal status and conditions. This conclusion applies to all members of the Executive Committee independently of the fact of whether or not they previously were also members of the DRP.

c) Improper constitution of the Disciplinary Committee

125. The Appellant submits that the three members of the DRP were appointed to resolve the dispute between the Bowler and MTBC. This, according to the Appellant, follows from the DRP report dated 12 April 2007, where MTBC determined – *inter alia* – that a Disciplinary Committee be established to act on the findings of the DRP. In the Appellant's view, the DRP assumed that the Disciplinary Committee would be constituted differently from the DRP. The Appellant refers in that respect to the Robert Rules, according to which *"a Special Committee appointed to hear a trial should be composed of persons different from those on the preliminary investigating committee"*. Because of this (alleged) breach of the Robert Rules the decision of the ABF must be considered – according to the Appellant – to be null and void. The Sole Arbitrator objects to this reasoning. Neither the DRP nor the Disciplinary Committee acted as hearing panels (within the meaning of the Robert Rules). Both bodies only gave recommendations to the ABF Executive Committee. It was the latter that took the decision (by adopting the

recommendations). Only once the Executive Committee adopted the recommendations, the decision was communicated to the Appellant.

d) Did the WTBA decision given on 29 September 2010 fail to address the merits of the substantive issues of law and procedure raised?

126. The Appellant submits that the WTBA decision insufficiently addresses the objection raised by it in the appeal procedure. The Sole Arbitrator shares the Appellant's perplexity as to the form and contents of the WTBA decision dated 29 September 2010. It contains only one sentence, which denied the appeal. The Sole Arbitrator holds that a decision of a sports organisation – in particular in a proceeding lasting for several years and involving multiple rounds of submissions – requires a (short) reasoning that enables the addressee to understand the findings and the reasoning of the association tribunal (see Swiss legal doctrine: BODMER H., Vereinsstrafe und Verbandsgerichtsbarkeit, St. Gallen 1989, 129 f.; FUCHS C., Rechtsfragen der Vereinsstrafe, Unter besonderer Berücksichtigung der Verhältnisse in Sportverbänden, Zürich 1999, 142; GIGER H., Neue Wege der Konfliktbewältigung im Sport, Teil I, Causa Sport 2006, 478, 489). However, having said this, the Sole Arbitrator reverts to his above conclusion according to which procedural flaws in a lower instance do not affect a *de novo* hearing before the CAS.

e) The penalty imposed

127. The types of penalties provided for in case a member federation fails to observe the applicable rules are listed in Art. X sec. 2 of the ABF Constitution. According thereto the ABF can issue "fines", withhold "sanctioning of international tournaments" or suspend or terminate the membership in ABF. In its decision dated 24 February 2008, the ABF Executive Committee acted within the frame of penalties provided for in Art. X sec. 2 of the ABF Constitution. Furthermore, the Sole Arbitrator finds that there is no evidence on file which could cast doubt on the proportionality of the penalty imposed on the Appellant. The sheer fact that a fine was imposed on the Appellant that equals the amount originally foreseen for the Perfect Game Award is in itself not disproportionate.

XI. CONCLUSION

128. The Sole Arbitrator finds that the ABF Executive Committee acted lawfully when imposing a sanction on the Appellant in its meeting on 24 February 2008. In conclusion, the decision of the Executive Committee must be upheld (as well as the decision of the Presidium of the WTBA dated 29 September 2010) and the appeal dismissed. Consequently, ABF is under no obligation to refund the sum of RM 50,000 that has been paid by MTBC to the ABF.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The CAS has jurisdiction to hear the appeal filed by the Malaysian Tenpin Bowling Congress against Asian Bowling Federation.

2. The appeal filed by the Malaysian Tenpin Bowling Congress against the decision of the Asian Bowling Federation dated 24 February 2008 is dismissed.

3. (…).

4. (…).

5. All other and/or further reaching prayers of relief are dismissed.