TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

Arbitration CAS 2023/A/9757 International Boxing Association (IBA) v. International Olympic Committee (IOC), award of 2 April 2024

Panel: Mr James Drake KC (United Kingdom), President; Mr Jeffrey Benz (USA); Mr Patrick Lafranchi (Switzerland)

Boxing
Governance: withdrawal of the IOC's recognition of the IBA as the IF for the sport of boxing
Nature of the arbitration (international or domestic)
Extent of the principle of autonomy of Swiss associations
Legal basis for the withdrawal of recognition
Right to be heard
Abuse of a dominant position by the IOC
Violation of IBA's personality right
Assessment of the IBA's satisfaction of the IOC's condition with respect the recognition

1. **Under Swiss Private International Law Act (PILA) Article 176 para. 1, an arbitration is domestic, and thus subject to Part 3 of the Swiss Code de Procédure Civile (CPC), if the seat of the arbitral tribunal is in Switzerland and if, at the time when the arbitration agreement is entered into, both parties were domiciled or habitually resident in Switzerland. Pursuant to CPC Article 353 para. 2, *"The parties may exclude the application of this Part [3] by making an express declaration to this effect in the arbitration agreement or a subsequent agreement, and instead agree that the provisions of the Twelfth Chapter of the PILA apply. (…)"*. This provision is paramount for issues relating to disputes with a sports background, as the international sporting community has a vested interest in the uniform application of the PILA as the *lex arbitri.* Contrary to the reference to the Court of Arbitration for Sport in the Olympic Charter which is not sufficient grounding, a clause to opt into Chapter 12 of the PILA set forth in the Order of Procedure which fulfils the requirements set out in Articles 353 para. 2 juncto 358 CPC is a valid agreement between parties having both their seat in Switzerland.**

2. **Pursuant to the principle of autonomy of Swiss associations, the latter have a discretionary right with respect to their membership. The use of the word *"may"* in Rule 3.7 of the Olympic Charter grant the IOC a discretionary power to grant or withdraw recognition. It is also an essential element of the very nature of the IOC as a Swiss association, with a constitutional freedom of association, and thus with a broad measure of autonomy with respect to with whom it decides to associate and on whom, in this context, it decides to confer the status of IOC recognition. The relevant legal bases are to be found at the confluence of Article 28 (protection of legal personality) and Article 72 (exclusion of an association's member) of the Swiss Civil Code (SCC).**

3. The IOC Session, as the supreme body of the IOC, is clearly free to accept or reject the recommendations made by the IOC Executive Board. In the absence of any basis or evidence to support the contention that the IOC's withdrawal of recognition of a member was not a decision freely taken by the IOC Session in accordance with its constitutional powers, this allegation cannot be accepted. What is more, generally boards such as the IOC Session must necessarily act on the basis of recommendations made by one of their constituent body members.

4. The right to be heard is a fundamental right, protected by the Swiss Constitution (Article 29(2)) and by Articles 182 and 190 of PILA. It is a legal principle which must be respected by federations when taking their decisions and within their internal proceedings. The right to be heard does not include the right to present one's case orally but is complied with where a party has been afforded a number of opportunities over an extended period of time to make its case.

5. To establish an abuse of dominant position by the IOC, the relevant international federation must first establish that the IOC holds a dominant position in the relevant market. Insufficient or incorrect definition of the relevant market makes it impossible to conclude that a dominant position exists in that market. What is more, holding a dominant position is not *per se* unlawful. Rather, a dominant undertaking's refusal to deal with another market participant is unlawful if, and only if, such behaviour is unlawful. Therefore, the relevant international federation must also show that the IOC has abused its dominant position by acting exploitatively in the exercise of its dominant position. In this respect, an IOC's obstruction i.e. an IOC's intent to hinder competition must be established. In any event, even if the IOC was found to have abused its dominant position by withdrawing the relevant IF's recognition, its conduct would still be lawful if it was objectively justified by legitimate business reasons.

6. Protection against attacks on personality rights is governed by Article 28 SCC. Such rights may be invoked by natural and legal persons. A very significant part of the role of an IF, namely representing the sport at Olympic level, is immediately lost upon withdrawal of recognition. An IF will also suffer an economic contraction from the loss of recognition, that follows, if nothing else, from the loss of IOC fundings. The issue for consideration therefore is whether, pursuant to Article 72 SCC, the IOC had good cause to withdraw the IBA's recognition and whether, that outweighs the IBA's interest to protect its personality rights associated with recognition.

7. Pursuant to Article 72 SCC, a decision of the IOC to withdraw the recognition of an IF is justified by an overriding interest on the part of the IOC to ensure that those IFs on which it confers recognition comply with the conditions articulated by the IOC for such recognition i.e. finance, sporting integrity (as to referees and jugdes), and governance. The impairment of the federation's personality rights is not unlawful but justified where those conditions are not fulfilled. More precisely, the IOC's right to control the circumstances in and the conditions on which it confers recognition outweighs the IBA's personality rights.

I. THE PARTIES AND OTHERS

1. The International Boxing Federation (the "IBA" or the "Appellant") is a non-governmental not-for-profit organisation, with its registered office in Lausanne, Switzerland, formerly recognised by the IOC (defined below) as the international federation ("IF") governing the sport of boxing. (It was previously known as the Association Internationale de Boxe Amateur or "AIBA" but will be referred to herein as the IBA as a result of its name change.)

2. The International Olympic Committee (the "IOC" or the "Respondent") is the world governing body of Olympic sport, with its registered office in Lausanne, Switzerland. The IOC is incorporated as an association pursuant to Articles 60 *et seq.* of the Swiss Civil Code (the "SCC") and is governed by the Olympic Charter (the "Olympic Charter"). The general meeting of the IOC members is known (and will be referred to herein) as the IOC Session. It is the IOC's supreme organ.

3. The parties shall be referred herein collectively as the "Parties".

II. OUTLINE OF THE APPEAL

4. As set out below in some detail, on 22 June 2023 the IOC Session decided, inter alia, to withdraw the IOC's recognition of the IBA as the IF for the sport of boxing (the "Appealed Decision"). The IBA appeals against that decision on various bases and seeks to have it *"annulled and set aside in full"*.

III. FACTUAL BACKGROUND

5. Set out below is a summary of the relevant facts based on the Parties' written submissions, pleadings and evidence in these proceedings and from matters of public knowledge. While the Panel has considered all matters put forward by the Parties, reference is made in this Award only to those matters necessary to explain the Panel's reasoning and its decision. This dispute has had a long and difficult history and it is necessary to give a brief outline of that history in order to place the current issues in their factual context.

6. The IBA was, in the past, recognised by the IOC pursuant to Rule 25 of the Olympic Charter as the IF for the sport of boxing. The IBA has, however, suffered a long history of allegations of corruption and bout manipulation dating back, at the least, to corrupt behaviour by boxing referees at the Olympic Games in Seoul 1998, and the IOC and the IBA have had a long history of interaction since then in an attempt to eradicate corrupt behaviour within the sport of boxing.

7. The Olympic Games in Rio de Janeiro took place in 2016 (the "OG Rio 2016") Following the OG Rio 2016, a number of IBA members, along with various media outlets, made, or made public, allegations against the IBA in relation to the corrupt conduct of IBA senior staff and IBA referees and judges in the OG Rio 2016 (and in previous Olympic Games in Athens Sydney and London). In response:

a. The then president of the IBA, Dr Ching-Kuo Wu ("Dr Wu") established a Special Investigation Committee (the "SIC") within the IBA to investigate allegations with respect to, in particular, what occurred at the OG Rio 2016. The SIC conducted its investigation over a period of four months and, amongst other things, concluded that there was a "bad culture" within the IBA that was driven by *"power, fear and lack of transparency"*.

b. The Executive Board of the IOC (the "IOC EB") requested the IBA to undertake steps to address serious concerns related to its governance and financial stability. The IOC EB requested a financial audit, an independent review, and changes to the rules relating to referees and judges (sometimes referred to herein as "R&J").

8. On 6 December 2017, the IOC suspended the IOC's financial contributions to the IBA until the IBA's problems over governance and finances were resolved.

9. On 12 December 2017, the IOC informed the IBA that it had significant concerns regarding the governance and financial stability of the IBA and called for a full report from the IBA by 31 January 2018. The IOC also set down a number of steps to be taken by the IBA in relation to governance, management, finance, and sporting integrity (both R&J and anti-doping).

10. On 27 January 2018, Mr Gafur Rakhimov ("Mr Rakhimov") was appointed as interim president of the IBA. At the time, Mr Rakhimov was designated by the US Department of Treasury as a member of an international crime syndicate and was subject to sanctions. According to the US Department of Treasury, Mr Rakhimov was *"one of the leaders of Uzbek organized crime with a specialty in the organized production of drugs in the countries of Central Asia"*.

11. On 31 January 2018, the IBA prepared and submitted to the IOC a report headed 'AIBA Progress Report to the IOC Executive Board' (the "2018 IBA Progress Report") on the IOC's *"expected steps"* in relation to governance, management, finance, and sporting integrity (both R&J and anti-doping).

12. On 7 February 2018, the IOC decided (a) to maintain its decision to suspend its funding to the IBA and (b) to open an investigation into the governance of the IBA, to be conducted by the IOC Chief Ethics and Compliance Officer. The IBA was informed the next day, and the IOC asked the IBA to submit a further report by 25 April 2018.

13. On 25 April 2018, the IBA submitted a further report to the IOC. The report addressed the IBA's current and future actions in the fields of governance, management, finance, and sporting integrity.

14. On 3 May 2018, the IOC considered the further information provided by the IBA and concluded that its key concerns had still not been addressed and that further information was required. The IOC also decided to maintain its decision suspending IOC funding to the IBA. The IOC put down a marker that should the matters not be fully implemented to the satisfaction of the IOC, then the IOC reserved the right to review the inclusion of boxing on the programme for the OG Tokyo 2020. The IOC also set out a number of actions which

were said to be *"Required AIBA actions by 6 July"*, including as to governance, ethics, management, finance and sporting integrity.

15. On 6 July 2018, the IBA submitted a further progress report which the IOC considered on 19 July 2018. The IOC decided that it still had concerns with respect to governance, ethics, management, finance and sporting integrity and it decided to maintain its decision to suspend IOC financing to the IBA. The IOC set down, once again, a number of matters to be addressed by the IBA by 12 November 2018.

16. On 12 November 2018, the IBA submitted a further progress report to the IOC, which the IOC considered on 30 November 2018. The IOC decided to initiate a formal inquiry into the IBA pursuant to Rule 59 of the Olympic Charter into the affairs of the IBA and appointed an 'Inquiry Committee' (the "IOC Inquiry Committee"): (a) to analyse the measures taken by the IBA regarding governance, ethics, financial management and refereeing and judging; (b) to investigate and assess these areas of major concern; and (c) to make a recommendation to the IOC on potential measures and sanctions in accordance with the Olympic Charter.

17. On 28 March 2019, the then AIBA Executive Committee member (and current IBA President), Mr Kremlev wrote to the IOC offering to meet all of the IBA's indebtedness himself.

18. On 21 May 2019, the IOC Inquiry Committee issued its report entitled 'the IOC Inquiry Committee on AIBA Situation: Report to the IOC Executive Board dated 21 May 2019' (the "the IOC Inquiry Report"). The IOC Inquiry Committee made the following conclusions and recommendations:

*"**Conclusions***

The IOC Inquiry Committee, having taken into consideration all the information provided by AIBA, as well as its explanations provided during the official meeting held on 20 May 2019 in Lausanne, and the Deloitte final report, comes to the following conclusions:

- *Serious governance issues remain, including breaches of the Olympic Charter and the IOC Code of Ethics regarding good governance and ethics, leading to serious reputational, legal and financial risks for the IOC, the Olympic Movement and its stakeholders;*

- *AIBA has been unable to demonstrate a sustainable and fair management of refereeing and judging processes and decisions, increasing the lack of confidence that athletes can have in fair competitions;*

- *The election as AIBA President of a person designated on the US Treasury list exposes the IOC, the Olympic Movement stakeholders and its partners, to unacceptable reputational, legal and financial risks; and*

- *The continuous very high level of indebtedness and the lack of liquidity, as highlighted by Deloitte, will oblige AIBA to primarily use any revenue, including from the Olympic Games Tokyo 2020 and beyond, to cover its existing debts. Thus, AIBA will not be able to use the money from sport for the development of sport and the support of the athletes and might remain financially at risk of insolvency.*

Recommendations

Following the conclusions above, the IOC Inquiry Committee considers that such accumulation of risks would justify the withdrawal of the recognition of AIBA as an International Federation by the IOC.

However, taking into consideration the interests of both the sport of boxing and the athletes, the IOC Inquiry Committee wishes to make the following recommendations, which should allow a real change in the governance of the sport of boxing:

The IOC Executive Board to propose to the IOC Session:

1. to suspend the IOC recognition of AIBA until sustainable improvements have been made in the areas of governance, ethics, refereeing and judging as well as financial stability and going concern; and

2. to allow, on an exceptional basis and given the specific circumstances, the IOC Executive Board to develop a solution that allows the athletes of Olympic boxing to attend qualification events and the Olympic Games Tokyo 2020".

19. Following the IOC Inquiry Report,

    a. The IOC established the 'IOC Boxing Task Force' (the "IOC Boxing Task Force") to deliver the boxing tournament at the Olympic Games Tokyo 2020 ("OG Tokyo 2020").

    b. The IOC established the 'IOC Special Monitoring Committee' (the "IOC Special Monitoring Committee") to monitor the IBA in the various areas of concern.

    c. On 26 June 2019, the IOC Session decided, amongst other things, to suspend its recognition of the IBA.

20. On 12 and 13 December 2020, the IBA elected Mr Kremlev as President of the IBA.

21. On or about 11 June 2021, the IBA engaged McLaren Global Sport Solutions Inc. ("McLaren Sport"), headed by Prof. Richard McLaren ("Prof. McLaren"), to conduct that investigation. McLaren Sport submitted three reports to the IBA: the first on 30 September 2021 (as to what took place at the OG Rio 2016); the second on 10 December 2021 (as to what has taken place since the OG Rio 2016); and the third on 22 June 2022 (as to the conduct of past presidents of the IBA and the individuals involved in the management, administration and finances of the IBA from 2006 to 2020). These reports are addressed below in chronological order.

22. On or about and shortly after 30 June 2021, the IBA also engaged a group comprising Prof. Ulrich Haas, Ms Melanie Schärer, Ms Annett Rombach, Dr Stephan Netzle and Dr Heiner Kahlert (known as the 'Governance Reform Group' (the "GRG")) with the principal task, as described by the GRG, as follows: *"In order to assist AIBA with its governance reform, the Board of Directors ("Board") appointed an independent expert group ("GRG") to assess AIBA's governance, to elaborate recommendations ("Recommendations") as to how AIBA's governance could be improved and to assist in the implementation of the Recommendations"*. The GRG issued two reports: the first dated

15 November 2021 by which it made a number of recommendations; and the second on 25 August 2022, which contained a *"high-level analysis"* of the implementation of the GRG's recommendations.

23. On 14 September 2021, at the close of the two-year monitoring period undertaken by the IOC Special Monitoring Committee, the IOC issued a decision in which it was noted that there were unresolved concerns with respect to the IBA's governance, finance, and R&J. The IOC DG and the IOC Chief Ethics and Compliance Officer were asked *"to follow up on the situation and analyse the various elements available with a view to producing a new assessment of the situation"*.

24. On 30 September 2021, McLaren Sport issued its first report ("McLaren Report 1"). The 153-page report addressed the outcomes of the boxing competitions at the OG Rio 2016. Amongst other things, McLaren Sport reported that the R&J processes had been corrupted and that a number of potential manipulations of the R&J processes took place during the tournament. "Key findings" included the following:

> *"1. A system for the manipulation of bouts by officials existed at Rio. The seeds of this were sown years before starting from at least the Olympic Games of the twenty-first century through the events around 2011* […] *and London 2012.*
>
> *2. The qualifying competitions along the route to participation in Rio in 2016 were the practise ground for the corruption and manipulation of bouts at Rio. At the Olympic qualifiers the manipulation methodology was fine-tuned in anticipation of use at Rio.*
>
> […]
>
> *3. Key personnel took on powers they did not have on paper.* […]
>
> *6. Vital to the success of the corruption was the connivance, approval and complicit acknowledgement and support of* […] *the Executive Director and the President.* […]
>
> *7. Bouts were manipulated for money, perceived benefits of AIBA, or to thank National Federations and their Olympic committees* […] [which] *involved significant six-figure sums on occasions* […]*"*.

25. On 15 November 2021, the GRG issued its report. The GRG reported that the IBA *"has made numerous changes to its rules and regulations in the recent past with the aim of improving its governance structure. These developments point in the right direction. The GRG, however, also notes that despite the above, AIBA was, and still is, in a serious crisis. In order to overcome this crisis and restore trust in AIBA, further far-reaching measures are urgently required"*. The GRG created, from various sources including in particular the benchmarks developed by the International Partnership against Corruption in Sport, a set of consolidated benchmarks against which the IBA was measured and issued a number of recommendations for the reform of governance at the IBA (the "GRG Recommendations"). The GRG Recommendations may be summarised as follows:

    a. Recommendations on integrity: An Independent Integrity Unit (the "IIU") should be established that is operationally independent from all other IBA bodies, to be responsible for the monitoring and investigation of integrity issues. The IIU shall be

administered by a coordinator to supervise the annual budget of the IIU, act as a point of contact with the IIU, and collect and collate its reports and report to the IBA Board and Congress. The IIU is to comprise the following sub-units:

i. the Compliance Unit;

ii. the Nomination Unit;

iii. the Anti-Doping Unit; and

iv. the Education and Development Unit.

b. Recommendations on democracy:

i. The size of the IBA Board should be reduced.

ii. The IBA Board shall be comprised of people with the required skills.

iii. The IBA Council should be dissolved.

iv. The IBA should establish clear and comprehensive eligibility rules for management and leadership positions.

v. The IBA should establish a diversity policy.

vi. The IBA Congress should meet once a year, and the Board to meet as often as necessary, but a minimum of six times a year.

vii. The IBA committees should be reorganised, with the current committees to be replaced by:

- Corporate Governance Committees: Audit Committee; Finance Committee; Strategy Committee; and Athletes Committee.

- Technical and Management Commissions: Competitions; Refereeing & Judging; Marketing; Diversity; Coaches; Medical; Champions & Veterans; and Member Federations.

c. Recommendations on 'Checks and Balances':

i. There shall be no President's Office; it should be abolished.

ii. The Secretary General position should be elevated to a "true" CEO.

iii. The Audit Committee should not provide financial advice to the IBA. It should be turned into a true independent body performing the task of internal auditing, and to be responsible for reviewing and monitoring statutory, regulatory, financial and legal compliance.

iv. The IBA Constitution should be amended to provide explicitly that the IBA Board *"can hold the President and the Secretary General accountable for the running of AIBA's affairs"*.

v. The IBA should develop a long-term strategic plan.

vi. The tasks of the IBA Congress vis-à-vis the IBA Board with respect to the IBA budget should be better defined.

d. Recommendations on crisis management:

i. The IBA is in serious crisis, and the crises it faces *"especially those of a structural nature, require special measures"*. Additional measures are therefore required *"to restore the stakeholders' trust and confidence in AIBA"*.

ii. These additional measures are:

- There should be a *"fresh start"* in leadership. *"Any Board member who made his / her career within AIBA predominantly during the eras of former Presidents Ching-Kuo Wu and/or Gafur Rakhimov should not form part of the Board to be elected in 2022"*.

- The IBA should appoint a Liaison Officer to work closely with the IOC *"and take all measures necessary to improve the working relationship"* with the IOC.

- The IBA should appoint an *"external structuring expert"* for the management of the current financial crisis. *"This expert should advise AIBA on appropriate restructuring measures to restore AIBA's financial viability"*.

iii. The President should visit Head Office *"as frequently as possible"*.

e. Recommendations on the timeline:

i. *"The GRG recommends that its Recommendations be implemented by AIBA before the Electoral Congress scheduled for 2022. The GRG is happy to advise AIBA on any questions in respect of the implementation of its Recommendations"*.

26. On 26 November 2021, the IBA Board adopted the GRG Recommendations.

27. On 8 December 2021, the IOC DG and the IOC Ethics and Compliance Officer issued an interim report in relation to its analysis of the position with respect to the IBA (the "IOC DG / CECO Interim Report"). The IOC DG / CECO Interim Report critiqued the steps taken by the IBA with respect to: (a) finance; (b) R&J; and (c) governance. The report's analysis of these three areas and its recommendations were as follows:

3. Analysis of the three areas of concern

3.1. Finance

Following the EY report, the IOC acknowledges that, with the financial revenue provided in particular by the Gazprom contract, the part of the indebtedness including the liability towards the company Benkons was paid off. However, it is noted that the contingent liability related to the FCIT contract (over USD 18.9 million plus interest as per AIBA's financial statements as at 30 June 2021) is still open, the claim being contested by AIBA and no settlement having been reached to date.

Real financial transparency is still to be reached. This is illustrated with the Gazprom contract, which AIBA did not share with the IOC. It must be noted that a very restrictive non-disclosure agreement was proposed by the IOC, which AIBA refused; AIBA agreed however to enter into a non-disclosure agreement with EY.

Due to the non-disclosure of the content of the contract with Gazprom, in particular the global amount paid by Gazprom and AIBA's performance obligations from the contract, it is not clear what the real nature of this contract could be. This also raises questions about how this contract was negotiated and approved by AIBA.

Already in 2019, AIBA's financial dependence on consecutive single sources of revenue from external investors was highlighted and defined as one of the causes of its indebtedness. The importance of the Gazprom contract, in proportion to the other revenues, may raise the risk of falling into a similar scheme. Therefore, the IOC encourages AIBA to develop its capacity to be more financially diversified and thus to become more sustainable in the long term.

It should also be noted that the International Federation's dependence on a state-owned company may also raise concerns regarding the potential situation of conflict of interest and autonomy.

As a consequence, the IOC encourages AIBA to increase its financial transparency and diversify its sources of revenue. In the meantime, the IOC will continue to monitor the evolution of AIBA's financial situation.

3.2. Refereeing & Judging (R&J)

The boxing tournament at the Olympic Games Tokyo 2020 demonstrated that it is possible to organise boxing competitions without putting the credibility of the results into doubt. The processes gained the full support and satisfaction of the vast majority of the athletes and the delegations.

PwC's audit of the AIBA Men's World Championships in Belgrade (Serbia) highlighted the remaining risks regarding integrity linked to potential human interference in the AIBA R&J process.

Therefore, the IOC encourages AIBA to change its R&J process to ensure the integrity of this process.

PwC, with the support of experts, will monitor the integrity of AIBA's own competitions ahead of the Olympic Games Paris 2024. Such assessment will also be taken into consideration for the inclusion of boxing in the Olympic Games programme.

3.3. Governance

The IOC already acknowledged improvements through the first 2020 AIBA constitutional reform, which were illustrated in the ASOIF Survey results. However, the governance reform measures proposed by Professor Haas' team, which have been approved by AIBA's Board of Directors, still need to be adopted by the Extraordinary Congress and to be fully implemented.

The IOC notes that Professor Haas has been asked to support AIBA to facilitate the full implementation of the measures recommended. In addition, it is also noted as part of this process that the elections for the renewed Board of Directors will take place in 2022.

The IOC encourages AIBA to fully and effectively implement the set of recommendations proposed by Professor Haas and his team before the IOC can reassess the situation.

In addition, the IOC encourages AIBA to ensure that all national teams are able to participate in AIBA's competitions, including with formal written reassurance from the relevant national authorities when needed.

4. Recommendations

Based on the above interim report, it is recommended that the IOC Executive Board tasks the IOC Director General and the IOC Chief Ethics and Compliance Officer with:

- *Defining a roadmap in consultation with AIBA to address the following areas of concern, in particular but not limited to:*
    - *With regard to finance, to increase financial transparency and sustainability including through diversification of revenues;*
    - *With regard to the credibility of the boxing competitions, to change its R&J process to ensure its integrity under the monitoring of PwC, including a monitoring period for AIBA's own competitions ahead of the Olympic Games Paris 2024; and*
    - *With regard to governance, to ensure the full and effective implementation of all the measures proposed by Professor Haas and his team, including the change of culture.*
- *Keeping the IOC Executive Board updated".*

28. On 9 December 2019, the IOC wrote to the IBA as follows (the "IOC Letter of 9 December 2021"):

"Dear Mr Kremlev,

Following the two-year long oversight on the AIBA situation conducted by the IOC Special Monitoring Committee, in September 2021 the IOC Executive Board took note of the various unresolved concerns remaining in the areas of governance, finance and referees and judges (R&J) and asked the IOC Director

General and the IOC Chief Ethics and Compliance Officer to follow up on the situation and analyse the various elements available with a view to producing a new assessment of the situation.

This comprehensive analysis, which included the review of the various external experts' conclusions, was consolidated in an interim report and discussed by the IOC Executive Board at today's meeting. A copy of the interim report is enclosed.

Based on the findings of the interim report, the IOC Executive Board tasked the IOC Director General and the IOC Chief Ethics and Compliance Officer with:

- *Defining a roadmap in consultation with AIBA to address the following areas of concern, in particular but not limited to:*
    - *With regard to finance, to increase financial transparency and sustainability including through diversification of revenues;*
    - *With regard to the credibility of the boxing competitions, to change its R&J process to ensure its integrity under the monitoring of PwC, including a monitoring period for AIBA's own competitions ahead of the Olympic Games Paris 2024; and*
    - *With regard to governance, to ensure the full and effective implementation of all the measures proposed by Professor Haas and his team, including the change of culture.*
- *Keeping the IOC Executive Board updated.*

It should be noted that, should the above-mentioned conditions be met by AIBA to the satisfaction of the IOC, the suspension of AIBA's recognition could be lifted in 2023.

As part of the initial steps of this roadmap and with regard to the Olympic Games Paris 2024, without prejudice to any IOC decision regarding AIBA or the inclusion of boxing in the Olympic Sports Programme, AIBA is required to:

i. Develop the Boxing Qualification System, and

ii. Define the weight classes for the 13 boxing events (7 men's and 6 women's) confirmed for the Paris 2024 event programme.

Both proposals shall be developed in consultation with the appropriate AIBA's [sic] *Committees and submitted to the IOC no later than 31 January 2022, the final approval of which will be subject to the IOC Executive Board.*

The above-mentioned considerations and concerns were also taken into account in today's proposal by the IOC Executive Board to the IOC Session on the list of sports to be included in the initial sports programme of the Olympic Games Los Angeles 2028 (hereafter "LA28 initial sport programme") in view of a final decision at the IOC Session to be held in Beijing (CHN) on 1-2 February 2022.

Upon recommendation of the Olympic Programme Commission the IOC Executive Board decided to not propose the inclusion of Boxing in the LA28 initial sport programme.

In finalising its proposal the IOC Executive Board noted that Boxing may be included to the LA 28 initial sport programme by the IOC Session in 2023, if by then AIBA will have demonstrated to the satisfaction of the IOC Executive Board that it has successfully addressed the ongoing concerns around its governance, its financial sustainability and the integrity of its refereeing and judging processes.

We trust in your understanding of the IOC position. In the coming months, consultation on the next steps of the above-mentioned roadmap will be organised by the IOC. …".

29. On 10 December 2021, McLaren Sport submitted a second report, this time addressing the post-OG Rio 2016 issues of corruption and manipulation ("McLaren Report 2"), which report was provided to the IOC the same day. McLaren Sport set forth a number of *"key findings"* and made a number of recommendations. The key findings included as follows:

> *"1. The AIBA organisation is enveloped by the tentacles of some of its former senior management and elected personnel … One of the prime characters in this drama is former Executive Director Karim Bouzidi. He led the scheme to manipulate some R&Js in their judging of bouts at Rio.*
>
> …
>
> *5. A system of manipulation was enabled by the organisational problems in the interregnum period. The manipulation of bouts that existed and flourished from 2016 to 2021 was more ad-hoc and less centralised than what was found to be present at Rio.*
>
> *6. The pressures on officials to manipulate the bouts continued to come from some National Federations and National Olympic Committees. Their effectiveness varied depending on the official's perception of personal harm or other potential retaliation and favour.*
> …
>
> *9. Lower-level cheating by some R&Js and ITOs exists to pass accreditation exams. This damages the integrity of such an official from the very first time they are engaged as an R&J or ITO. The selection accreditation process requires a complete review.*
>
> *10. The disciplinary process failed all AIBA stakeholders …*
>
> *11. The disciplinary process and the codes of conduct did not allow for the proper collection of evidence. This needs to be reviewed and rectified.*
>
> *12. Some evidence is emerging that bout manipulation may be occurring to facilitate gambling syndicates which will need to be examined further in Stage 2.*
>
> *13. There has been noticeable improvement in the operation and administration of AIBA due to the leadership of the current President and the officials he has appointed such as the new Secretary General Istvan Kovacs and others".*

a. The recommendations included as follows:

   i. The establishment of an Independent Integrity Unit.

   ii. The establishment of a *"whistleblower hotline"*.

   iii. Limitation on terms for elected officials; and full disclosure of outside interests.

   iv. Implementation of a programme of education in relation to dealing with corruption.

   v. Review and revise the Codes of Conduct and Ethics.

30. On 12 December 2021, the IBA held an Extraordinary Congress during which, amongst other things, the GRG Recommendations were adopted.

31. On 20 December 2021, the IBA responded to the IOC Letter of 9 December 2021 in which response the IBA said that it looked forward to *"cooperating with the IOC on a roadmap that covers the areas you mention"* and that *"the IBA will also deliver progress on the other issues raised in the IOC's interim report. We will provide you with updates as this delivery occurs. The new IBA has only been able to make such comprehensive progress on the key issues of sporting integrity, financial integrity and governance reform because we have been working to a clear roadmap, that we look forward to developing further with the IOC"*.

32. On 7 January 2022, 11 of the IBA's national federations ("NF") wrote to the IBA expressing their concerns about boxing being dropped from the Olympic Games Paris 2024 ("OG Paris 2024") and excluded from the Olympic Games Los Angeles 2028 ("OG Los Angeles 2028") and to *"discuss how NFs can assist IBA regain trust and recognition of the IOC"*. The NFs proposed a meeting at IBA's offices in Lausanne.

33. On 21 January 2022, the IOC sent the IBA a letter making, inter alia, the following points:

   a. The IOC has been in contact with the GRG and the IOC is pleased to see that the implementation of the reforms is about to start.

   b. The final assessment by the IOC will take place in 2023. This will provide the IBA with enough time to organise its elections so as to *"to fully and effectively implement the full set of governance recommendations and to reach the high standards in the R&J processes"*.

   c. The deadline for the IBA's delivery of the qualifications system and weight classes for the Olympic Games Paris 2024 is extended to 25 February 2022. Both proposals will be subject to final approval by the IOC.

   d. The IOC requested a copy of the IBA's Technical Official's Selection Process and any additional supporting documents.

e. The IOC is willing to assist the IBA in these respects. The assistance will include the expertise of PwC for an independent assessment and for providing further detailed recommendations, when needed, to be implemented by IBA. PwC will be hired directly by the IOC, all these costs will be covered by the Olympic Games' revenue contribution from boxing.

34. On 3 February 2022, the IBA called for candidates for its Board of Directors in preparation for the upcoming elections to be held in Istanbul, Turkey on 13-14 May 2022. The IBA said that nominations would be vetted by the IBA's Interim Nomination Unit (the "INU") and that nominations closed on 2 March 2022.

35. On 7 February 2022, the IOC wrote to the IBA saying that the IOC has decided not to include, at this stage, boxing in the OG Los Angeles 2028 programme, but the IOC Session may decide to include it when it meets in 2023 *"if the IBA has demonstrated by then that it has successfully addressed the various ongoing concerns outlined in our previous letter dated 9 December 2021"*.

36. On 2 March 2022, Messrs van der Vorst, McAtee, Hartley, and Sjöholm (the "CCA Candidates") lodged their nominations for the IBA elections for President and the Board of Directors.

37. On 16 March 2022, a group of 19 NFs, acting under the banner 'The Common Cause Alliance' (the "CCA") wrote to the IBA expressing concern in relation to Gazprom being the IBA's sole sponsor in light of the sanctions imposed on Russia by reason of the Russian invasion of Ukraine and the resultant financial impact on the IBA.

38. On 30 March 2022, the IBA sent to the IOC an updated version of the IBA's Olympic qualification system for boxing.

39. On 31 March 2022, the IBA agreed to extend the GRG's mandate until the end of 2022.

40. On 1 April 2022, the IOC DG wrote to the IBA in relation to the weight categories for the 13 boxing events for the OG Paris 2024 and said as follows:

"The IOC will continue to support the implementation of the roadmap, communicated in the letter dated 9 December 2021 ahead of the IOC Session in 2023 where boxing may be included in the programme, if IBA has demonstrated to the satisfaction of the IOC EB that it has successfully addressed ongoing areas of concerns. …".

41. On 11 and 13 April 2022, respectively, the Serbian Boxing Federation and the Venezuelan Boxing Federation filed complaints against the CCA Candidates, requesting the INU to conduct an investigation into the CCA Candidates on the bases that the CCA had participated in another international boxing organisation, that the CCA Candidates campaigned outside the electoral period, and that they had colluded together in a fraudulent effort to manipulate the elections.

42. On 12 April 2022, the IOC acknowledged receipt of the IBA qualification system *"which was recently approved by the* [IOC EB]*, as one of the first steps of the roadmap established by the IOC"*.

43. On 21 April 2022, the INU issued its list of eligible candidates for the elections. The CCA Candidates were listed, with Mr van der Vorst listed as eligible to stand in the elections for director and president.

44. On 28 April 2022, the INU requested the IBA Disciplinary Committee (the "IBA Disciplinary Committee") to determine whether the conduct of the CCA Candidates amounted to a breach of the IBA Disciplinary Code and whether, if so, they should be sanctioned.

45. On 2 May 2022, the IBA replied to the IOC addressing the *"Implementation of the Olympic Qualification System for the boxing tournament of Paris 2024"*. The IBA addressed the topics set forth by the IOC in its letter of 12 April 2022, viz., (a) the confirmation of host cities of ranking-qualifying events; (b) the governance and financial structures of the events; (c) the ranking system per se (point distribution and its reasonings); and (d) the guarantees of acceptable levels of Technical Officials' management, particularly, that of referees and judges.

46. On 10 May 2022, the IOC replied to the IBA, making the following points:

    a. The IOC's recognition of the IBA is suspended.

    b. The IOC has consistently said that significant concerns remain in each of the key areas of governance, refereeing and judging, and the financial sustainability of the IBA.

    c. The IOC has concerns regarding the necessary details of OG Paris 2024.

    d. The IOC still has concerns as to the IBA's capacity to execute a complex management system for the of Technical Officials.

    e. The IOC repeats its request for the full details of your new ranking system, including the calendar.

    f. Boxing is not currently included in the sports programme of OG Los Angeles 2028, with concerns remaining in the key areas of governance, financial sustainability and the proven integrity of the refereeing and judging systems.

47. On 11 May 2022, the IBA Disciplinary Committee issued its decision, finding the CCA Candidates not guilty of all the charges that the INU had referred to it for determination.

48. On 12 May 2022, the INU issued its decision finding that the CCA Candidates had engaged in prohibited electioneering through the CCA. The INU found that it had *"no other option"* but to declare that the CCA Candidates were ineligible to participate in the elections.

49. On 13-14 May 2022, the IBA held its Extraordinary Congress in Istanbul, Turkey, the principal purpose of which was to conduct elections for president and for independent board directors. Mr Kremlev was voted in as IBA President, unopposed.

50. On 17 May 2022, the CCA Candidates appealed to the CAS against the decision of the INU. This became CAS 2022/A/8862-8873-8874-8875.

51. On 14 June 2022, the Sole Arbitrator in CAS 2022/A/8862-8873-8874-8875 issued his award in which the INU's decision to exclude the CCA Candidates from the election was set aside (with a note on the part of the Sole Arbitrator that he had no power to order a new election but that a new election would be the *"logical"* thing to do) (the "CAS 8862 Award").

52. On 20 June 2022, McLaren Sport issued its 'Report Final Stage' (the "McLaren Third Report") in which it made a number of *"key"* findings and recommendations. The key findings were as follows:

"1. More than a decade of financial mismanagement created a damaging legacy that hung over the management and administration of the sport until recently.

2. The pursuit of investments for unrealistic business plans and the implementation of the ventures contributed to the improper management and administration of the sport and of the planned ventures.

3. Corruption was allowed to creep in and take hold of the organisation because of the senior management's excessive focus on finding investments for unrealistic ventures. Insufficient attention was paid to the administration of the sport and its officials. When those enterprises never materialised, the sport suffered a huge financial burden that nearly caused its collapse. The singular focus of management became finding funds to repay the loans and pay the staff. The combination of attrition and the lack of financial resources ultimately resulted in the organisation being left with a skeleton staff to run itself.

4. There is a lack of a fully developed IBA set of educational material for R&Js and ITOs to be used by NFs for training sessions at IBA level competitions. The materials that exist are not delivered by qualified instructors. The training language is English and simultaneous translation is not always available. The consequences are that there is no adequate training and development strategy to ensure advancement of R&Js and ITOs.

5. Overriding the automated draw system by manual interference facilitates the possibility of bout manipulation. The problem is caused by the neutrality principles the sport uses to select R&Js not properly reflected in the automated system, thereby justifying manual draws. Nevertheless, there are far too many manual interventions. This occurs at IBA and Continental Confederation level tournaments.

6. There continue to be reports of officials fulfilling roles that they are not capable of doing despite having credentials suggesting that they could perform the role. The problem is caused by the control of the selection of officials by the Continental Confederations and NFs with a lack of IBA involvement.

7. The Code of Conduct and the rules of the FOP are constantly being breached particularly as they relate to mobile phone use and succumbing to pressure by those who should not be in the FOP. These types of seemingly minor infractions reinforce the past culture which disregarded the ethics and integrity of the sport.

8. Too many people have accreditation to access the FOP without the necessity of being there. Those without accreditation can also be found from time to time in the FOP. Some of these individuals attempt to influence officials or even abuse them.

9. The vetting process and use of the Artificial Intelligence ("AI") tool together with followup vetting has identified potential high-risk R&Js and ITOs who as a consequence have not officiated at the particular tournament. The benefit of the process and presence of the MIIT investigators has been the greater sense of security and protection without interference of external pressures on R&Js and ITOs".

53. McLaren Sport's *"key"* recommendations to the IBA were as follows:

"1. The MIIT investigation Reports identify and describe the pathway to cultural reform of the IBA and its members. The Board ought to commission a cultural review. This review needs to provide a basis for which to alter past inappropriate behavioural attitudes.

2. The Board of Directors to seek funding to establish a Training Academy for the purpose of training senior management and national federation management as well as R&Js and ITOs. That training should include instruction on ethical decision-making, match-fixing and rule compliance for R&Js and ITOs. For senior management, it would involve leadership development and occupational skill development.

3. The IBA should develop comprehensive written training and educational programs for the certification and subsequent progression of R&Js and ITOs. The developed material should be made available and required to be used by all National Federations for the fulfillment of their educational role of R&Js and ITOs.

4. The accreditation process for access to IBA and Confederation level competitions should be removed from the Local Organising Committee and the President's office and be centralised and controlled by the IBA staff.

5. There are a series of recommendations in Chapter seven for the rigorous enforcement of the rules of the FOP and the integrity of IBA internal stakeholders".

54. On 24 June 2022, the IOC wrote to the IBA in relation to the CAS 8862 Award. The IOC informed the IBA that:

"The ruling adds to the very serious concerns around IBA's governance, its financing and refereeing and judging system, which the IOC had, unfortunately, to express on multiple occasions.

In the interest of the athletes and the boxing community, the IOC EB decided unanimously that the boxing qualifying events and the competitions at Olympic Games Paris 2024 will not be run under the authority of the IBA. …

Whether boxing will be included in the sports programme of the Olympic Games Los Angeles 2028 will be discussed at a later stage".

55. On 22 July 2022, according to GRG, the IBA informed the GRG that *"it had decided to abandon external consultants and to proceed with the implementation of the GRG recommendations with its internal resources".* The GRG mandate was therefore terminated.

56. On 25 August 2022, the GRG issued a 'Short Summary Report 25 August 2022' (the "GRG Summary") the stated purpose of which was (a) to set out in a summary fashion the GRG's high-level analysis of the implementation of the GRG Recommendations and (b) to help the

IBA to plan its future work on governance and the further course of the implementation process. The salient points within the report may be summarised as follows.

a. The BIIU:

i. The GRG had recommended the creation of a BIIU. The BIIU (and its subdivisions) *"now have a sound legal basis in the IBA Constitution"*. Further, the IBA has delegated several results management tasks to the International Testing Agency (the "ITA"). *"Consequently, the legal implementation of the BIIU into the IBA rules and regulations is, in principle, completed"*.

ii. The GRG had recommended that the BIIU be operational before the IBA Extraordinary Congress holding the elections for president and directors. With the IBA's decision to hold the elections in May 2022, this was not possible and the IBA decided that it wanted the new board to decide on the structure of the BIIU. The IBA envisaged that the BIIU would be in place by the end of the year, so that at the time of the report the matter was said to be *"still pending"*.

iii. Given the delay, the GRG recommended that the tasks of the BIIU should be allocated to other organs of the IBA. This has a sufficient legal basis in the IBA Constitution in that the rules provide for the Ethics Committee and the Disciplinary Committee in the interim. The heavy case load of these committees could not be completed before the elections; they should be properly funded and staffed to ensure that happens.

iv. The INU *"had a significant impact on the elections for the position of President and the Board by excluding, on the day before the elections, the candidates … based on complaints that had been filed approximately one month earlier"*. This decision was quashed by CAS. The annulled decision *"put IBA in a very difficult position at a time when IBA was under special scrutiny – as evidenced by the IOC's decision that the boxing qualifying events and competitions at the Olympic Games Paris 2024 will not be run under the authority of IBA, which decision was taken in direct reaction to the … CAS decision"*, This decision will also cause the IBA to incur costs in that the elections need to be repeated.

v. The GRG therefore *"encourages IBA to evaluate any changes in respect of the (interim) Nominations Unit and/or the applicable substantive rules that could minimize the risk of such an unfortunate course of events in future elections"*.

vi. There seemed to be *"conflicts of competence"* between the INU and the Disciplinary Committee, which need to be *"examined and solved"*.

b. The Board:

i. The GRG Recommendation in relation to the composition of the Board has been implemented in the IBA Constitution and elsewhere in the rules and regulations.

ii. Timing: The IBA decided to hold the elections in May 2022, as to which the GRG was sceptical. *"The GRG is of the view that the tight timing had a decisive and detrimental impact on the running of the Congress, the elections and also on the decisions taken by the INU in the lead up to the Congress"*.

iii. Pre-election: The phase leading up to the election of the board was *"run professionally"*.

iv. Election: The election *"appeared to be transparent and well-managed"*.

v. Fresh start: An important goal of the GRG Recommendations was to ensure a *"fresh start"* within the Board. This has been achieved in terms of the number of new members but there is still room for improvement on language and diversity.

vi. Discussion culture: The GRG attended Board meetings of the old and new boards. It was the GRG's impression that there was considerable improvement in this respect.

c. Commissions and Committees:

i. According to *"the GRG roadmap"*, the technical and management commissions (comprising Marketing, Competitions, R&J, Coaches, Champions, Champions and Veterans, Medical, Diversity, Member Federations) should be established by the new Board.

ii. The GRG had recommended that the corporate governance committees should comprise an Audit Committee, a Finance Committee, a Strategy Committee, and an Athletes Committee. *"The GRG notes that this … has been partially implemented both legally and administratively"*. The Strategy Committee had not been installed and was *"urgently needed"*.

d. Liaison Officer:

i. The GRG regrets that its recommendation that a direct line of communication between the IOC and the IBA *"did not materialize"*.

e. President's Office:

i. The GRG had recommended that there would be no such office in addition to the head office in Lausanne. The GRG is not in a position to confirm whether this recommendation has been *"implemented to the required extent"*.

f. Continental Federations/ National Federations:

i. *"The influence of the Continental Federations on the governance of IBA is considerable … This follows … from the simple fact that the presidents of the five Continental Federations are ex-officio members of the Board of Directors. The GRG finds it absolutely essential that*

the initiatives of good governance be extended to the Continental Federations and to the National Federations eventually. …".

g. Financial Situation:

"The financial situation of IBA was tight in the past. IBA was dependent on a single sponsor (Gazprom), which entailed a significant cluster risk. In addition, the various boxing programs and initiatives were costly and the Gazprom's financing horizon rather short. The situation has become even more challenging in the meantime, since various competitions have been cancelled, the elections for the presidency of IBA need to be repeated and since the IOC decided on 24 June 2022 that the boxing qualifying events and competitions at the Olympic Games Paris 2024 will not be run under the authority of IBA. Furthermore, the cluster risk related to the Gazprom sponsorship materialized with the Russian invasion of Ukraine.

The GRG … made it clear that the partnership with Gazprom needs to be terminated by the end of 2022 at the latest. In its correspondence with IBA, the GRG emphasized that IBA should communicate its decision not to renew the sponsorship to the national federations prior to the elections. The GRG cannot confirm that this requirement has been fulfilled and expects that the Gazprom sponsorship will definitely not be renewed. The GRG also observes that prize monies by national tournament organizers have not been paid timely, which further undermines IBA's credibility.

The GRG is aware of efforts by IBA to diversify and stabilize its stream of income. It also acknowledges that IBA took a conservative approach when estimating the liabilities, expenses and losses in a proactive manner (cf. budget 1 July 2022-30 June 2023). However, the GRG cannot predict if and to what extent these efforts have been or will be successful. The GRG has identified securing financial stability as a top priority in the time to come. Furthermore, in order to be credible and trustworthy, IBA must ensure that prize money offered by tournament organizers is paid to the addressees. Finally, the GRG encourages IBA to repair the damaged relationship with IOC, in order to ensure that it will stay part of the Olympic Family in the middle and long run. This may also help to stabilise IBA's financial situation".

h. Governance Culture:

""Good governance" is not only a legal matter, but above all a cultural condition that grows over time. It needs to be constantly evaluated and nurtured through continuous training and refreshment of the leadership. The GRG therefore recommended creating a climate in which such growth is possible and encouraged, the best minds are recruited and decision-making processes are optimised and sufficiently legitimised. While the GRG acknowledges that certain improvements have been made in this regard, it is still of vital importance for the future of IBA that the governance culture is continuously improved".

57. On 7 September 2022, the IBA sent a copy of the GRG Summary to the IOC under cover of a letter informing the IOC that the IBA had terminated the GRG mandate and that it had decided *"to undertake the final steps of the implementation process without external advice".*

58. On 8 September 2022, the IOC informed the IBA as follows:

"… Regarding the governance concerns, the IOC Executive Board received information on Professor Haas team's Short Summary Report … It is clear from this report that, while steps have been made to reflect the recommendations in IBA's regulations, their full implementation remains to be achieved and reflected in IBA's actual practices. Additionally, the IOC Executive Board was made aware that Professor Haas team's mandate, which was originally set for the end of 2022, has been terminated on 26 August 2022.

The termination of Professor Haas's mandate follows the removal of a number of key IBA's personnel in the IBA Headquarters Office and advisors resulting in an increased role of the Presidential office in Moscow and thus contradicting Professor Haas' recommendations.

On the financial aspect … the IBA has not been able to find new sources of income to mitigate its dependency from a Russian State-owned company. Furthermore, the IOC Executive Board noted that this situation is exacerbated by the fact that IBA is dependent from a Russian State-owned bank's branch located in Switzerland which is currently restricted in operation due to sanctions in place.

All the above-mentioned elements and other events aggravate the most serious concerns of the IOC Executive Board with regard to the implementation of the roadmap set out by the IOC Executive Board in December 2021.

Boxing is currently not included in the sports programme at the Olympic Games Los Angeles 2028. Considering the absence of a real evolution, the IOC Executive Board is not in a position to reverse this decision and will continue to monitor with grave concerns IBA's governance".

59. On 25 September 2022, the IBA Extraordinary Congress took place in Yerevan, Armenia. Amongst other things, the Congress discussed the CAS 8862 Award and a vote was taken as to whether another presidential election should be held. By a majority, it was decided not to hold another presidential election.

60. On 16 November 2022, the IBA informed the IOC of the following *"course of reforms"* by which the IBA: (a) was changing its statutes according to the recommendations of GRG and McLaren Sport, leading to the creation of the BIIU; (b) several measures had been taken to dissociate the IBA from past practice, both in terms of location and staff; (c) the IBA closed its account at Gazprom bank; (d) the IBA was *"moving forward"* with McLaren Sport's *"new experimental model of pre-doping control"*; (e) a new six-year sponsorship deal with the Australian sports equipment company, Sting, had been signed that should provide revenues *"up to 1 million per year";* and (f) new technologies were being and would be implemented (such as nano-chips in the gloves) for referees and judges.

61. On 2 December 2022, the IBA's external auditors, Moore Stephens Refidar SA ("Moore Stephens") issued their report to the IBA Board with respect to the year ended 30 June 2022. The salient elements are as follows:

    a. The auditors certified that, in their opinion, the financial statements comply with Swiss law.

b. The opinion was not qualified.

c. The auditors did however draw attention to what was said in the notes to the accounts in relation to the First Commitment International Trade ("FCIT") and IOC recognition *"describing an uncertainty around operating as a going concern in the mid to long term. Indeed the ability to continue operating for a period over 12 months is conditional upon adherence to approved budget, the capacity of IBA to continue to find sources of revenues and to whether the risk of a potential litigation mentioned* [with FCIT] *materialises. Currently it is not possible to predict whether, and if so, to what extent, IBA will have to pay for any damages, consequently, a material uncertainty exists in relation to this contingency".*

d. The relevant notes to the accounts were as follows:

*"**3.8 Revenues from Sale of Goods and Services Olympics***

In May and June 2019, the International Olympic Committee (IOC) decided to provisionally suspend IBA's recognition and to remove from IBA the organisation of the Olympic Boxing Tournament Tokyo 2020. A decision by the IOC with respect to IBA's recognition was expected in August 2020. IOC have listed a number of requirements in order IBA's suspension to be removed. Those required actions are currently being implemented by IBA.All requirements should be shortly met in order to get a positive decision by the IOC on IBA's future recognition. Boxing remains in the program of the Olympic Games 2024 in Paris.

6. Contingent liabilities and legal matters

A. First Commitment International Trade (FCIT) has initiated a debt enforcement procedure on 30th September 2020 by having an order to pay served on IBA for CHF 18'991'229 + 5% interest since 10 December 2016, resulting in a total claim of around CHF 24'350'000 as of today. A further procedure was initiated in October 2022 to renew the claim and prevent its automatic closure. IBA filed an objection to each order to pay and rejects this claim on the basis that IBA does not owe anything to FCIT. The rejected claim of CHF 18'991'229 actually relates to a loan between FCIT and BMA, which is now dissolved. Consequently no booking has been made into the accounts, however CHF 300'000 has been accrued in provision for potential legal costs. […]

7 Subsequent events & future perspectives

During the next twelve months, a range of measures will keep being implemented. In the mid to long term, these measures should enable IBA to increase and diversify its revenue on the one hand, while further reinforcing financial stability on the other hand.

There remains uncertainty, however, over the issue of Olympic status and revenue (as further discussed in 3.8). This uncertainty is based on the question of boxing's future in the Olympic Games and the question of IBA's recognition by the International Olympic Committee (IOC) as the body responsible for the boxing tournament therein. However, the Board of Directors remain confident on a final positive outcome from the IOC thanks to the new measures being implemented…".

62. On 6 December 2022, the IOC informed the IBA that it was not in a position to reverse its stance on the suspension of the IBA's recognition. The IOC made the following points:

    a. The IOC has been monitoring the IBA's practices and activities for several years, periodically considering whether the suspension could be lifted.

    b. There have been indications that there has been some reorganisation of the administration but there are *"multiple signals that the drastic change of culture requested by the IOC in order to lift the suspension of IBA's recognition has not been implemented"*.

    c. For OG Paris 2024, the IOC will share the qualification criteria with the boxing community. These will build on the IOC's criteria for OG Tokyo 2020.

    d. Boxing is not currently in the sports programme of OG Los Angeles 2028 and if a decision had to be taken today regarding its inclusion, the IOC would not be able to recommend to include boxing in the sports programme under the authority of the IBA as the IBA has not demonstrated that it has successfully addressed the ongoing concerns around its governance, its financial transparency and sustainability and the integrity of its refereeing and judging processes.

    e. The IOC will continue to monitor the IBA's practices and activities and, on the basis of the developments, will consider taking a decision regarding IBA's recognition at the appropriate time.

63. On 8 December 2022, in a letter from the IBA to the IOC, the IBA stated that it had implemented the GRG Recommendations in full.

64. On 11 December 2022, the IBA held its Ordinary Congress. Amongst other things, Mr Kremlev told the Congress that: (a) the *"IBA is determined to make sure that no National Federation, athlete or coach will participate at the Olympic Games without IBA's involvement"*; and (b) the IBA *"is considering the renewal of the agreement with Gazprom, whose sponsorship allowed IBA to pay off the debts, ensure stable day-to-day operation of the organization, assist IBA members with boxing development in their countries and introduce prize money for the athletes"*. This proposal to renew the agreement was supported by acclamation.

65. On 20 February 2023, the IBA wrote to its NF members by which it announced its approved OQS *"for athletes to compete at the Paris 2024 Summer Olympics"* and that the IBA would provide assistance to any *"athlete or coach of a Boycotted National Federation who would like to participate in the IBA World Boxing Championships"*.

66. On 23 February 2023, the IOC informed the IBA that it was continuing to monitor the IBA *"in the various areas of concern in view of a decision concerning the status of IBA's recognition as per the Roadmap to 2023 communicated in December 2021"* and that, as it had done in the past, the IOC had *"mandated external experts to assess the IBA's status, practice and activities, its progress or the absence of progress"*. In particular:

a. The IOC *"reappointed"* Ernst & Young ("EY") *"to conduct an updated assessment of IBA's financial situation, in particular following the approval of IBA's financial statements and budget, as well as other financial decisions taken during its last Congress"*. The IOC asked the IBA *"to send or make available to EY on site in Lausanne … as soon as possible but no later than 3rd March 2023"* various financial statements (including the audited accounts as at 30 June 2022) and the key sponsorship contracts.

b. The IOC had engaged PwC to *"continue monitoring IBA's major events, specifically the upcoming IBA Women's World Boxing Championships (New Delhi) on 15-26 March 2023"*. The IOC asked the IBA to send to PWC by 3 March 2023 various documents relating to the refereeing and judging of the championships, pre-competition, in-competition, and post-competition.

c. In light of the fact that the IBA had terminated the services of GRG, the IOC had *"mandated"* Ms Kendrah Potts ("Ms Potts") a UK barrister, to assess the implementation of the GRG's recommendations.

d. The IOC would not take into account any *"information and/or development"* beyond 3 April 2023.

67. On 3 March 2023, the IBA replied saying that the *"IBA is open to cooperate to the maximum extent possible and we will provide to the IOC and the appointed experts all necessary documentation, unless these documents are confidential or involve third parties who do not agree to disclose particular documentation"*. The IBA provided copies of certain of the requested documents and, because the IBA was heavily committed in the organisation of the IBA Women's World Boxing Championships in India from 15 to 26 March 2023, invited the IOC to inspect the remaining documents at the IBA's head office after 31 March 2023, upon return of the IBA staff from India. The IBA also asked that the PwC team liaise with McLaren Sport in relation to matters concerning refereeing and judging.

68. On 7 March 2023, the IOC wrote to the IBA making the following points.

a. The IOC confirmed receipt of the documents provided by the IBA under cover of its letter of 3 March 2023.

b. EY will contact the IBA to request a number of documents that were not provided.

c. PwC have prepared and will send to the IBA a list of *"missing documents still to be received"*.

d. A list of documents to be sent to Ms Potts was provided.

e. All documents should be provided by the deadline of 13 March 2023.

f. *"We confirm, as mentioned in our letters dated 6 December 2022 and 23 February 2023, that the IOC continues to monitor the evolution of IBA's practice and activities in the various areas of concern in the view of a decision concerning the status of IBA's recognition. As communicated earlier, no*

information and/or development beyond 3 April 2023 will be taken into account for the purposes of such decision".

69. On 10 March 2023, the IBA replied to the IOC. The IBA made the following (*inter alia*) points:

a. The IOC recognition of the IBA was suspended in 2019 *"after several concerns were voiced against the previous administration and practices of the AIBA and following several IOC investigations".*

b. In the last few years, the IBA has ratified numerous regulations and policies *"to the effect of implementing and enforcing the … IOC Rules and Principles"* and to follow the GRG Recommendations.

c. The IBA noted that *"we are in obligation to require* [the external experts] *to sign an NDA that we will provide in due course".*

d. The IBA requested clarification from the IOC of the scope and objectives of the review by the experts (EY, PwC and Ms Potts).

e. The IBA requested that PwC should monitor not only IBA Women's World Boxing Championships in India but also the IBA Men's World Boxing Championships in Tashkent in May 2023 and that PwC should cooperate with McLaren Sport.

70. On or about 14 March 2023, the IBA sent to the IOC non-disclosure agreements ("NDA") for PwC and EY to sign in advance of being provided with any IBA documents. The NDA for PwC contained this language (and the EY NDA was in the same terms):

"Confidential Information will be provided for the sole purpose of permitting PwC, its personnel or other members of the global network of PwC firms to perform all its duties in the framework of its activities entrusted by IOC according to the Mandate and only to the extent reasonably necessary i.e. prepare a report which will be provided to IOC and IBA at the end of their work ("Report"). PwC will take appropriate steps to ensure that all personnel to whom access to the Information is given are aware of its confidentiality and that such personnel comply with the terms of this NDA. The Report shall be as detailed as possible as long as it does not contain Confidential Information, which IBA does not authorize PwC to disclose to IOC, by any means currently existing or existing in the future".

71. On 14 March 2023, the IOC wrote to the IBA saying, amongst other things, that the IBA's complaints about the time limits in providing the documentation to the experts were misplaced insofar as it *"is part of good governance practice to have organised and accessible internal documentation in place".* As to the NDA proposed for PwC, the IOC noted that no NDA was requested *"during the previous missions and we see no reason to change this practice".* The IOC granted the IBA an extension of time until 17 March 2023 to provide the documents. The IOC then said this:

"It is on the basis of these expert reports that the IOC will make a comprehensive assessment in the view of a potential decision by the IOC Session regarding the status of the IBA's recognition in 2023, as per the roadmap to 2023 communicated to IBA in December 2021.

While you will of course have the opportunity to provide your views before any decision on the status of IBA's recognition is made, please note that the IOC's assessment and the potential IOC Session's decision will be made based on the entirety of facts and developments during the roadmap followed from the initial decision to suspend the recognition of AIBA in 2019 until the rendering of experts' report. As already indicated in previous correspondence, no development after 3 April 2023 will be taken into account".

72. On 16 March 2023, the IBA responded to the IOC. The IBA made the following points:

a. While the IOC timings may seem reasonable, they do not take account of the fact that the management and key staff of the IBA were working on hosting the IBA Women's World Boxing Championships in India and the IBA does not have full access to the files remotely.

b. As to the EY NDA, the IBA is in direct contact with EY and *"we will provide EY with an NDA adapted to the mission"*. EY were invited to attend the IBA's offices on 31 March 2023 upon the return of the IBA staff from India.

c. As to PwC, it is true that there was no NDA in the past but to have an NDA is good governance and is *"particularly important because the appointed experts will have access to all the management and know-how of the competition. Also, considering the rumours that IOC … is cooperating with other National Federations in creating parallel events and an association, we want to prevent the confidential information from getting into the wrong hands and using it against IBA interests"*.

d. The IBA was *"sorry to hear"* that PwC would not attend the IBA Men's World Boxing Championships in Tashkent in May 2023. *"We do believe that PwC would have an entire picture having opportunity to observe the Competition Officials selection process from the very beginning"*.

e. The IBA's *"firm intention* [is] *to cooperate with PwC … subject that they comply with our internal policy by signing the NDA … and cooperate with* [McLaren Sport]*"*.

f. The IBA is in contact with Ms Potts and she has already reviewed the documentation.

73. On or about 26 March 2023, the IBA sent to the IOC a report prepared by McLaren Sport headed 'Summary of Key Integrity Achievements'. The salient points are as follows:

a. While the IBA's work with respect to R&J is still a work in progress, *"noteworthy progress has been made to promote the current and future integrity"* of the IBA's competitions.

b. McLaren Sport has attended nine IBA competitions since October 2021. As a result of interventions by McLaren Sport, 22 officials were stood down by the IBA.

c. The IBA has introduced a 'detect and protect' policy for the detection of corruption by IBA officials and for the protection of *"clean and trusted"* officials. The level of scrutiny meets the highest standards of integrity testing.

d. In the past 18 months there has been a "marked improvement" in the professionalism of the IBA's referees and judges.

e. The draw for the referees and judges *"has historically been the focus of much criticism and is still a work in progress"*. The IBA has made significant strides to improve the procedures to reduce the need for manual amendments. There is an ongoing process across the IBA which will take time to implement fully. It is accepted that automated filters cannot always replace manual amendments but this should be the exception rather than the rule.

f. Significant improvements have been made in the selection process for the continental referees and judges.

g. The bout review process has undergone a series of changes over the past 18 months. The process is now much more open and much less open to abuse. The process is still evolving; there are plans for it to be fully automated.

h. The IBA has taken over control of the accreditation process and increased its dialogue with local organising committees. There are still external influences who may seek to corrupt competition officials or undermine the integrity of the competition. While security at some IBA events is not perfect, the blame is not entirely with the IBA.

74. On 29 March 2023, the IOC informed the IBA that it had delegated to the IOC DG and the IOC Ethics and Compliance Officer the following powers: (a) to assess all the circumstances including in particular the three expert reports, and *"determine whether there were still major concerns regarding IBA's practice and activities"*; (b) if there were such concerns: (i) to notify IBA of the points of potential non-compliance and of its right to respond in writing; and (ii) to prepare a comprehensive report to be presented to the IOC.

75. On 31 March 2023, Ms Potts delivered her report. The more salient points made by Ms Potts may be summarised as follows:

a. GRG:

i. The decision to terminate the GRG's mandate early *"has created the difficulty that whilst many of the Recommendations have been implemented on paper … it is difficult to assess whether the Recommendations are being given full effect in practice and whether IBA has achieved, and continues to work towards a real change in its governance culture. The GRG, as the group that had investigated and analysed IBA's governance, would have been best placed to continue its assessment, particularly given that it had access to IBA …"*.

ii. Real governance reform requires changes in practice and not just on paper. It is unfortunate that rather adopting an approach that would demonstrate real change by permitting the GRG to monitor the full implementation, of the GRG Recommendations, the IBA *"chose to dispense with the GRG"*.

b. BIIU:

i. GRG recommended the establishment of a BIIU that would be operationally independent from the IBA and would comprise four divisions: compliance; nomination; anti-doping; education and development, as well as the IBA Tribunal, and would be managed by an appointed coordinator.

ii. The GRG recommended that these changes be made before the end of 2022.

iii. While progress has been made towards the establishment of the BIIU with its legal foundation and appointment of the board and the appointment of McLaren Sport to provide independent advice on integrity and governance, *"it is clear that IBA did not put in place the new BIIU before the end of 2022 and, indeed, the new BIIU is still not full established, staffed or operational"*.

c. The Board:

i. The GRG recommended changes to the size and composition of the Board, which changes have been implemented on paper.

ii. As to the implementation in practice, the elections for the Board and IBA President took place on 13-14 May 2022, monitored by the GRG, which reported that the IBA had made good progress.

iii. That notwithstanding, the decision of the INU to exclude four candidates from the election had a significant impact on the elections.

iv. Following the challenge by those individuals and the CAS Award, the IBA decided not to hold fresh elections but to put to the IBA Congress whether Congress wanted a new election.

v. Given the GRG's comments that there was a loss of trust in the IBA due to the perception that eligibility checks for important IBA positions did not meet the required standards, *"the sensible course would have been to hold new elections to demonstrate … a commitment to good governance"*.

vi. This *"failure to hold new elections after the CAS Award raises … considerable concern about the legitimacy of the election"*.

d. The Committees:

i. The GRG recommended that new commissions and committees be established.

ii. The IBA reply says that a significant number of new committee members were appointed in May and September 2022 and March 2023, which appointments have sought to address GRG's diversity concerns. But the committees have

not yet met and it is *"therefore too soon to consider how well the new committees are functioning in practice"*.

iii. With respect to the Finance and Audit Committees, appointments were made in April 2022: three people applied for the former and four people applied for the latter, and there does not appear to have been any competition for the roles. In December 2022, *"all of the members of the Audit Committee and a member of the Finance Committee resigned and the positions remain vacant. It is unclear why these members resigned only 7 months after they were appointed and the resignation on mass raises significant questions which would require further investigation"*.

iv. On 6 March 2023, five members of US Boxing resigned their committee positions stating that the IBA does not value the input of its committee members. This raises concerns.

v. In general, whilst some progress has been made *"at this stage it does not appear that the complete set of fully staffed and functioning committees is in place"*.

76. Ms Potts' conclusions were as follows:

"50. As noted in the Summary Report, 'Good governance' is not only a legal matter, but above all a cultural condition that grows over time. It needs to be constantly evaluated and nurtured through continuous training and refreshment of the leadership.

51. It must be recognised (as noted in the GRG Report) that IBA has made numerous changes to its rules and regulations since 2020 with the aim of improving its governance structure. However, as the GRG also noted, IBA had lost the confidence of stakeholders in its ability to run its affairs and a significant change of culture was required. A change of culture requires changes to be implemented in practice as well as on paper and will require ongoing commitment from IBA, which IBA will need to continue to demonstrate to repair the breakdown in confidence with stakeholders.

52. A document on IBA letterhead provided on 8 December 2022 noted IBA's position that the governance practices recommended by the GRG had been "completed in full". As set out above, that is not yet the case. In particular, there remains considerable work to be done to establish a fully operational and independent BIIU and fully 'staffed' and functioning committees.

53. Further, despite the work that has been done, there are several issues that continue to raise concerns about the governance culture (in particular following the 2022 elections, the complaints by USA Boxing and the resignations from various Committees). Some of these issues have not yet been considered by the appropriate organs within IBA and there may be adequate explanations. However, taken together and against IBA's history of poor governance, it continues to leave question marks. As noted above, it is disappointing that IBA did not continue to engage the GRG so that it could oversee the full implementation of its Recommendations.

54. At present, it cannot be said that the Recommendations have been met in full, albeit there has been considerable progress towards implementing them".

77. On 6 April 2023, the IOC DG and the IOC Ethics and Compliance Officer issued their report entitled 'Points of Potential Non-Compliance with the Olympic Charter' (the "IOC Points of Potential Non-Compliance Report"), which report set out their assessment of the three areas of concern investigated by the external experts. The report identified a number of points said to be *"potentially qualifying as a matter of non-compliance"* by the IBA, summarised as follows:

a. Good governance:

i. In December 2021, the IOC requested the full implementation of the GRG Recommendations, not only on paper but also in IBA's effective practice and activities as per the Olympic Charter. The monitoring of this full implementation was entrusted to the GRG led by Prof. Haas. The relation between IBA and the GRG was terminated by IBA before the end of the process. In a letter to the IOC dated 7 September 2022, IBA explained that it took the decision to "undertake the final steps of the implementation process without external advice".

ii. As a result, on 25 August 2022, the GRG produced its GRG Summary. It highlighted the differences between the legal implementation of the recommendations and the administrative implementation of the recommendations. On different points, the GRG noticed that the legal implementation was in principle completed, but the operational implementation was still pending.

iii. In the report from Ms Potts, Ms Potts made similar observations emphasising the still ongoing lack of effective implementation of the GRG Recommendations, which continues to raise concerns about the IBA's governance culture. Ms Potts also noted that the termination of the GRG mandate before the end of the full implementation of its recommendations is indicative of the lack of IBA's willingness to change its culture of governance and that this may have a negative impact on the boxing community's confidence in IBA's ability to conduct its affairs and to run the sport properly.

iv. Ms Potts noted that the IBA had not put in place the new BIIU by the end of 2022 as the IBA pledged to do; indeed, the new BIIU is still not fully established, staffed and operational at the time of her report.

v. Perhaps the most problematic example identified by Ms Potts is the lack of democracy, in particular as the elections were significantly impacted by the decision of the INU to exclude five individuals from the elections of the President and Board of Directors members, which was subsequently overturned by CAS. Excluding a political opponent by abusing the eligibility check system is an example of improper way of governance.

vi. The functioning of IBA's organs, notably the new committees is also problematic in practice. For instance, as noted by Ms Potts, the Finance and Audit Committees' members were appointed in April 2022 (it is understood

that there was no competition for these positions); eight months later, all the members of the Audit Committee and one member of the Finance Committee resigned; no explanations were given by IBA on these resignations. Such "mass resignations" raise significant questions regarding the effective practice and activities of these committees and IBA as an organisation.

vii. Ms Potts noted that, despite the work that has been done by IBA, there are several issues that continue to raise concerns about IBA's governance culture, which corroborate the concern expressed in the GRG Summary as to the lack of administrative implementation of the recommendations.

b. Finance

i. Considering the importance of the sponsoring contract with Gazprom, signed in April 2021 for the period up to 31 December 2022, the IOC has been concerned about the IBA's financial transparency and sustainability, given IBA's effective dependence on a single state-owned company. Such concern is exacerbated by the fact that Gazprom has been sanctioned by international authorities.

ii. The IOC asked on various occasions (9 December 2021, 12 April 2022, 10 May 2022, and 8 September 2022) the IBA to inform the IOC of the actions it undertook to diversify its revenues and achieve financial independence. No such information has been provided by IBA and the IOC cannot take comfort from publicly available information either.

iii. EY was reappointed to conduct an updated assessment of IBA's financial situation. IBA initially agreed to cooperate with EY and transmitted some documentation through the IOC as it has done in the past. However, before transmitting the remaining documentation, IBA added its request for EY to sign a NDA, which was unacceptable as it would have prevented EY from sharing its findings with the IOC making the monitoring process pointless. As a result, EY was unable to gain access to the requested information and to fulfil its mission.

iv. The IOC was left with no choice but to draw its conclusions from publicly available information, such as the financial statements ending on 30 June 2022 and the annual budget for the year ending 30 June 2023. It transpires from such information that the absence of sustainable financing and dependence on a state-owned sponsor have not been remedied.

v. With regard to the indebtedness, the FCIT debt (approximately CHF 19 million) is the only known liability still pending in 2022; this was expressly mentioned in the auditors' report on the financial statements ending on 30 June 2022. The 2022-2023 budget contains a provision for legal costs linked to the FCIT debt, but nothing for the actual amount of this potential claim.

vi. IBA's reliance on a contract with Gazprom puts its financial and overall independence in jeopardy. The Gazprom contract signed in April 2021 ended on 31 December 2022. During IBA's Ordinary Congress in December 2022, the extension of this contract was announced and approved. Contrary to what was announced during the Congress, IBA later informed the IOC that the Gazprom contract would not be renewed. Gazprom is still prominently featured as a *"general partner"* on IBA's website. All this contradictory information is another sign of IBA's lack of transparency and reliability.

vii. One may conclude that IBA's cash position can only be expected to further decline if the expenditure is maintained at the current budget level and no additional sources of revenues are obtained for the period after June 2023. Due to the lack of information provided by IBA, there is no evidence of any other new contract providing cash revenues (the Sting contract seems only to be value in kind) and serious doubt remains about IBA's financial sustainability and the diversification of its revenues.

viii. Similarly, the financial statements as at 30 June 2022 and the budget do not allow the IOC to understand under which operating expenses the prize money to medallists of IBA's competitions, for the period 2021-2022, has been allocated to. As a consequence, it is not clear how the announced prize money for future IBA competitions for the period 2022-2023 will be funded.

ix. It is thus telling that the auditors' report describes an uncertainty around operating as a going concern in the mid to long term. Indeed, the ability to continue operating for a period over 12 months (to 30 June 2023) is conditional upon the capacity of IBA to continue to find sources of revenues and whether the risk of a potential litigation materialises.

c. Referees and Judges

i. In 2019, the IOC noted that IBA had been unable to demonstrate a sustainable and fair management of the referees & judges processes. As a consequence of the suspension of the IBA's recognition, the boxing qualifying and tournament at the OG Tokyo 2020 was organised by the IOC through the BTF.

ii. The IOC was confident that, following the OG Tokyo 2020, the IBA would be able to capitalise on the BTF's experience to set up its own R&Js processes for the IBA's World Men Boxing Championships in Belgrade (Nov. 2021), and the IOC shared its documentation and know how in this respect.

iii. The IOC appointed PwC was to assess IBA's major events, specifically the IBA's Women World Boxing Championships in New Delhi (March 2023). The IBA initially agreed to cooperate and transmitted some documentation through the IOC, but then added its request for an NDA, which was unacceptable as it would have prevented PwC from sharing its findings with the IOC. As a result, PwC was unable to gain access to the requested

information, to attend IBA's competition in New Delhi and to fulfil its mission.

iv. The IOC was left with no choice but to draw its conclusions from publicly available information. The review of the IBA's Rules which applied during the IBA Women World Boxing Championships in New Delhi (IND) is based on a two-phase approach, pre-competition and competition phases.

v. For the pre-competition phase, there are no documents in the public domain so that an assessment of this phase was not possible.

vi. For the post-competition, some documents are publicly available. From its analysis of these, there are a number of potential risks in the integrity of the process.

- The on-site draw for the R&Js is a key element of the integrity of the competition process; extraordinary changes prior to the start of the competition may only be undertaken under certain pre-defined criteria. The IBA's rules allowed such extraordinary changes requests but without defining the criteria. As a consequence, the Draw Commissioner could submit unjustified extraordinary change requests, influencing the R&Js draw sheet and potentially the outcome of the bout.

- The IBA's rules do not define the procedure to (re)allocate a new referee or judge in case of extraordinary change. As a consequence, the Draw Commissioner could allocate the positions according to own preferences or other considerations that can potentially risk the integrity of the draw sheet and, as such, the outcome of the bout.

- The IBA's rules do not provide a second Judge Evaluator or an Observer as a comparison for the Judge Evaluator's performance, as such comparison would minimise the risk of underperformance by the Judge Evaluator officiating on the bout; this risks the objectivity and independence of the evaluation of the judges.

- Sanctions and suspensions for underperforming R&Js are essential for the efficiency of the process. There are no provisions in the IBA's Rules regarding any measures in case of underperformance. This questions the IBA's willingness to set up a robust process and to implement its rules.

- The conditions under which a bout review could be initiated seem inconsistent as there are different rules (IBA Technical and Competitions Rules - Rule 20.2.1, Rule 20.4.3 and Rule 20.5.1) and there is no indication as to which rule applies in which case. This

uncertainty and potential contradiction could pose a risk to the integrity of the bout review process as the rules and roles remain unclear and could be applied inconsistently by the respective boxing officials. Similarly, it is unclear what the consequences could be if the Observer and the Judge Evaluator disagree on a bout result.

- From the Rules it is neither part of the Referee Evaluator's (Rule 30.3) nor the Observer's duty (Rule 35.3) to score the bouts. Rule 20.2.3 defines that the bout review must be concluded within 5 minutes after its activation. Within such a short timeframe, it seems unlikely that the Referee Evaluator or the Observer would have time to re-watch the bout in order to individually score each round, before making their decision. As a consequence, there is a risk for the integrity of the bout's outcome if the Referee Evaluator or the Observer must decide on the outcome of the bout without having both previously scored each round during the bout (Rule 20.6.1) and without having had enough time to review the bout. Such sequence of rules in practice may allow two non-randomly appointed officials to overrule the collective score of the five randomly appointed judges.

78. On the same day, 6 April 2023, the IOC wrote to the IBA enclosing a copy of the IOC Points of Potential Non-Compliance Report to the IBA and informed the IBA that, if the areas of potential non-compliance were confirmed then *"the IOC Session could decide to withdraw IBA's recognition on that basis"*. The IBA was asked to provide its comments in writing by 5 May 2023.

79. On 5 May 2023, the IBA submitted its 'Reply on Points of Potential Non-Compliance with the Olympic Charter' (the "IBA's Reply"). (The IBA's Reply was 34 pages long together with almost 500 pages of documentary exhibits). In the IBA Reply, the IBA set forth a point by point response to the IOC's Points of Potential Non-Compliance. By way of conclusion, the IBA said this:

"Considering all the above, we can conclude that IBA made significant progress within last years. There are still ongoing reforms and a lot of work to do to improve the boxing family's culture, but withdrawal of the IBA's full recognition by the IOC will be not justified, fair and legally correct decision.

We call on the IOC members to hear our arguments, note our progress and make a fair decision about the future of boxing".

80. The IBA provided a point by point response to the matters that were said by the IOC to be points of potential non-compliance. Most of the points made at this juncture by the IBA have been repeated in its submissions in this appeal, which can be seen below. By way of summary only, more salient points made by the IBA were as follows.

a. The roadmap:

   i. The IBA has never contested the roadmap. It is accepted that includes the so-called three conditions relating to finance, sporting integrity and good governance.

   ii. IBA is of the opinion that it successfully met the criteria mentioned in the roadmap.

b. Good governance:

   i. GRG made a significant contribution and developed the measures to reform the IBA governance, but it was not a requirement of the roadmap that the IBA use the GRG to implement the GRG Recommendations.

   ii. The GRG and the IBA agree that the legal implementation of the GRG Recommendations *"was in principle completed"* but practical implementation always takes time.

   iii. The report of Ms Potts is positive. She says that *"it is difficult to assess whether the Recommendations are being given full effect in practice and whether IBA has achieved, and continues to work towards, a real change in its governance culture"*.

   iv. Ms Potts does not say that the decision to terminate the GRG mandate was indicative of the IBA's unwillingness to change its culture.

   v. As to the BIIU, the initial plan was to establish the BIIU at the end of 2022. It was decided not to rush for the sake of the quality of BIIU. In the meantime, the judicial bodies of IBA have not ceased to function, but members of the Ethics and Disciplinary Committees take over the function on a temporary basis according to Article 51 of the BIIU Rules.

   vi. The statutory changes for the BIIU have been implemented. The IBA called for nominations on 11 October 2022 for the various units of the BIIU.

   vii. On 15 October 2022, the IBA entered into a contract with McLaren Sport as an independent service provider to the BIIU.

   viii. The BIIU Board and Managing Director were put in place in March 2023. The Board had its first meeting on 23 March 2023 and its second meeting on 25 April 2023.

   ix. The BIIU units have been established and appointments made.

   x. There is no suggestion that the BIIU is acting in bad faith with respect to the establishment of the BIIU.

xi. Ms Potts referred to the elections and the CAS Award. The INU was appointed to control elections. On 12 May 2022, it decided that the CCA Candidates were ineligible. The CCA Candidates appealed. The Sole Arbitrator concluded that there had only been a minor infraction of the election rules and set aside the INU decision, which they should have done. He did not cancel the elections.

xii. The IBA Board decided to call an Extraordinary Congress on 24 June 2022 to put to the Congress whether it wished to conduct new elections. 74.65% of the voting Congress voted against. Far from being an abuse of the democratic process, that is democracy in action.

xiii. As to the IBA committees, the IBA has established the committees and commissions in accordance with the GRG Recommendations. There have been five resignations from two committees but, to put this in context, there are 12 committees.

xiv. An independent person reading the report of Ms Potts would find the report "rather positive". It is hard to find ideal organisation which is not subject to criticism; the IBA has taken significant measures since December 2020 to rectify its mistakes of the past.

c. Finance

i. The IOC's concerns in relation to the financial situation of the IBA are *"groundless"*.

ii. The IBA has settled all of its historic debts.

iii. If the IOC wished to monitor the IBA's finances, it could have given prior notice, which would have allowed for more opportunity for cooperation.

iv. The IBA was ready to provide the necessary documents to EY, but EY refused to sign the NDA. As to the NDA, EY (or IOC) did not identify any particular section of the NDA that would hinder or prevent EY from complying with its mandate. EY also did not make any attempt to propose an alternative version with modifications and negotiate it.

v. The deadline set by the IOC to submit its financial information to EY coincided with the period of the IBA Women's World Championships in India, during which IBA key personnel were in New Delhi and otherwise occupied.

vi. The IOC should have allowed the IBA more time.

vii. The budget income statement (available online) shows that the total operating income expected for the current financial year was CHF 12m made up of:

sponsorship at CHF 6m, sports events at CHF 5.6m, and licensing at CHF 400,000. This shows that sponsorship amounts to half of the IBA's income.

viii. The updated budget presented to the IBA Board on 25 March 2023 shows an increase in income of approximately 30%, to CHF 15.3m, with sponsorship at CHF 7.7m, or 50% of income.

ix. The IOC's conclusion as to the lack of sustainable financing is therefore wrong.

x. It is not correct to say that the IBA depends on a state-owned sponsor. Sponsorship revenues from all sponsors, including Gazprom and Sting, are less than 50% of the total.

xi. The Gazprom contract expired on 31 December 2022, and it has not been extended.

xii. During the IBA's Ordinary Congress in December 2022 the IBA President asked the opinion of the NFs on the role of Gazprom, and the majority by acclamation agreed to extend the contract with Gazprom. This is demonstration of the transparency and democracy in the IBA, because the IBA asks its NFs and listens to their opinion. However, the Gazprom sponsorship agreement has not been extended. Since 31 December 2022, Gazprom's logo has not appeared at IBA events, but has been displayed on the IBA website as a gesture of goodwill and as compensation for some services that were not provided. The Gazprom logo is no longer visible on the IBA website.

xiii. The IBA keeps working on the diversification of its income.

xiv. With respect to FCIT, the IBA has no pending liability to FCIT and never has. The IBA provided a full report to its auditors on this, and the auditors agreed; hence there is no provision in the IBA's accounts for a debt to FCIT.

xv. As for prizemoney, according to the budget presented to the IBA Board of Directors on 25 March 2023, it is planned to spend CHF 7.4m for the prize money. The IBA's income covers these expenses.

d. Referees and Judges

i. The IBA accepts that the R&J processes in place prior to 2019 were not acceptable. The IBA suspended all TOs from that time.

ii. The IOC's BTF undertook this role for the OG Tokyo 2020 and has provided guidance to the IBA team since that time, for which he the IBA is grateful.

iii. The IBA has continued to develop in the area of TO selection, and those best practices that have been shared by the IOC have been warmly received. The majority of those applications work well for IBA, but not all.

iv. McLaren Sports has been working hard in support of the IBA integrity work; we have now vetted approximately 250 (two hundred fifty) TOs since 2021, therefore providing an extended pool of officials as and when required, particularly for reserve support.

v. The IBA disputes the allegations regarding PwC. PwC did not point to any part of the NDA that would hinder its work and did not propose alternative language. The NDA allowed PwC to fulfil its mandate; PwC was not cooperative with the IBA.

vi. PwC had a conflict of interest in monitoring IBA events and obtaining its know-how given that it was the organiser of the qualification system for the IOC.

vii. The IBA provided to the IOC a copy of McLaren Sport's 'Summary of Key Integrity Achievements'. This sets out information about achievements of IBA in integrity area. However, the IOC preferred to ignore it and rely instead on publicly available information.

viii. The IBA continues to work hard in the development of its R& J Rules,. Those pertaining to the IBA Women's World Championships were specific to the Bout Review, which is a key piece of work that is ongoing. The Bout Review will be digitised for the World Championships in Tashkent.

ix. The IBA *"absolutely content"* with its R&J process. It follows a similar model to that of the IOC and the work that the BTF concluded for OG Tokyo 2020.

x. The IBA's *"Technical Officials have been vetted by McLaren Sport, which is another layer of integrity provided on top of the system that the IOC has recommended"*.

xi. In this regard, IBA has an extensive pre-defined criteria that is applied to the draw. Part of those were transferred from Swiss Timing, with the remainder being extensively supported by onsite relationships, and further support from academics who understand many geo-political anxieties that may impact on relationships amongst the TOs. We understand the wider scoping requirements, as not all filters applied are generic to each event. Again, we highlight the point above in relation to the extensive pre-vetting requirements that are supported by McLaren Sport in ensuring that we have the right people within the field of play.

xii. At what point do we allow human factor to influence the decisions made within the FOP? The process is clear, and SportData run an extremely robust process in support of the draw, and indeed the removal of any R&J due to

extra ordinary reasons, continental parity, the number of bouts he or she has been part of prior, or any natural conflict of interest. This coupled with the oversight of a pre-vetted Draw Commissioner, supported by a second and third party, and signed off by the Technical Delegate, ensures that there a significant number of people involved, who are held in high regard, with a robust vetting check process behind them. Please note, that all changes are recorded, and reasons given as to why, especially where human factor is a key contributor.

xiii. All Evaluators and Observers are appointed on individual expertise and performance throughout the season. The events are not isolated, and only those who have performed exceptionally are appointed to the World Championships. We are also in a position to bring in 5 (five) evaluators and 3 (three) observers in order to minimize fatigue and any general lapse of concentration.

xiv. IBA has a firm sanction process in place, which is annotated within the respective evaluation forms and Rule 25 per se. Once a referee or judge is sanctioned, they are subject to removal from a session, or 2 (two) sessions, or indeed the whole event. The system is in place, but of course we always see different situations in every tournament. In relation to the Women's World Championships; we had an extra ordinary situation whereby the referee made a disastrous mistake by stopping a boxer through Referee Stops Contest. This decision was evaluated and agreed that this R&J should immediately not take part within the remainder of the tournament. The official was returned home, and the decision was communicated to all athletes as a matter of courtesy and indeed transparency. The respective R&J will now undergo a 12-month monitoring process, to be undertaken by the IBA R&J Committee. This is one example that demonstrates our willingness to ensure that we have adopted and adapted our sanctioning processes.

xv. Regarding Rule 20 and the Bout Review 22; we have communicated the process out to all NFs, which has been received extremely well. The review remains work in progress, and we continue to develop and to re-word as we move forward. The system again has been improved for the IBA Men's World Championships took place in Tashkent towards the back end of April, early May 2023. Please refer to the Technical and Competition Rules that can be found located here. IBA continues to work hard with our respective key stakeholders. Notably SportData has commended the work we have done here; this organization also works alongside other International Federations. We have also received good feedback from Prof. McLaren, who have been following this process for some time. We are content to share this report and its findings which are related particularly to the bout review. On a final note, with the comments regarding 'the consequences if the Observer and the Judge Evaluator disagree on a bout result' - the process here is quite simple, the result remains, with no change to the decision that was made by the 5 (five) judges.

xvi. The rules have been significantly updated to reflect the scoring of both the Observer and Evaluators respectively; we continue in the 'work in progress' space as already alluded, and indeed looking forward to an even better product in Tashkent. Regarding the 5-minute activation; the process for review works in real time, as the bout is occurring, so what happens on conclusion of the bout can be immediately decided. There is no requirement to re-watch the bout in this case. The same principle applies for the referee, if an incident occurs that would warrant a change of circumstance during the bout; this has also been refreshed in the Technical and Competition rules. More so the 5 (five) minutes is required to assess the decision regarding the referees' actions. The beauty of the new bout review is that the decision is instant, therefore no requirement to take any result in to the 'back of house' to discuss the decision. In fact, this process that was in place previously opens up further opportunity to overrule a result, with more officials involved during this process.

81. On 2 June 2023, the IOC DG and the IOC Chief Ethics and Compliance Officer issued their 'IOC Comprehensive Report on the Situation of the International Boxing Association (IBA – formerly known as AIBA)' (the "IOC Comprehensive Report"), which was provided to the IBA on 7 June 2023. The stated purpose of the IOC Comprehensive Report was to determine whether as at 3 April 2023 the IBA met *"the conditions set out in the communication of 9 December 2021 to the IOC's satisfaction"*. The report set out an assessment of the IBA's progress with respect to (inter alia): (a) governance; (b) financial sustainability; (c) integrity of the R&J process, summarised as follows:

a. As to governance, as at 3 April 2023 (the cut-off date), *"the IBA failed to effectively implement in its practice and activities the principles of good governance as proposed by the GRG … . Therefore, the IBA's evolution is still not sufficient to consider that the IBA's actual governance is effective in its practice and activities as per the conditions set out in the Roadmap 2023*".

b. As to financial sustainability, *"the constant uncertainty around operating as a going concern in the mid to long term, raised by the IBA's external auditors' report for the period beyond 30 June 2022, persists. The ability to continue operating for the period beyond 30 June 2023 is conditional upon the capacity of the IBA to find new sustainable sources of revenue"*. The IBA's sources of revenue were primarily derived from its previous contract with Gazprom; and no new sources of revenue were *"demonstrated by any new signed contracts"*. As a consequence, *"the absence of sustainable financing and the dependence on a state-owned former sponsor have not been remedied, which demonstrates that the IBA did not effectively improve its financial governance culture and meet the conditions set out by the IOC"*.

c. In relation to the integrity of competitions, *"contrary to what was requested in the Roadmap 2021 to 2023, the IBA chose not to implement in its processes the know-how inherited from the IOC BTF used for the Olympic Games Tokyo 2020 to the satisfaction of the participants. The technical analysis within the present comprehensive report shows that the IBA relies heavily on its vetting process of the technical officials, but not on a full R&J process reducing the human factor and thus minimising the risks for the integrity of the competitions, independently of the individuals involved. Therefore, the various concerns raised by the IOC Session in 2019 regarding the sustainability and*

fairness of the entire R&J processes, referred to in the Roadmap 2021 to 2023, are still not addressed to the satisfaction of the IOC, and thus the conditions are not met".

82. The conclusion of the IOC Comprehensive Report included the following:

"Despite the various chances given to the IBA, including the Road Map 2021 to 2023, to address the various concerns with actual, effective evolution, the IBA was unable to provide the elements which would have allowed the lifting of its suspension. Therefore, it is not possible to reach any conclusion other than to confirm the analysis made by the IOC Session in 2019, which was at no time contested by the IBA, on the necessity to withdraw the IOC's recognition of the IBA. Effectively, the situation has become so serious that the only proportional conclusion is to withdraw the IOC's recognition of the IBA pursuant to the Olympic Charter".

83. On 7 June 2023, the IOC EB considered the IOC Comprehensive Report and issued the following decision:

"The IOC Executive Board approves the Comprehensive Report dated 2 June 2023 and notes that the IBA failed to fulfil to the IOC's satisfaction the conditions set by the IOC in its decision communicated to the IBA on 9 December 2021 for the lifting of the suspension of the IBA's recognition.

Therefore, the IOC Executive Board recommends that the IOC Session withdraw the IOC's recognition of IBA, in accordance with OCR3.7.

As an additional consequence of the decision above, the IOC Executive Board recommends to the IOC Session to decide that the IBA should not organise the Olympic Games LA28 boxing tournament.

The IOC Executive Board also recommends that the IOC Session, in the interest of the boxing athletes and the sport of boxing, maintain boxing on the sports programme of the Olympic Games Paris 2024, in accordance with the IOC Executive Board's decisions taken on 24 June,8 September and 6 December 2022.

The IOC Executive Board and the IOC President thus decide to convene an IOC Extraordinary Session to be held remotely on 22 June 2023".

84. On 22 June 2023, the IOC Session decided in accordance with the IOC EB recommendation and decided that:

a. the IOC's recognition of the IBA was withdrawn in accordance with OCR3.7;

b. in the interest of the boxing athletes and the sport of boxing, boxing would be maintained on the sports programme for OG Paris 2024; and

c. the IBA would not organise the boxing tournament for the OG Los Angeles 2028.

85. This decision of the IOC Session is what has been defined above as the Appealed Decision.

IV. PROCEEDINGS BEFORE THE CAS

86. On 27 June 2023, the IBA filed a Statement of Appeal with the CAS against the IOC with respect to the Appealed Decision, pursuant to Articles R47 and R48 of Code of Sports-related Arbitration (2023 edition) (the "CAS Code"). In its Statement of Appeal, the IBA requested (a) the consolidation of this appeal with the appeal in CAS 2023/A/9718 and (b) a stay of the Appealed Decision.

87. On 28 June 2023, the CAS Court Office rejected the IBA's request to consolidate the two proceedings but invited the Parties to indicate whether they agreed to submit this appeal and that in CAS 2023/A/9757 to one and the same panel.

88. On 6 July 2023, the IBA stated it agreed to have this appeal be heard by the panel in CAS 2023/A/9718.

89. On 10 July 2023, the IOC submitted its Answer to the IBA's request for a stay, objecting to the application.

90. On the same date, the IOC stated it did not agree to have this appeal be heard by the panel in CAS 2023/A/9718 and appointed Mr Patrick Lafranchi, Attorney-at-law in Bern, Switzerland as arbitrator in this procedure.

91. On 14 July 2023 the CAS Court Office informed the Parties that the arbitrator nominated by the Appellant had declined his appointment and on 20 July 2023 the Appellant appointed Mr Jeffrey Benz, Attorney-at-law and Barrister in London, UK, as arbitrator in this procedure.

92. On 18 July 2023, the IBA requested an extension of time to file its Appeal Brief from 23 July 2023 to 21 August 2023. On the same day, the IOC opposed the IBA's request for an extension.

93. On 19 July 2023, the CAS Court Office informed the Parties that the President of the Appeals Arbitration Division (the "Division President") had extended the deadline for submission of the Appeal Brief to 11 August 2023.

94. On 27 July 2023, the CAS Court Office informed the Parties that the Division President had appointed an arbitrator as president but, after comments received by the IOC regarding his disclosure, the arbitrator decided to withdraw his acceptance on 2 August 2023.

95. On 10 August 2023, the CAS Court Office informed the Parties that the panel appointed to decide this reference (the "Panel") was constituted, after the appointment of a new presiding arbitrator by the Division President, as follows:

<u>President</u>: Mr James Drake KC, Barrister, London, UK

<u>Arbitrators</u>: Mr Jeffrey Benz, Attorney-at-law and Barrister, London, UK
Mr Patrick Lafranchi, Attorney-at-law, Bern, Switzerland.

96. On 11 August 2023, the IBA filed its Appeal Brief with the CAS Court Office pursuant to Article R51 of the CAS Code and within the extended deadline.

97. On 14 August 2023, the IBA submitted new evidence in relation to its Request for Stay, on the basis that *"[a]t the time of submitting the original Request for Stay, the Appellant was unable to provide certain crucial documents that have since come to light"*.

98. On the same day, the IBA once again requested the CAS Court Office to refer this appeal and that in CAS 2023/A/9718 to the same panel of arbitrators.

99. On 15 August 2023, the CAS Court Office acknowledged the IBA's letter of 14 August 2023 attaching new evidence in relation to the IBA's Request for Stay and invited the IOC to provide comments on the new evidence by 22 August 2023.

100. On 21 August 2023, the CAS Court Office informed the Parties that the Division President had decided to reject the Appellant's request to refer this and CAS 2023/A/9757 to the same panel of arbitrators.

101. On the same day, the IOC furnished its comments regarding the IBA's new exhibits stating that, while it saw no reason to object to the introduction of the exhibits, it (i) had expected for the IBA to *"first seek the IOC's agreement"*, before *"circumventing a possible objection by the IOC"* by submitting the exhibits without the IOC's consent; (ii) the exhibits had *"no relevance whatsoever with respect to the merits of the case, since they concern developments that occurred well after"* the date set for the IOC's analysis; and (iii) the exhibits had *"little or no relevance with respect to the pending stay application"* as there had been withdrawals by national federations prior to the Appealed Decision.

102. On 4 September 2023, the IOC submitted new evidence, with the agreement of the IBA, in relation to the IBA's Request for Stay.

103. On 5 September 2023, the CAS Court Office acknowledged the IOC's submission of new evidence and invited the IBA to file its comments, if any, by 7 September 2023.

104. On the same day, the IBA submitted comments on the new evidence adduced by the IOC.

105. On 7 September 2023, the CAS Court Office informed the Parties of the Panel's decision to deny the IBA's Request for Stay, the reasons for which would be communicated in this Award. Additionally, the CAS Court Office communicated to the Parties the Panel's available dates for the hearing.

106. On 14 September 2023, the CAS Court Office informed the Parties that a hearing had been set on 16 November 2023. On the same day, the Parties were notified of an additional disclosure by Mr Benz, which did not induce a protest or challenge by the Parties.

107. On 26 September 2023, the IOC filed with the CAS Court Office its Answer pursuant to Article R55 of the CAS Code and within the extended deadline.

108. On 28 September 2023, the IOC provided, in reply to the list of attendees to the hearing submitted by the IBA on the same day, its list of attendees and challenged the appearance of Mr Claude Ramoni as a witness for the IBA on the grounds that Mr Ramoni was not properly identified as a witness in the IBA's Appeal Brief. Additionally, the IOC notified it did not intend to cross-examine Dr Ioannis Filippatos as it considered that *"his evidence has become moot after the Panel's decision on provisional measures"*.

109. On 29 September 2023, the IBA replied to the IOC's challenge and comments to Mr Ramoni and Dr Filippatos respectively. Regarding Mr Ramoni, the IBA stated that, while it had not mentioned Mr Ramoni as a witness in the Appeal Brief, it had still submitted his memorandum as evidence and had called him as a witness in order to grant the IOC and the Panel an opportunity to cross examine him. Regarding Dr Filippatos, the IBA stressed that the Panel had yet to provide its reasoning for denying the IBA's Request for Stay and, in any case, his statement still had probative value on the merits. Having submit the reasonings above, the IBA still stated it was prepared to withdraw both witnesses.

110. On 3 October 2023, the IBA requested to hold a case management conference ("**CMC**") to discuss *"the preparation of the hearing, especially the matters related to the Appellant's witnesses"*.

111. On 4 October 2023, the IOC replied to the IBA's request for a CMC, in principle agreeing with it, but stating that the IBA should not be allowed to provide further arguments relation to Mr Ramoni's appearance as witness as the hearing as *"this is a procedural (and not an organisational) issue that in the IOC's view shall be resolved before the CMC"*.

112. On 5 October 2023, the CAS Court Office informed the Parties of the Panel's view that *"there is no proper basis for Mr Ramoni to appear as a witness in the hearing*" and *"there is no need for Dr Filippatos to attend the hearing"* as the IOC did not wish to cross-examine him.

113. On 12 October 2023, the CAS Court Office provided the Parties the Order of Procedure, which was duly signed by the IOC on the same day and by the IBA on the next day.

114. On 13 October 2023, the CAS Court Office informed the Parties that the CMC would be held on 30 October 2023.

115. On 30 October 2023, a CMC was held between by video conference in which, in addition to the Panel and Mr Antonio de Quesada, Head of Arbitration with the CAS, the following persons attended:

a. <u>The Appellant</u>:

   i. Mr Yury Zaytsev, Counsel
   ii. Mr Alberto Roigé, IBA Head of Legal

b. <u>For the Respondent</u>:

   i. Mr Antonio Rigozzi, Counsel
   ii. Ms Marie-Christin Bareuther, Counsel

116. On 10 November 2023, the CAS Court Office informed the Parties, after failing to agree on a hearing schedule, the Panel had decided that *"the Appellant's witness statements are to stand as the direct testimony of the witness and that the Appellant will have the opportunity to conduct limited further direct examination of the witnesses, subject to the permission and control of the Panel"*.

117. On the same day, and following the Panel's ruling, the Parties agreed on a hearing schedule, which was delivered to the Panel via the CAS Court Office.

118. On 13 November 2023, the CAS Court Office informed the Parties that the hearing would only take place over one day per the Panel's instructions.

119. On 16 November 2023, the hearing was held in person, at the CAS offices located in Lausanne, Switzerland. In addition to the Panel and Mr Antonio De Quesada, Head of Arbitration with the CAS, the following persons attended the hearing:

a. The Appellant:

i. Mr Yury Zaytsev, Counsel
ii. Mr Alexander Zen-Ruffinen, Counsel
iii. Ms. Emilie Weible, Counsel
iv. Mr Alberto Roigé, IBA Head of Legal
v. Mr Chris Roberts, IBA Secretary General and CEO, Witness
vi. Mr Marko Petric, Witness
vii. Mrs Anastassiya Dlala, Witness
viii. Mr Richard McLaren, Witness via videoconference
ix. Mr Roland Breiteneder, Witness via videoconference
x. Mr Gavriil Skopelitis, Witness via videoconference

b. The Respondent:

i. Mr Antonio Rigozzi, Counsel
ii. Ms Marie-Christin Bareuther, Counsel
iii. Mr Breno Pontes, IOC's Head of Boxing Operations

120. At the commencement of the hearing, the Parties confirmed that they had no objection to the jurisdiction of CAS or to the constitution of the Panel. At the conclusion of the hearing, the Parties expressly confirmed that their right to be heard had been fully respected.

121. On 12 February 2024, the CAS Court Office informed the Parties that, and as discussed during the hearing, the Parties were *"required to provide all copies of all authorities relied upon in their submissions […] and, insofar as any is not English, to translate […] the particular passage on which reliance is placed by 19 February 2024. If an authority is not provided in this way it will not be taken into account by the Panel"*. In turn, the Parties provided the requested authorities and translations within the allotted deadline.

V. THE PARTIES' SUBMISSIONS

122. The Parties made lengthy written submissions in the Appeal Brief and Answer, respectively, and each made extensive oral submissions at the hearing of this matter. Whilst the Panel has carefully considered all of the submissions, what follows below is a summary of the principal submissions made by the Parties.

A. The Appellant's Submissions

a) Which Party bears the burden of proof?

123. The Appealed Decision does not contain any grounds for the decision. In accordance with CAS 2014/A/3621, where a decision does not contain grounds, the burden of proof lies on the respondent to prove that the appellant did not comply with the relevant rules.

124. The burden of proof is therefore on the IOC.

b) What is the legal basis for the Appealed Decision?

125. Rule 59 of the Olympic Charter provides that the IOC may withdraw recognition of an IF *"in the case of any violation of the Olympic Charter, the World Anti-Doping Code, the Olympic Movement Code on the Prevention of Manipulation of Competitions or any other decision or applicable regulation issued by the IOC"*.

126. The Appealed Decision does not cite any specific violation of any such rule. The only reference in the Appealed Decision is to Rule 3.7 of the Olympic Charter. This merely outlines the power of the IOC Session to withdraw recognition. It does not provide the legal basis for doing so.

127. In this regard, the IBA notes that the IOC Letter of 9 December 2021 did not establish any conditions for the withdrawal of recognition but rather conditions for the lifting of the suspension of recognition.

c) Does the Appealed Decision constitute an independent decision?

128. The IOC Session is the supreme organ of the IOC. It appears however that the Appealed Decision was *"imposed"* by the IOC EB and that the IOC Session did not reach the Appealed Decision independently.

a. The IOC EB's recommendation to the IOC Session said that the decision was *"required"* of the IOC Session. This suggests a *"mandatory obligation to decide"* rather than a recommendation.

b. The IOC President and the IOC DG both gave one-sided statements when introducing the matter to the IOC Session in an attempt to sway the IOC members to vote against the IBA.

c. During the IOC Session no questions were asked regarding the IOC Comprehensive Report and there were no discussions regarding *"the actual situation"* of the IBA.

d. *"Everything that happened at the IOC Session gives the appearance of a meeting of the Communist Party of the Soviet Union rather than a democratic gathering of respected sports authorities"*.

e. The IBA does not say which rule in the Olympic Charter has been breached.

a. The way in which the situation was summarised to the IOC Session was not one-sided; the IOC EB's recommendation based on the IOC Comprehensive Report was presented to the IOC Session, which took into account the IBA's Reply, and was the IOC's final assessment in relation to the matter.

b. The IOC Comprehensive Report and the IBA's Reply were both provided to the IOC members and the IOC invited the IBA's comments within four weeks. The IBA was told that noting after 3 April 2023 would be considered.

c. The IOC Session decided to withdraw the IBA's recognition *"autonomously"* in accordance with Rule 3.7 of the Olympic Charter. The IOC Session is the supreme IOC body and is not bound to follow the IOC EB recommendations.

d) Did the IOC respect the IBA's right to be heard?

129. The right to be heard is a fundamental right, CAS 2012/A/2740; CAS 2020/A/6617.

130. The IOC did not respect the IBA's right to be heard. The IOC said that in respect to the IBA's right to be heard, the IOC provided the IBA's Reply to the IOC members on 7 June 2023. But the IBA's Reply was *"within the issuance"* of the decision of the IOC EB on 7 June 2023, which is the subject of a different CAS appeal.

131. In this case, the IBA's right to be heard was not respected to the same extent as the IOC's. The IOC presented kits position to the IOC Session but there was no opportunity given to the IBA to present its position.

132. This breach *"should be enough to cancel the Appealed Decision"*.

e) Was there an abuse of dominant position by the IOC when issuing the Appealed Decision?

133. This case concerns the withdrawal of IOC recognition *"which means the elimination of IBA from the market of Olympic entities, which as the material effects of a boycott"*.

134. The Swiss Legal Act on Cartels and other restraints of Competition (the *"Loi fédérale sur les cartels et autres restrictions à la concurrenc"*, "LCart") constitutes the Swiss law in relation to competition. Its purpose is to prevent harmful economic or social effects of cartels and other restrictions of competition and to promote competition in the interests of a liberal market economy.

135. It provides:

a. By Article 2, the LCart applies to public or private undertakings which are parties to cartels, or which exercise market power, or which participate in concentrations of undertakings; an undertaking is a consumer or supplier of goods or services in trade, regardless of the legal or organisational form.

b. By Article 4, dominant undertakings are those which, in a given market, are able, as suppliers or consumers, to behave to an appreciable extent independently of other participants in that market.

c. By Article 7, a dominant undertaking behaves unlawfully if, by abusing its position in the market, it hinders the access of other undertakings to competition.

136. The *"preconditions"* for an offence under Article 7 are therefore: (a) a dominant undertaking; and (b) abuse by the dominant undertaking: see 2C_985/2015. The IBA must prove the existence of a dominant position and the abusive nature of the conduct complained of, while the IOC must prove that its conduct *"is objectively justified"*.

137. In this case, the IOC is a dominant undertaking and is subject to the provisions of LCart when it makes a decision applicable to IFs *"and more particularly as regards any restriction of competition contained therein"*.

a. The IOC is an association under Swiss law, in accordance with Article 60 et seq. of the SCC. *"The mission and role of the IOC is to lead the Olympic Movement and promote the Olympism and its values throughout sport, and more specifically the Olympic games"*, per Articles 1 and 2 of the Olympic Charter.

b. The Olympic Games generate substantial revenues. The revenue from for the period 2017 to 2021 was USD 7.6 billion. From these revenues, the IOC provides financing to IFs.

c. With regard to the IOC, the relevant market is *"the market for the organization and marketing of the Olympic sport on a global level"*.

d. The three main constituents of the Olympic Movement are the IOC, the NOCs, and the IFs. The regulations established by the IOC *"are binding for members of the Olympic Movement, including the International Federations, who risk being excluded from the market if they do not respect the regulations. In effect, IF's must be recognized by the IOC in order to be granted the function of governing and supervising one or more sports worldwide … and to be able to send affiliated athletes to the Olympic Games"*.

e. Recognition by the IOC also enable the IFs to benefit from financial assistance provided by the IOC.

f. *"Therefore IOC can be considered as an undertaking exercising a dominant position in the commercial market, because of the effective power it exercises over the constituents of the Olympic Movement, among which the International Federations"*.

g. The IBA is also an undertaking under LCart, *"as it is the International Federation and the part of the Olympic Movement, and participate in the economic process of Olympic stile boxing* [sic]*"*.

138. The conduct by the IOC in this case in withdrawing the IBA's recognition was an abuse of power.

139. The IOC has obstructed access to or exercise of competition by the IBA:

a. The Appealed Decision leads to a loss of status by the IBA. *"Regardless financial independence of IBA from the IOC, the status itself gives a lot to the International Federations, from sponsors to credibility before the national federations and athletes"*.

b. The Appealed Decision has led the loss of several IBA members, such as USA Boxing, Swiss Boxing, New Zealand Boxing, Argentinian Boxing, and Boxing Australia.

c. NOCs in many countries exerted pressure on their NFs "*to leave the IBA as soon as possible*".

d. Withdrawal of the IBA's recognition also *"opens an opportunity"* for alternative IFs, as has happened with the appearance of World Boxing. All of the NFs who left the IBA have "*declared their will*" to join World Boxing. Under the 'one flag principle' the NFs will not be able to be affiliated with more than one IF, and so it is *"logical and understandable that World Boxing will be prioritised at the expense of IBA"*.

e. The IBA's global sponsor is Sting International Pty Ltd. The revenue generated by the contract plays a significant role in the IBA's financial independence from the IOC. The sponsorship contract contains a provision by which the sponsor can terminate the contract in the event that the IBA loses its IOC recognition. *"This situation will have catastrophic financial consequences for IBA, and certainly lead to its economic ruin"*.

140. The IOC has abused its dominant position:

a. The Appealed Decision affects the IBA's competitions. The IBA can no longer participate in the Olympic Games and its qualifying events. The ASBC has postponed all competitions in Asia, including the Youth and Junior Boxing Championships in Astana.

b. In order for the hindrance of access to competition or the exercise of competition by another undertaking to be abusive, *"the dominant undertaking's behaviour must not be based on legitimate commercial considerations"*. The burden of proof in this respect is on the IOC and *"the IOC has failed to demonstrate the existence of such legitimate considerations"*.

c. That the Appealed Decision is an abuse is clear:

i. It was issued without any legal basis.

ii. The IOC Session of 22 June 2023 did not constitute a democratic meeting *"but rather event with the only intend to sway the IOC members to vote against the IBA"*.

iii. The IBA's right to be heard was violated by the IOC.

iv. The IOC did not give equal treatment to the IBA.

d. Moreover, the IOC was biased in its assessment of the IBA's progress with respect to its reforms for these reasons:

i. The IOC never developed and provided to the IBA the so-called *"road map"*.

ii. The IOC never provided to the IBA with the *"conditions without which would mean failure and lead to withdrawal of the IOC recognition"*.

iii. The IBA made "very important efforts to comply with the IOC's general requirements" and made significant improvements in the areas of ethics, governance, and finance, which efforts have been recognised by ASOIF by its ranking of the IBA in its A2 group.

iv. The IBA "spent a significant amount of time and money to achieve the objectives set by the IOC.

v. The IOC "has failed to demonstrate in what manner the interest of boxing athletes and the sport of boxing in general would suffer from the lifting of the provisional suspension and the withdrawal of recognition".

e. The IOC has *"clearly engaged in unlawful conduct by issuing a decision generating an illegal hindrance of access to competition to the detriment of IBA"*, and such conduct *"is not justified by any legitimate considerations and in violation of Swiss competition law"*.

f) Was there a violation of the IBA's personality rights?

141. Article 28 of the SCC prohibits infringements of personality rights by third parties. With respect to the conduct of an association, the Swiss Federal Tribunal (the "SFT") has decided as follows:

a. Although associations enjoy a large degree of autonomy, such autonomy is limited in that the association's statues may not derogate from mandatory laws and must not *"unduly affect the personality of its members"*: such as the IOC: ATF 134 III 193, c.4.3; confirmed by CAS in CAS 2011/A/2433; CAS 2013/A/3091.

b. The refusal of admission to and exclusion from an association may result in an infringement of personality rights in the case of membership of a professional,

corporate or economic association, or of a sports association (ATF 5A_21/2011, GOC v. IOC, c. 5.2.1.3).

c. For a restriction of economic freedom to be considered excessive, it must subject the person to the arbitrariness of his contractual partner, suppress his economic freedom or limit it to such an extent as to jeopardise the basis of his economic existence (ATF 4A_312/2017, c. 3.1).

142. For any IF, in order to be admitted into the Olympic Movement and to take part in the organisation of the Olympic Games, it must be recognised by the IOC pursuant to Rules 3 and 25 of the Olympic Charter. IOC recognition gives the recognised IF *"a number of rights specified in the Rule 26 of the Olympic Charter, that includes control and direction of its sport at the Olympic Games"*. When deciding on recognition, the IOC *"must respect the mandatory provisions of the law – including the personality rights of the entity subject to its regulations"*.

143. The IBA's right to development and economic fulfilment has been violated by the Appealed Decision, which will *"exclude IBA of the Olympic market and will be fatal for the IBA: recognition will be granted to another entity, which will replace IBA, the latter being de facto deprived of its activities and, consequently, of any source of income"*.

144. The exclusion by the IOC is not justified by an overriding private or public interest:

a. The IOC has failed to demonstrate that any public interest would be adversely affected by the lifting of the suspension of the IBA's recognition; and the IOC has failed to demonstrate any public interest that would justify the withdrawal of the IBA's recognition.

b. Even if there were a public interest, that interest would be *"far inferior"* to the IBA's private interest in maintaining recognition.

g) Did the IBA fulfil the conditions set by the IOC in IOC Letter of 9 December 2021?

145. The overarching submissions of the IBA in this respect may be summarised as follows:

a. In the IOC Letter of 9 December 2021, the IOC did not provide a concrete and detailed roadmap for IBA. Instead, the IOC outlined three areas of concern: finances, credibility of the boxing competitions, and governance. The IBA was tasked with developing the Boxing Qualification System and defining the weight classes, which it has done.

b. The three areas of concern were never detailed by the IOC, and the IOC never established what exactly the IBA should achieve in order to comply with the IOC requirements.

c. Despite the challenges faced, it has taken significant steps to address the three areas of concern and has made substantial progress in enhancing its organisation and operations.

d. The IBA has made significant progress in various areas, including finances, credibility of the boxing competitions, and governance. While the IBA acknowledges that it may not be a perfect organisation and faces its share of challenges, it is essential to recognise the considerable improvements made, especially considering the difficult circumstances that arose during the presidency of C.K. Wu.

e. Perfection is unattainable in the sports world or any other domain. The IBA has been working diligently to address its problems and achieve meaningful reforms. Considering the low point when the AIBA faced challenges, the reforms and achievements made by IBA are remarkable.

f. Therefore, the IBA has fulfilled the conditions set by the IOC in the IOC Letter of 9 December 2021.

g. It is also important to note that nothing in the IOC Letter of 9 December 2021 establishes criteria for withdrawal of the IBA full recognition by the IOC; therefore, it cannot be used as a legal basis to withdraw recognition.

146. In the IOC Comprehensive Report, at paragraph 11, the IOC said that on 9 December 2021 *"the IOC EB established specific conditions in the Roadmap 2021 to 2023 that AIBA needed to fulfil. The roadmap defined the conditions, the benchmarks and the timeline by which the conditions needed to be fulfilled at the latest 2023. The conditions set out in the roadmap and communicated to*

147. The IBA agrees that three areas of concern were communicated by the IOC to the IBA on 9 December 2021: finance, R&J, and governance. The IBA never challenged those areas of concern and had been working hard to improve in these areas. But the IBA does not agree that the IOC has ever developed a "roadmap" or delivered such a roadmap to the IBA.

148. The IOC Letter of 9 December 2021 said that the IOC EB had tasked the IOC DG and the IOC Ethics and Compliance Officer with *"defining a roadmap in consultation with AIBA" to address the areas of concern. The roadmap was "never defined to the IBA and there were not any communications between the IOC and IBA regarding defining such roadmap". The three areas of concern "cannot be regarded as a Roadmap … as a Roadmap typically entails a detailed action plan with specific deadlines".* The concerns expressed by the IOC did not *"encompass the comprehensive and specific guidance that is typically found in a Roadmap"*. Accordingly, in the absence of an *"actual Roadmap" the IOC "cannot hold the IBA accountable for non-compliance with an undefined roadmap"*.

149. Further, the three areas of concern set forth by the IOC in the IOC Letter of 9 December 2021 were developed for the purpose of establishing the conditions under which the suspension of the IBA's recognition could be lifted in 2023; the IOC did not explicitly state that failure to comply with these conditions would lead to the withdrawal of recognition.

150. The IBA therefore *"provides comments and evidence"* as to the progress achieved by the IBA in each of the three areas of concern.

1) Qualification System to Paris 2024

151. Despite the absence of a formally defined roadmap, an attempt to outline a roadmap may be inferred from the IOC Letter of 9 December 2021 by which, *"as part of the initial steps of this roadmap"*, with regard to the OG Paris 2024, the IBA was *"required"* to do the following: (a) develop the boxing qualification system; and (b) define the weight classes for the 13 boxing events confirmed for the OG Paris 2024 programme. The IBA was given a deadline of 31 January 2022, later extended to 25 February 2022.

152. The IBA successfully fulfilled the IOC's request:

a. On 30 March 2022, the IBA submitted to the IOC its final proposal on these matters, and there followed an exchange of correspondence between the IBA and the IOC.

b. On 12 April 2022, the IOC notified the IBA of its approval of the IBA's proposed boxing qualification system for the OG Paris 2024 *"as one of the first steps of the roadmap established by the IOC"*.

c. On 2 May 2022, the IBA sent to the IOC the IBA's 'Implementation of the Olympic Qualification System for the boxing tournament of Paris 2024'. The IBA's good faith with respect to the development of the boxing qualification system is attested to in the witness statement of IBA sport director, Mr Petric.

d. The IOC's criticisms of the boxing qualification system only surfaced on 10 May 2022, just prior to the IBA's elections of 13-14 May 2022. The IBA "perceives" that this was an attempt by the IOC *"to interfere in the elections and undermine support for … Mr Kremlev"*.

e. On 24 June 2022, the IOC made a decision to proceed with qualifying events and the boxing competitions at the OG Paris 2024 without the participation of the IBA. As a consequence, the IBA was no longer involved in the boxing qualification process and was unable to complete its work.

2) Finances

153. In the IOC Letter of 9 December 2021, the IBA had *"to increase financial transparency and sustainability including through diversification of revenues"*.

154. The IOC never specified the specific steps that the IBA should undertake to address and overcome the concerns raised in this area.

155. Based on a review of the IOC DG / CECO Interim Report (see [] above), it is evident that the IOC's concern regarding finances was confined to: (a) responsibility to FCIT; and (b) the Gazprom sponsorship contract.

156. As to FCIT:

a. FCIT invested not directly into the IBA but into the IBA's subsidiary, Boxing Marketing Arm SA.

b. FCIT intended to acquire shares in BMA in exchange for its investment, but no contract was executed, so that the shares were never transferred.

c. The investment was then reclassified as a loan.

d. BMA was liquidated in 2019 due to bankruptcy, since when FCIT has not issued any claims against BMA or the IBA.

e. The IBA has objected to the FCIT's debt enforcement procedures "*in accordance with established procedures*".

f. The IBA's former legal adviser has prepared a memorandum in relation to FCIT in which he confirmed that *"even though there is a risk of litigation between IBA and FCIT … IBA does not have a debt toward FCIT [and] if the dispute … is brought before a tribunal or arbitration court, IBA has a good chance to prevail"*.

157. The IBA thus denies the existence of any responsibility to FCIT, as is explained in the IBA's statutory accounts as of 30 June 2022. The IBA's auditors received a comprehensive report on this matter *"and concurred with IBA's position that there is no pending debt, resulting in the absence of any reserved FCIT debt in the IBA accounts"*.

158. As for Gazprom:

a. The Gazprom contract is confidential, which is why the IBA could not provide a copy to the IOC but EY reviewed the contract and reported back to the IOC.

b. The IBA's negotiations with sponsors and the contents of sponsorship contracts "*are private matters*" and the IBA is *"entitled to preserve its autonomy in this respect"*.

c. The IOC raised concerns about sponsorship from a state-owned company but the IOC *"has not cited any specific case of conflict of interest or loss of autonomy"*.

d. The Gazprom sponsorship contract expired on 31 December 2022 and was not renewed or extended. For the financial year ended June 2023, sponsorship revenue amounted to 50% of total revenue which *"demonstrates that IBA's financial reliance on Gazprom … has significantly diminished and highlights the organizations diversified sources of revenue from various sponsors"*.

159. In general, the IBA has proven to be stable and is operating successfully:

a. The IBA holds its World Championships in men's and women's boxing. Organisation of these events would not be possible if the IBA were a *"problematic organization, like the IOC is trying to demonstrate"*.

b. The IBA has established new tournaments, such as World Boxing Tour and IBA's Champion's night.

c. The IBA celebrates International Boxing Day in several countries each year.

d. The IBA holds its congresses.

e. The IBA financially assists NFs and confederations through the 'Financial Support Program'.

160. The allegations of financial instability are therefore *"groundless"* and the IBA has decided *"not to provide the IOC with any information concerning its sponsors and investors to prevent any potential pressure from the IOC"*.

3) R&J

161. With regard to the credibility of boxing competitions, the IOC Letter of 9 December 2021 required the IBA *"to change its R&J process to ensure its integrity under the monitoring of PwC, including a monitoring period for AIBA's own competitions ahead of the Olympic Games Paris 2024"*.

162. PwC attended the IBA Men's World Boxing Championships 2021 in Serbia and the IBA Women's World Boxing Championships 202 in Turkey. As to the suggestion that the IBA prevented PwC from attending the IBA Women's World Boxing Championships 2023 in India, the IBA submits as follows:

a. The IBA was concerned about *"the potential copying of IBA's system for working with competition officials by the IOC, without IBA's consent"*. It therefore requested PwC to sign a non-disclosure agreement ("NDA"), which was aimed at protecting the IBA's confidential information.

b. The IBA may have *"been mistaken"* about the intentions of the IOC to copy the IBA system. But the IOC's invitation to the IBA competition officials to participate in the IOC qualification events without involving the IBA "contradicts the standard practices of cooperation" and was *"disrespectful"*.

c. PwC's refusal to sign the NDA *"might have raised concerns that they could potentially use the information for purposes beyond assessing IBA's progress in the competition area"*. The content of the NDA did not prevent PwC from performing its task. The NDA provided that *"confidential information will be provided for the sole purpose of permitting PwC to perform all its duties in the framework of its activities entrusted by IOC"*.

d. The NDA therefore allowed PwC to fulfil its mandate and *"allowed PwC to conduct a comprehensive assessment and prepare the required report without nay hindrance"*.

e. PwC *"was not restricted in access to any necessary information related to the IBA competitions in order to assess IBA activity in this area"*. The possible restriction on PwC in the sharing of

information with the IOC *"did not in any way infringe on the right of the PwC to carry out its mandate"*.

f. The IBA requested that PwC monitor the IBA Men's World Boxing Championships 2023 in Uzbekistan. The IOC rejected that request and *"deprived itself of the opportunity to observe the organization of perhaps the best boxing event in history"*.

163. The progress made by the IBA in enhancing competition integrity has been recognised by McLaren Sports in the report entitled 'Key Integrity Achievements' dated 26 March 2023. The report noted that *"it is the opinion of* [McLaren Sport] *that … noteworthy progress has been made to progress the current and future integrity of IBA … competitions and consign to history the corruption legacies of previous administrations"*.

164. Based on this report and *"the documented progress in the R&J process"*, the IBA has *"successfully demonstrated significant improvement in ensuring the integrity of the boxing competitions"*.

4) Governance

165. The IOC Letter of 9 December 2021 required the IBA *"to ensure the full and effective implementation of all the measures proposed by Professor Haas and his team, including the change of culture"*.

166. On 30 June 2021, the IBA decided to establish an independent expert group, the GRG, to conduct a thorough assessment of the IBA's governance practices, provide recommendations for enhancing governance, and assist in the implementation of the suggested improvements.

167. The GRG issued the GRG Recommendations on 15 November 2021, and the Recommendations were adopted by the IBA Board on 26 November 2021 and by the IBA Congress on 12 December 2021.

168. As from December 2021, the GRG *"provided continuous support to the IBA"* with respect to the implementation of the GRG Recommendations.

169. On 22 July 2022, the IBA discontinued the use of GRG and decided to proceed with the implementation of the GRG Recommendations using *"internal resources"*. In this regard, it was never part of the IOC's requirements specified in the IOC Letter of 9 December 2021 that the GRG would be retained; instead it was *"the full and effective implementation of all the measures proposed by Professor Haas and his team"*.

170. The GRG issued the GRG Summary Report at the end of its mandate on 25 August 2022.

171. The IBA can demonstrate the progress made with respect to governance.

i) The IBA Constitution

172. In order to adhere to the GRG Recommendations, the IBA Congress made amendments to the IBA Constitution on 12 December 2021 and 11 December 2022. *"Consequently, IBA has*

effectively met the legal requirements necessary for the comprehensive implementation of the GRG Recommendations".

ii) The BIIU

173. The IBA Constitution provides for the legal basis for the BIIU and its subordinate bodies., by Article 36.

174. The IBA has put in place the BIIU Rules, the BIIU Procedural Rules and the IBA Disciplinary and Ethics Code. To ensure the independence of the BIIU, Article 36.2 of the IBA Constitution provides that no amendment to the BIIU rules or procedures can be made without the approval of the BIIU Managing Board.

iii) The IBA Board of Directors

175. The BIIU elects new Board of Directors after an election process conducted in accordance with the IBA Constitution.

176. The GRG Summary expressed general satisfaction with the changes introduced by the IBA including that the election process was *"transparent and well-managed"*, that the board had made a "*fresh start*", and that there was *"considerable improvement"* in the discussion culture at the board level.

iv) The IBA Committees

177. As per the GRG Recommendations, the IBA has established two groups of committees: corporate governance committees; and technical and management committees. These committees have been formed and are operational. It is crucial to acknowledge however that the ongoing situation between the IOC and the IBA has resulted in some departures from these committees.

v) The Liaison Officer

178. In accordance with the GRG Recommendations, the IBA suggested to the IOC (I a letter dated 4 March 2022) a procedure to appoint a liaison officer and a list of potential candidates. There was no response from the IOC. *"As a result, the IBA could not fulfil this recommendation due to lack of cooperation from the IOC's side…".*

vi) The President's Office

179. In the GRG Recommendations, it was recommended that there be no President's Office in addition to the Head Office. Based on that recommendation, the President's Office was dissolved. A number of other personnel changes were implemented in line with the GRG Recommendations.

vii) Confederations and NFs

180. Elections were held in all IBA Confederations and the governing bodies "*completely re-elected*".

181. As per the GRG Recommendations, the IBA has established a 'Member Federations Committee' to, inter alia, deal with relations between the IBA and the NFs, to draw up proposals for the cooperation between the NFs and the IBA, to monitor the statutes of the Confederations and NFs, and to develop best practices for the NFs. The IBA has also put in place an 'IBA Membership Policy' (31 January 2022) that establishes a mechanism for the oversight of NFs and of improving the quality of their work.

viii) Governance Culture

182. As was said in the GRG Short Summary Report:

> *""Good governance" is not only a legal matter, but above all a cultural condition that grows over time. It needs to be constantly evaluated and nurtured through continuous training and refreshment of the leadership. The GRG therefore recommended creating a climate in which such growth is possible and encouraged, the best minds are recruited and decision-making processes are optimised and sufficiently legitimised. While the GRG acknowledges that certain improvements have been made in this regard, it is still of vital importance for the future of IBA that the governance culture is continuously improved".*

183. As to governance generally:

a. The transformation of governance culture is a process that cannot be achieved overnight, *"it requires sustained investment of time and effort"*.

b. Measuring governance culture is inherently challenging due to its subjectivity.

c. The IBA is of the opinion that *"it is on the right track to improve its governance culture"*.

d. ASOIF, in its report of July 2021, ranked the IBA's governing structure in Group A2, the second-highest tier, alongside various "esteemed" IFs. This underscores the IBA's progress in this regard.

e. The IBA has implemented the GRG Recommendations.

184. By way of overall conclusion:

a. The IOC did not provide *"a concrete and detailed roadmap for IBA"* but instead outlined three areas of concern: finances, credibility of the boxing competitions, and governance. The IBA *"has taken significant steps to address these concerns and make substantial progress in enhancing its organization and operations"*. However:

i. these areas of concern were never detailed by the IOC *"and the IOC never established what exactly the IBA should achieve in order to comply with the IOC requirements"*; and

ii. the IBA has been working diligently to address its problems and to achieve meaningful reforms but perfection is unattainable.

b. The IBA has fulfilled the conditions set by the IOC in the IOC Letter of 9 December 2019.

h) Does the Comprehensive Report prove the IBA's non-compliance?

185. The purpose of the IOC Comprehensive Report was to *"determine whether, on 3 April 2023, the IBA did indeed meet the conditions set out in the [IOC Letter of 9 December 2021] to the IOC's satisfaction"*.

186. The IOC Comprehensive Report should be therefore limited to arguments related to the requirements mentioned in the IOC Letter of 9 December 2021. Any other arguments in the IOC Comprehensive Report that do not relate to those requirements are irrelevant.

187. There is nothing in IOC Letter of 9 December 2021 that establishes criteria for withdrawal of the IBA full recognition by the IOC; it instead relates to conditions to be met so that the suspension of the IOC's recognition of the IBA could be lifted. There is a significant difference between the conditions to lift the suspension and the conditions to decide on the status of the IBA's recognition. The latter involves considering the possibility of either lifting the suspension or withdrawing the recognition entirely, while the former does not.

188. Therefore, even if one were to assume that the IBA failed to comply with the requirements set forth in the IOC Letter of 9 December 2021, such failures cannot serve as the legal basis for the withdrawal of the IBA's recognition because these requirements were not initially established as the conditions for the withdrawal of recognition.

1) Governance

189. The IOC Letter of 9 December 2021 required the IBA *"to ensure the full and effective implementation of all the measures proposed by Professor Haas and his team, including the change of culture"*.

190. For the reasons set forth above, the IBA has done so.

191. The IOC hired Ms Kendrah Potts to assess the IBA's progress with respect to governance. The IBA is *"sceptical about this report"* because of the short time period of less than one month granted to Ms Potts for the preparation of the report. In that time, it *"would be challenging to conduct a comprehensive study of all the reforms implemented"* by the IBA between 2021 and 2023. Ms Potts acknowledges that, given *"the short timescales"*, she has not conducted interviews or attended any IBA meetings. The assessment of the change of governance culture cannot be adequately made solely on a review of the documents within a limited timeframe.

192. In any event, Ms Potts came to a conclusion that there was a lack of willingness on the part of the IBA to change its culture of governance. She did so based on (a) various complaints by USA Boxing and the resignations from various IBA committees; and (b) termination of the GRG mandate before the full implementation of the GRG Recommendations.

193. Neither provides the basis for her conclusion and there is nothing else in the file that supports such a conclusion.

a. USA Boxing was a member of the Common Cause Alliance, which *"became a tough opposition"* to the IBA leadership and became the first NF to leave the IBA to join an alternative boxing federation, World Boxing. This shows that USA Boxing's complaints were *"politically motivated"*.

b. The maintenance of the GRG mandate was not an IOC condition. The IBA is grateful for the work of the GRG *"but the way how the reforms shall be implemented is part of the IBA's autonomy"*.

194. The IOC Comprehensive Report also criticised the timing of the formation of the BIIU and its components. It was said that the BIIU was still not fully established by March 2023, and that the various BIIU units were appointed on 25 April 2023, after the cut off date of 3 April 2023. However, the GRG Recommendations did not set a specific deadline for the establishment of the BIIU. While the BIIU aimed to establish the BIIU by the end of 2022, *"it was considered an internal goal rather than a strict deadline"*. It became evident to the IBA that establishing such a crucial body in a short time frame *"posed significant challenges"*. It was therefore decided to extend the deadline in order to ensure *"a diligent and thorough selection process"*.

195. The IOC Letter of 9 February 2021 did not impose any specific deadline for the implementation of the GRG Recommendations, including the establishment of the BIIU. Even if the BIIU was not active until 25 April 2023, that was before the Appealed Decision was made; the Appealed Decision therefore cannot be justified on the basis that the BIIU was not in place. In any event, in the interim period before the establishment of the BIIU, its functions were assumed by the members of the Ethics and Disciplinary Committee.

196. The IOC Comprehensive Report also criticised the IBA for a lack of democracy, citing the episode surrounding the elections in May 2022 that was the subject of proceedings in CAS. In this respect, the IBA's position is that:

a. The CAS Award did not say anything about a lack of democracy in the IBA processes.

b. The Sole Arbitrator *"came to a contradictory and wrong conclusion"* that the IBA President also carried out early campaigning.

c. The excluded candidates did not request the CAS to cancel the IBA Congress in Istanbul in May 2022. Therefore the CAS set aside the INU decision to exclude the candidates but did not cancel the elections. The limited consequences should be attributed to the candidates and not to the IBA.

d. The IBA provided the NFs with an opportunity to vote on whether there should be a new election. The IFs voted 74.65% against. That is a democratic process.

e. Prof. McLaren's evidence is that the election was conducted fairly.

2) Finances

197. The IBA was *"surprised"* by the timing chosen by the IOC to assess the IBA's financial situation coming just prior to the IBA Women's World Boxing Championships 2023 in India (15-26 March 2023), when the staff were busy preparing the competition. Assessing the financial situation of the IBA during an operational period *"does not seem reasonable"*. The IBA pointed this out to the IOC at the time.

198. The IOC, in the IOC Comprehensive Report, also says that EY were prevented from fulfilling its "*contractual mission*" as a result of the IBA's insistence on an NDA. The IBA objects to this:

a. Neither EY nor the IOC identified any particular section of the NDA that would hinder or prevent EY from complying with its mandate.

b. The NDA provided that *"confidential information will be provided for the sole purpose of permitting EY … to perform all its duties in the framework of its activities entrusted by IOC"*.

c. The NDA therefore allowed EY to fulfil its mandate and *"allowed PwC to conduct a comprehensive assessment and prepare the required report without nay hindrance"*.

199. The IOC Comprehensive Report raises the issue of FCIT and Gazprom, as to which see above. Further, IBA does not share the position of other federations that enjoyed Gazprom sponsorship for many years but then *"broke off all relations with Gazprom in one day"*. *"The IBA cannot afford such attitude to its sponsors"*. During the IBA's Ordinary Congress in December 2022, the President asked the opinion of the NFs and the majority by acclamation agreed to extend the Gazprom contract. Due to circumstances beyond the IBA's control, the contract was not renewed.

200. The IOC Comprehensive Report also raised questions about prize money. It was said that if prizemoney was being from drawn from the event's revenue then the IBA's dependence on sponsorship was even greater; and that such a direct link between the event's host and prizemoney may create a conflict of interest. As to this, the IBA submits that:

a. The *"deduction of the prize money from the event's income does not constitute illegal activity and … it has no impact on [the] successful functioning of IBA"*.

b. The IOC only suggests that a conflict may be created and it provides no grounds for that assumption.

201. The IBA is not prepared to provide the IOC with any information regarding its sponsors and investors in order to avoid pressure on them from the IOC.

3) R&J

202. In the IOC Comprehensive Report, the IOC said that *"Prof. McLaren's report and the IBA's reply show that the IBA relies only on its vetting mechanism, but not on a full R&J process"*.

203. But the IOC did not consider that the IBA's R&J processes are "*constantly improving*", as confirmed by Prof. McLaren in his witness statement saying that McLaren Sport took on enhanced role to ensure ethical standards and regulations are adhered to. In addition to screening, McLaren Sport attended every session of the competition and provided *"comprehensive independent integrity oversight"*.

204. As to what was said in the IOC Comprehensive Report that the bout review was still within the control of the competition officials, by his witness statement Prof. McLaren explains that a *"fundamental change"* to the bout review process was required and that the current bout review process (whereby the judge evaluator and the observer have an integral role to play in deciding the outcome of a 3-2 bout) *"whilst not perfect is, as an interim measure, a significant step forward"*.

205. As proof of the R&J progress, the IBA relies on the witness statement of Mr Chris Roberts, the IBA Interim Secretary General and CEO. Mr Roberts was previously the IBA Development Director and the Chair of the IBA R&J Committee. The IBA relies on the following evidence from Mr Roberts:

a. As to the pre-competition phase of the selection of officials:

i. This is managed via a random draw process, other than for the Technical Delegate.

ii. The IBA has applied a random draw for the Technical Delegate, based on the availability of five at one time.

iii. The process is recorded via Zoom, placed into a recorded document, and then agreed by either the IBA Competition Committee and/or the IBA R&J Committee. .

b. As to the draw:

i. The draw is conducted and managed externally by SportData.

ii. The filters that are applied are based on the same system used by Swiss Timing; the fixed filters can be expanded as appropriate and any conflict of interest may be identified at the very start of the competition.

iii. In some cases, post draw, there may be a ned to make some manual requirements, which is used if an referee or judge needs to be removed for lack of performance set against an evaluation process or an issue arises which was not identified at the start of the competition.

iv. This vetting process *"far exceeds anything that has been done in the past",* either by the IBA or the IOC.

v. A recording process is applied when a referee or judge is removed, which is signed by both Draw Commissioners and ratified by the Technical Delegate.

vi. The documents are then scanned and sent to McLaren Sport *"as a true and accurate reflection of the change"*.

c. As to the bout review:

i. The bout review is set forth in some detail in 'IBA Bout Review 22'.

ii. It has been evolving for some time in order to allow oversight by the Evaluators and Observers to ensure that the result is correct.

iii. The effect of the bout review is that the IBA has *"almost moved"* to the process where there are seven judges around the ring for each bout, which adds another layer of assurance.

206. The IBA also relies on the (undated) expert report of Sportdata GmbH & Co KG ("Sportdata") in relation to the bout review process. In its report, Sportdata describe the evaluation and implementation of a new system for bout review, put in place for the first time for the Women's World Championships in India in March 2023.

4) Additional Aspects

207. The matters set forth in the IOC Comprehensive Report relating to additional aspects are not based on the conditions mention in the IOC Letter of 9 December 2021 and are therefore irrelevant.

i) Conclusions on the Merits

208. The IOC Comprehensive Report does not prove the IBA's non-compliance *"but rather biased approach of the IOC towards the IBA"*. The IBA is a healthy organisation; it may have slight defects or mistakes but *"this does not mean that the IBA does not meet the requirements for recognition by the IOC"*.

j) The Appellant's Requested Relief

209. The relief sought by the IBA was as follows:

"The International Boxing Association (IBA) respectfully requests the CAS to rule as follows:

1. The appeal filed by the International Boxing Association (IBA) shall be admissible and upheld.

2. The Decision of the IOC Session passed on 22 June 2023 shall be annulled and set aside in full.

3. As consequence to the point above, International Olympic Committee (IOC) (i) recognizes International Boxing Association (IBA) as the International Federation in the Olympic Movement as per OCR3.7 and (ii) shall authorize International Boxing Association (IBA) organise the Olympic Games LA28 boxing tournament in case it is included in the program.

4. The International Olympic Committee (IOC) shall bear all costs incurred with the present procedure.

5. The International Olympic Committee (IOC) shall pay to the International Boxing Association (IBA) a contribution towards its legal fees and other expenses incurred in connection with the present proceedings, in an amount to be determined at the Panel's discretion".

B. The Respondent's Submissions

a) Which Party bears the burden of proof?

210. The burden of proof is on the IBA. There has been no sanction imposed on the IBA; this is a case of non-compliance with the requirements set by the IOC for the recognition of the IBA. The IBA's arguments based on legal principles applicable to disciplinary matters are inapposite.

211. The IBA was required to establish, to the IOC's satisfaction, that the IBA complied with the requirements set forth in the IOC's decision of 9 December 2021.

b) What is the legal basis for the Appealed Decision?

212. The IBA's recognition was not withdrawn as a sanction but as the consequence of IBA not having shown to the IOC's satisfaction that it had met the IOC's conditions to regain recognition within the applicable time limit. The Appealed Decision does not impose any *"measures or sanctions"* pursuant to Rule 59 of the Olympic Charter. This is not a disciplinary case for *"violation"* of the Olympic Charter.

213. The legal basis on which the IOC decided to withdraw the IBA's recognition is Rule 3.7 of the Olympic Charter. Rule 3 of the Olympic Charter provides that the IOC may recognise IFs. It provides that: (a) the IOC is empowered to withdraw the recognition given to IFs; (b) any such withdrawal us by the IOC Session, as was the case here; and (c) all details of recognition procedures are determined by the IOC EB, as was the case here with the IOC Letter of 9 December 2021, the subsequent correspondence and the roadmap.

214. The IBA argument that Rule 3.7 of the IOC Charter merely outlines the powers of the IOC Session is misconceived. It has been abundantly clear since 2019 that the IBA would be given the possibility to regain recognition if certain requirements were met; it has always been clear that those requirements related to three areas of concern, finances, integrity of boxing events, and governance. In the IOC Letter of 9 December 2021, the IOC EB maintained the suspension of the IBA's recognition while setting out a number of conditions as part of the roadmap, conditions that the IBA needed to be met to the satisfaction of the IOC in order to decide on the status of the IBA's recognition in 2023.

215. The IBA was given *"full opportunity"* to show that it met the IOC's conditions on 23 February 2023 when it was invited by the IOC to provide all explanations and documents it deemed necessary to the IOC's three external experts,

216. With the Points of Potential Non-Compliance with the Olympic Charter on 6 April 2023, IBA was given a clear indication of why the IOC believed that the IBA had not fulfilled the IOC's conditions for recognition.

217. The IBA therefore knew the legal basis for the decision.

c) Does the Appealed Decision constitute an independent decision?

218. The IBA complains that the Appealed Decision was not an independent decision. This is without merit for these reasons:

a. The IBA does not say which rule in the Olympic Charter has been breached.

b. The way in which the situation was summarised to the IOC Session was not one-sided; the IOC EB's recommendation based on the Comprehensive Report was presented to the IOC Session, which took into account the IBA's Reply, and was the IOC's final assessment in relation to the matter.

c. The Comprehensive Report and the IBA's Reply were both provided to the IOC members and the IOC invited the IBA's comments within four weeks. The IBA was told that nothing after 3 April 2023 would be considered.

d. The IOC Session decided to withdraw the IBA's recognition *"autonomously"* in accordance with Rule 3.7 of the Olympic Charter. The IOC Session is the supreme IOC body and is not bound to follow the IOC EB recommendations.

d) Did the IOC respect the IBA's right to be heard?

219. The IBA complains that the IOC did not respect its right to be heard.

220. The IBA was provided with *"an unrestricted opportunity"* to comment on the matters that the IOC considered problematic. For example:

a. On 6 April 2023, the IOC provided the IBA with the Points of Potential Non-Compliance with the Olympic Charter and gave the IBA a four week period to reply. The IBA was told that nothing after 3 April 2023 would be considered.

b. The IBA did not complain about the process. Indeed, the IBA provided its Reply on 5 May 2023 and called upon the IOC *"to hear our arguments, note our progress and make a fair decision about the future of boxing"*.

c. The IBA therefore knew that its Reply *"constituted the exercise of its right to be heard before the IOC Session"*.

d. According to Swiss law, the IBA had no right to an oral hearing before the IOC Session in addition to its written response.

e. According to CAS case law, whether someone has been afforded the right to be heard is to be assessed on a case by-case basis; here *"there can be no doubt"* that the IBA had ample opportunity to present its case.

e) Was there an abuse of dominant position by the IOC when issuing the Appealed Decision?

221. The IBA's case based on Article 7 of the LCart should be summarily dismissed for these reasons:

a. The LCart is not applicable.

b. The IOC does not hold a dominant position in the relevant market.

c. The withdrawal of the IBA's recognition does not constitute an abuse under Article 7 of the LCart.

d. The withdrawal of the IBA's recognition was objectively justified by legitimate business reasons.

1) The LCart is not applicable

222. According to Article 2(2) of LCart, it is applicable *"to restrictions on competition that have a direct relevant effect on competition in Switzerland"*. This is also reflected in Article 137(1) of the Swiss Private International Law Act ("PILA").

223. The IBA does not explain why the LCart applies in this case. The only discernible connection with Switzerland is the fact that the IOC and the IBA have their seats in Switzerland. This does not mean that the Appealed Decision has a direct effect in Switzerland; moreover, the IBA has not defined the relevant market on which such direct effect has taken place.

224. Even if, as the IBA submits, one were concerned with the concept of a *"market of Olympic entities",* the only Olympic related direct effects of the Appealed Decision are the impossibility of organising the boxing tournament for the OG Paris 2024 and possibly the OG LA 2028 (if boxing is readmitted). It is hard to see how the Appealed Decision could have any direct effect on competition in Switzerland.

2) The IOC does not hold a dominant position

225. In order to succeed on this claim, the IBA has to establish that the IOC holds a dominant position in the relevant market.

226. The IBA has not done so. It has not even defined the relevant market. *"Insufficient or incorrect definition of the relevant market makes it impossible to conclude that a dominant position exists in that market"*.

227. The IBA speaks of a *"market of Olympic entities"* as well as a *"market for the organisation and marketing of Olympic sport"*. Even if these two definitions can be reconciled, the IBA's position is "*incorrect*".

228. It would be "*absurd*" to consider that the IOC dominates the *"Olympic market"* since it is obvious that, by definition, is the exclusive owner of the Olympic Games. The only market that could be taken into consideration is the market of international sport in general, as was held by the SFT in 5A_21/2011, 10 February 2012.

3) The withdrawal of the IBA's recognition does not constitute an abuse

229. Holding a dominant position is not *per se* unlawful. The mere fact that an undertaking holds a dominant position that prevents other undertakings from entering or competing in the relevant market is not unlawful. *"Rather, a dominant undertaking's refusal to deal with another market participant is unlawful if, and only if, such behaviour is unlawful"*. The mere fact that an undertaking holds a dominant position that prevents other undertakings from entering or competing in the relevant market is not unlawful. *"Rather, a dominant undertaking's refusal to deal with another market participant is unlawful if, and only if, such behaviour is unlawful (ATF 129 II 497; para. 6.5.1)"*.

230. The IBA has the burden of proving such abuse on the part of the IOC. It contends that the IOC abused its dominant position by obstruction. The IBA claims that, by the IOC withdrawing the IBA's recognition*, "the IOC deprived the IBA of its status of recognised federation"*.

231. The crucial factor to determine whether an action constitutes obstruction *"is the dominant undertaking's intent to hinder competition"*.

232. This is certainly not the IOC's intention and the IBA does not go so far as to claim that it is. Moreover, IFs do not have a right to be recognised by the IOC and many prosper without such recognition.

4) The withdrawal of recognition was justified by legitimate business reasons

233. In any event, even if the IOC were found to have abused its dominant position by withdrawing the IBA's recognition, its conduct would not be unlawful because it was objectively justified by legitimate business reasons.

234. In the field of sport, the objective reasons justifying restriction on competition are not limited to commercial reasons but also include *"considerations that are specific to sport, such as the smooth running of a competition, the safety of participants and equal opportunities for competitors"*.

235. In this case, the IOC took the decision to withdraw the IBA's recognition because it failed to address the IOC's legitimate concerns in relation to the IBA's finances, integrity of boxing events, and governance. The IBA did not ever challenge that the IOC had a legitimate interest to ensure that these concerns were addressed.

f) Was there a violation of the IBA's personality rights?

236. The IBA claims that its personal rights were infringed. This claim is based on a misunderstanding of the legal principles and their application here.

237. The autonomy of association is *"a pillar"* of Swiss law. *"Swiss law endows associations, including sports governing bodies, with a great deal of autonomy"*. By Article 63(1) of the SCC, this autonomy is only limited by mandatory law.

238. Articles 27 and 28 SCC are mandatory laws *"and operate as the main limitation to association autonomy"*. Article 27 protects the individual against him or herself against excessive commitments, which is not relevant here and the cases relied on by the IBA relating to Article 27 are irrelevant. Article 28 prohibits infringement against personality rights committed by third parties. Article 28 applies, if at all, because it is alleged that the IBA is the victim and the IOC is the third party perpetrating the infringement.

239. In this context, the IBA alleges that its economic development has been restricted and its economic freedom suppressed but has neither substantiated nor proved these allegations. The IBA's economic freedom is not suppressed as it is still economically active despite the suspension of its IOC recognition for the last five years and whether the withdrawal of recognition impairs the IBA's economic development has not been proven by the IBA.

240. An infringement of personality rights is presumed unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law. In this case, the IBA has consented to the extent that it never challenged the requirements for reinstatement of recognition and, in any event, any infringement would be justified *"by an overriding private interest"*. The SFT does not apply a particularly high standard when assessing whether there is such an overriding interest in the context of the exclusion of a member from an association – and that is a measure that has a much more severe impact on personality rights than a withdrawal of the recognition by the IOC. According to the court, the infringement of the excluded member's personality rights will be justified by an overriding interest of the association if the exclusion is based on a *"good cause"*.

241. The SFT also considers that an association's autonomy to exclude members (per Article 72(2) of the SCC takes precedence over a member's personality rights (per Article 28 of the SCC) because any incoming member must be taken to be aware of the association's statutory rules relating to the exclusion of members. This rationale should be applied *a fortiori* here where the IBA accepted clear conditions for regaining recognition, Where these conditions were not met then there can be no infringement of the IBA's personality rights.

g) Did the IBA fulfil the conditions set by the IOC in the IOC Letter of 9 December 2021?

242. The *"main if not the only issue"* in this arbitration is therefore whether the IBA demonstrated to the IOC's satisfaction that it had fulfilled the IOC's conditions by the cut-off date.

243. The IOC conditions regarding the status of the IBA's recognition were *"formalised"* on 9 December 2021 *"and the last steps of the 'Roadmap to 2023' were clearly laid out as of 23 February 2023"*.

244. As set forth in the IOC Letter of 9 December 2021, the IOC set the following conditions, which were never challenged by the IBA:

a. *"with regard to finance, to increase financial transparency and sustainability including through diversification of revenues;*

b. *with regard to the credibility of the boxing competitions, to change its R&J process to ensure its integrity under the monitoring of PwC, including a monitoring period for AIBA's own competitions ahead of the Olympic Games Paris 2024; and*

c. *with regard to governance, to ensure the full and effective implementation of all the measures by Prof. Haas and his team, including the change of culture"*.

245. In its letter of 23 February 2023, the IOC set out *"the next steps of the Roadmap to 2023, namely the instruction of three external experts to assess IBA's progress … in the three areas of the IOC Conditions (i.e. finance, governance and integrity of competitions)"*. At the same time, the IBA were told that no information and/or development after 3 April 2023 would be taken into account.

246. The Panel should therefore determine (even in a *de novo* hearing) whether the IBA has established to the IOC's satisfaction that it has met the 'IOC Conditions' as at 3 April 2023.

247. The IBA has failed to demonstrate to the IOC's satisfaction that it had fulfilled any of the IOC conditions at the time of the cut-off date. *"The findings of the Comprehensive Report are thus totally correct and the IOC Session was right in deciding to withdraw IBA's recognition. Even if the Panel were to take account matters beyond the cut-off date the result "should be the same""*.

1) Finance

248. Under this condition, the IOC requested the IBA *"to increase financial transparency and sustainability including through diversification of revenues"*.

a. The IOC found that there were still major concerns regarding the IBA's practices and activities, which may be considered as points of potential non-compliance with the Olympic Charter.

b. The IOC Comprehensive Report concluded that *"the absence of sustainable financing and the dependence on a state-owned former sponsor have not been remedied, which demonstrates that the IBA did not effectively improve its financial governance culture and meet the conditions set out by the IOC"*.

249. This conclusion was founded upon the following elements:

a. EY was prevented from fulfilling its mandate.

b. The reliance on Gazprom has not been terminated.

c. The exposure to the FCIT claim.

i) Ernst & Young

250. EY was engaged to perform an updated evaluation of the IBA's financial situation, upon which evaluation the IOC would rely in assessing the IBA's progress.

251. The IBA prevented EY from fulfilling its mandate, in two ways:

a. It sought an NDA from EY in terms that would have prevented EY from sharing its findings with the IOC. It did this in circumstances where it had agreed to cooperate with EY without the need for any such NDA.

b. It claimed that it was unable to provide data to EY because of its commitments to the IBA World Championships in India. But a governing body with its financial records in order should be able to provide them even if some staff are absent.

ii) Gazprom

252. The IBA asserts that the Gazprom sponsorship deal was terminated on 31 December 2022. However:

a. The IBA's Ordinary Congress approved in principle the extension of the Gazprom agreement.

b. The IBA website prominently featured Gazprom as a "general partner" at the time of 3 April 2023.

253. Without additional revenue sources, and with expenditure at current levels, *"it is likely that IBA's cash position will continue to deteriorate" and the lack of information with respect to the new revenue contracts "raises legitimate doubts about IBA's financial sustainability and revenue diversification"*.

254. The claim that the IBA's revenues for 2022-23 from Gazprom and Sting were less than 50% of the total revenue *"is unconvincing"*. It is based on the IBA's own budget, which is of limited relevance; and the statement is difficult to reconcile with the IBA's financial statements for 30 June 2022 which show only an amount of CHF 11,865,978 as *"other deferred income"*, most likely the residual sponsorship revenue from Gazprom, which is twice the amount that the 2022-23 budget allocates to sponsorship. It is clear that the IBA was still relying on Gazprom money in the financial year 2022-23 than the CHF 6,106,875 indicated in the budget.

255. A concern also arises as to the financing of the IBA's prize money for competitions in the period 2022-2023. The IBA budget indicates CHF 7,400,000, expected to be funded from event revenues. If the IBA has to offer a significant part of its event revenues as prize money, that will reduce IBA's share of those revenues, and therefor increase the IBA's dependency

on sponsorship. It is thus wrong to say that these deductions will have no impact on the successful functioning of the IBA.

iii) The financial responsibility to FCIT

256. The audit report for the IBA for the year ended 30 June 2022 contained a note with respect to FCIT by which it was described as a contingent liability. A contingent liability means the existence of a possible obligation arising from past events, and with its confirmation hinging on uncertain future events. The fact that the IBA did not make provision for it does not mean that it can simply be ignored.

257. The auditors also drew attention to this in their accompany letter to the IBA Board. In particular, it was said that the IBA's ability to continue operating for a period over 12 months was conditional upon, inter alia, whether the risk of litigation with FCIT materialises.

258. The IBA's failure to cooperate with EY meant that the IOC could not assess the matter other than by reference to the accounts and the notes of the IBA's auditors.

259. The IBA seeks to rely on a memorandum from its former lawyer, Mr Claude Ramoni, which IBA says shows that the IBA has no liability to FCIT and has a strong chance of prevailing in any dispute. This memorandum should be disregarded. It was provided after the cut-off date and the Appealed Decision. In any event, a number of aspects of the memorandum are *"troubling"*:

a. The memorandum confirms that FCIT paid CHF 15m to the IBA in 2014, which payments were made with a view to acquiring shares in a subsidiary of the IBA, Boxing Marketing Arm ("BMA").

b. The memorandum says that the IBA *"reinvested"* these funds into BMA pursuant to a framework agreement between the IBA and FCIT.

c. At some point in time, this investment was considered a loan to BMA, but there is no evidence as to this (and no loan agreement has been produced).

d. BMA went bankrupt. It did not repay the funds.

e. FCIT has not sought to prove any claim in the bankruptcy; instead it asserts a claim against the IBA.

260. The explanation in the memorandum that FCIT has no chance of success on its claim is *"difficult to follow and impossible to verify"*.

261. In light of these matters, *"one can only agree"* with the finding of the IOC Comprehensive Report that the IBA did not satisfy the *"IOC Condition of increased financial transparency and sustainability including through diversification of revenues"*. This conclusion also suffices to reject the appeal.

2) Integrity of boxing competitions

262. The endemic issues with the IBA's R&J, in particular during the 2016 Rio OG, were not only one of the reasons for the suspension of recognition in 2019, but the *"main reason"* why the IOC decided that the boxing qualifying and tournament for OG Tokyo should be organised by the BTF. In that context, the BTF worked with PwC to develop a *"two-phase (pre-competition and competition) R&J process that allowed making significant improvements"*. The IBA decided not to replicate that process *"and did not reach the minimum satisfactory levels during the 2021 Belgrade World Championships where PwC was present"*.

263. As a result, the credibility of boxing competitions was one of the *"IOC Conditions"* and in the IOC Letter of 9 December 2021 it was set out as follows: *"with regard to the credibility of the boxing competitions, to change its R&J process to ensure its integrity under the monitoring of PwC, including a monitoring period for AIBA's own competitions ahead of the Olympic Games Paris 2024"*.

264. In light of the IBA's failure to cooperate with PwC, which the IOC had reappointed to conduct an onsite monitoring of the IBA's competitions, the IOC could only rely on publicly available documents. The IOC identified *"a series of problematic aspects"* and concluded in the IOC Comprehensive report that there were *"still major concerns"* that had not been addressed.

i) PwC

265. The IBA prevented PwC from reviewing documentation and accessing competitions.

266. On 23 February 2023, the IOC appointed PwC to evaluate the IBA's major events, specifically the Women's World Boxing Championships in New Delhi in March 2023. The IBA at first cooperated with PwC but then *"introduced new conditions"* including a request that PwC sign a NDA *"which was … unacceptable as it would have restricted PwC from sharing its findings with the IOC"*.

267. The IBA now says that its former Secretary General may have *"been mistaken about the intentions of the IOC to copy the IBA system"*. This does not change the fact that the IBA did not cooperate with PwC, who had been appointed to monitor and review the IBA's progress with respect to the R&J process.

268. Further, the fact that the IBA commissioned its own expert, McLaren Sport, to provide its assessment instead of cooperating with PwC *"is of little relevance"*. Prof. McLaren *"is merely presenting the results of the work conducted by his company on behalf of IBA to conclude that, from his perspective, significant progress was made but does not state that the endemic R&J issues were resolved"*.

269. PwC was therefore prevented from accessing the necessary information and attending the event. The IOC was left to draw its own conclusions based upon information that was publicly available.

270. The IBA's additional argument that PwC had a conflict of interest because it was also appointed by the IOC to monitor the IOC qualifying events was *"a mere excuse"*. The IOC is not organising Olympic qualification and the Olympic boxing tournament *"to supplant"* the

IBA. It is doing it because it wants to ensure that the IBA has solved its issues with the integrity of boxing competitions.

ii) The pre-competition phase

271. The pre-competition phase concerns the data on the pool of IBA boxing officials, and the vetting, drawing, education, training, and monitoring of boxing officials.

272. Because the IBA did not provide PwC with any documents and no documents are publicly available, the IOC was not able to assess the sustainability and fairness of this part of the R& process, so the doubts it had in this respect *"could not have been lifted"*.

273. It was only with Prof. McLaren's witness statement in these proceedings that the IBA provided *"some explanation"* but with no supporting evidence. Even if this evidence were *"admissible"*, it being after both the cut-off date and the Appealed Decision, it still does not show that the IBA has *"resolved its risks for the integrity of the competitions in the pre-boxing phase"*.

iii) The competition phase

274. For the competition phase, PwC were only able to analyse rules that were in the public domain. PwC identified the following potential risks with respect to the integrity of the IBA's R&J process:

a. a lack of pre-defined criteria for changes in the R&J draw;

b. a lack of a defined procedure for the re-allocation of R&J;

c. an absence of a second judge evaluator or observer for performance comparison;

d. a lack of sanctions and suspensions for underperforming R&Js; and

e. inconsistencies in bout review rules, consequences and disagreements.

275. The IOC raised each of these matters in the IOC Comprehensive Report.

276. The IBA did not address these concerns in its Reply, or subsequently.

iv) Conclusion on R&J

277. In light of the above, and in particular due to the inability of PwC to carry out its monitoring, the IOC was not satisfied that *"the IOC Conditions of the Roadmap to 2023 were met"*.

3) Governance

i) The condition

278. As set forth in the IOC Letter of 9 December 2021, the IOC set the following condition with respect to governance: *"to ensure the full and effective implementation of all the measures by Prof. Haas and his team, including the change of culture"*.

279. The IOC engaged Ms Potts to assess the IBA's implementation of the GRG Recommendations. Based on Ms Potts' report of 6 April 2023 and the IBA Reply, the IOC its concerns in relation to the IBA's governance *"are still unaddressed"* and that the *"the IBA's practice and activities is* [sic] *still not sufficient to confirm that the IBA fulfils … the specific conditions regarding effective good governance as set out in the Roadmap 2021-2023"*.

ii) Termination of GRG

280. While working with GRG was not an express requirement, the premature termination by the IBA of GRG's mandate *"raises obvious concerns about IBA's commitment"* to implementing the GRG Recommendations. By ending the GRG mandate, the IBA *"lost a crucial independent mechanism to demonstrate substantive process"*.

281. Moreover, the supervision by GRG was *"at least an implicit term"* of the IOC's requirements because: (a) on 21 January 2022, the IOC asked to be regularly updated by Prof. Haas on the implementation of the GRG Recommendations; and (b) on 31 March, the IBA not only agreed to GRG oversight but renewed the GRG mandate to support implementing the GRG Recommendations.

282. On the materials available to the IOC, the IOC cannot conclude that the IBA has effectively implemented the GRG Recommendations.

iii) No operational implementation of the BIIU

283. The most obvious example of the lack of implementation relates to the BIIU. As noted by Ms Potts, the BIIU was not established by the end of 2022 as GRG had requested and was not operational by either the cut-off date or the date on which Ms Potts prepared her report.

284. The BIIU report relied upon by the IBA is dated 21 July 2023, a month after the Appealed Decision. It does not show, as the IBA suggests, that the BIIU was *"successfully established and currently operates"*. It only summarises the BIIU framework within the IBA Constitution and the various appointments that were made. There is no indication of *"actual implementation like staffing, budgets, activities, or outputs"*.

iv) IBA Committees

285. The *"most concerning"* issue in this regard relates to the Finance and Audit Committees.

286. As noted by Ms Potts, the members of these committees were appointed in April 2022 but eight months' later all members of the Audit Committee and one member of the Finance Committee resigned. The IBA has provided no explanation.

287. The IBA relies on the evidence of Ms Dlala, the IBA Director of Administration and HR. But that evidence relates to the IBA's situation at the end of July 2023, after both the cut-off date and the Appealed Decision. It also provides no transparency on elections or staffing.

v) The President's office

288. The GRG Recommendations included the dissolution of the President's Office and the establishment of a Head Office in Lausanne, together with the elevation of the Secretary General position to that of a CEO.

289. The IBA's submission that this recommendation has been implemented is *"absurd"*. The IBA organisational chart *"shows an increased concentration of power under the President"* with multiple personnel reporting to both the President and the Secretary General. This *"dual leadership is problematic and inconsistent with the recommendations of the GRG as it allows the possibility of inappropriate presidential influence in operational matters"*.

vi) The lack of democracy and of governance culture

290. The *"cultural deficit"* in the democratic process, as noted by Ms Potts, *"is clearly established by the actions of the INU in the exclusion of the five candidates from the presidential and board of directors' elections"*. It is unusual to find in CAS awards language as strong as that used by the Sole Arbitrator in the CAS 8862 Award: *"[t]o attempt to constrain a candidate by extending the duty of faith he or she owes to an organisation to stop them raising concerns and criticisms is simply untenable"*.

291. Further:

a. The assertion that the CAS Award came to a *"contradictory and wrong conclusion"* that the President had also engaged in early campaigning is also absurd. The CAS Award clearly shows that, while the President did not author the letter that was considered inappropriate, those campaigning letters sent by the President's allies were *"imputable"* to the President.

b. The assertion that the CAS Award did not set aside the election because the candidates did not request and therefore their fault is also absurd. The candidates did request provisional measures, which were opposed by the IBA; and the Sole Arbitrator explicitly noted that the logical thing to do would be to hold new elections.

c. The IBA's reliance on Prof. McLaren's witness statement is misplaced. Prof. McLaren speculates that the President would have been re-elected. That is not the point; the point is that using a federation's internal bodies to *"get rid"* of a political opponent is a *"text-book example of abuse of power"*.

vi) Conclusion on governance

292. In light of these matters, *"one can only agree"* with the finding of the IOC Comprehensive Report that the IBA did not show that it had fully implemented the GRG Recommendations. This conclusion also suffices to reject the appeal.

4) Conclusion

293. In light of the above, it is clear that IBA has failed to demonstrate to the IOC's satisfaction that it had fulfilled any of the cumulative IOC Conditions at the time of the Cut-off Date.

h) Does the Comprehensive Report prove the IBA's non-compliance?

294. The findings of the Comprehensive Report are and the IOC Session was right in deciding to withdraw IBA's recognition.

i) The Respondent's Requested Relief

295. The IOC's prayers for relief were as follows:

"302. Based on the foregoing developments, IOC respectfully requests the Panel to issue an award:

(i) Dismissing IBA's Appeal and all IBA's prayers for relief.

(ii) Upholding the Decision of the IOC Session of 22 June 2023.

(iii) Ordering IBA to pay the cost of the arbitration and a significant contribution towards IOC's legal fees and other expenses".

VI. JURISDICTION

296. Article R47 of the CAS Code provides as follows:

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

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

297. Rule 61 of the IOC's Olympic Charter provides as follows:

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

298. In its Answer to the Appellant's Statement of Appeal and Request for Stay dated 27 June 2023, the Respondent said this: *"The IOC does not dispute that CAS has jurisdiction to order the measures requested in the Request as far as only the decision of the IOC Session is concerned"*.

299. In its Answer dated 26 September 2023, the Respondent said this: *"The IOC does not challenge that the CAS has jurisdiction in the present arbitration"*.

300. The Panel notes as well that there was no objection to jurisdiction at any time, and that the Parties signed the Order of Procedure confirming this and fully participated in these proceedings.

301. Accordingly, it is common ground that the CAS has jurisdiction in respect of this matter at this juncture and the Panel so confirms.

VII. ADMISSIBILITY

302. Article R47 of the CAS Code provides as follows:

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

303. Article R49 of the CAS Code provides as follows:

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

304. The present appeal was filed on 27 June 2023, five days after the Appealed Decision was issued on 22 June 2023 and within the 21-day deadline set by Article 49 of the CAS Code. Furthermore, the Appellant complied with all other requirements set out in Article R48 of the CAS Code, including paying the CAS Court Office fee.

305. In its Answer, the Respondent said the following: *"IBA's appeal is admissible as the statement of appeal was indeed filed with the CAS Court Office on 28 June 2023, that is within the 21-day time limit provided for by Article R48 of the CAS Code"*. As such, the admissibility of the Appellant's appeal was not challenged throughout the proceedings.

306. The Panel, therefore, confirms that the Appellant's appeal is admissible.

VIII. APPLICABLE LAW

307. Article R58 of the CAS Code provides as follows:

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

308. It is common ground in this appeal that the applicable regulations are those set forth in the Olympic Charter. The Panel shall therefore decide this appeal according to the Olympic Charter and, subsidiarily, to the laws of Switzerland as the country in which the Respondent is domiciled.

IX. A PRELIMINARY QUESTION

A. International or domestic arbitration?

309. During opening submissions, but not before, the Appellant made the submission that this appeal is a domestic arbitration governed by Part 3 of the Swiss Code of Civil Procedure (the "CPC") and not an international arbitration governed by Chapter 12 of PILA.

310. In this regard, the Panel notes that, under PILA Article 176, para. 1, an arbitration is domestic, and thus subject to Part 3 of the CPC, if the seat of the arbitral tribunal is in Switzerland and if, at the time when the arbitration agreement is entered into, both parties were domiciled or habitually resident in Switzerland. It is common ground that these conditions are present here.

311. Pursuant to CPC, Article 353, para. 2 *"The parties may exclude the application of this Part [3] by making an express declaration to this effect in the arbitration agreement or a subsequent agreement, and instead agree that the provisions of the Twelfth Chapter of the PILA apply. The declaration must be in the form specified in Article 358".*

312. This provision is paramount for issues relating to disputes with a sports background (BSK ZPO-WEBER-STECHER, Article 353, paras. 17 and 21 with further references), as the international sporting community has a vested interest in the uniform application of the PILA as the *lex arbitri*. Even though both Parties are domiciled in Switzerland and the arbitral tribunal has its seat in Lausanne, Switzerland, the dispute entails a *quasi* international dimension, as both the IOC and the IBA respectively govern sports on a global scale and as IBA's members are national member associations from various countries other than Switzerland and the IOC's members are individuals, and the National Olympic Committees and IFs it recognises are entities, from various countries other than Switzerland.

313. Article 358 para. 1 CPC provides that *"the arbitration agreement must be done in writing or in any other form allowing it to be evidenced by text"*. Article 358 para. 2 CPC provides that *"the provisions of this Part apply by analogy to arbitration clauses in unilateral transactions or in articles of association"*.

314. In the case at hand, the arbitration agreement finds its written form and basis in Rule 61 of the IOC's Olympic Charter which provides as follows:

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

315. The arbitration agreement contained in Rule 61 of the Olympic Charter and the consecutive jurisdiction of CAS is not disputed by the Parties.

316. On 12 October 2023, the CAS Court Office provided the Parties the Order of Procedure, which was duly signed by the IOC on the same day and by the IBA on the next day.

317. In the Order of Procedure, the Parties expressly agreed in writing, over the signature of counsel, as follows:

"In accordance with the terms of the present Order of Procedure, the International Boxing Association (the "Appellant") and the International Olympic Committee (the "Respondent") (collectively, the "Parties") agree to refer the present dispute to the Court of Arbitration for Sport (the "CAS") subject to the Code of Sports-related Arbitration (the "CAS Code"). Furthermore, the provisions of Chapter 12 of the Swiss Private International Law Statute shall apply, to the exclusion of any other procedural law".

318. Additionally, on 30 October 2023, a CMC was held between the Parties and the Panel by video conference in which neither of the Parties took any point with respect to the applicability of the CPC as the *lex arbitri*.

319. The Panel thus concludes, that, even if the reference to the Court of Arbitration for Sport in the Olympic Charter is not sufficient grounding, the Parties had expressly agreed in writing to opt into Chapter 12 of the PILA in the manner set forth in the Order of Procedure, which fulfilled the requirements set out in Articles 353 para. 2 juncto 358 CPC. The Panel takes the view that it would not be right to disregard a clause of an agreement, which is the character of the Order of Procedure, that was signed by both Parties with the assistance of counsel. The Appellant should therefore be held to that bargain.

X. THE MERITS OF THE APPEAL

320. The appeal is against the Appealed Decision dated 22 June 2023 by which, as has been noted, the IOC Session decided, *inter alia*, to withdraw the IOC's recognition of the IBA as the IF for the sport of boxing. The IOC's decision to do so plainly followed a long and difficult history of attempted oversight, compliance, and guidance by the IOC, which has been set out at some length above. The Panel accepts that the IOC does not wish to run sports directly but instead prefers to recognise IFs to operate sports on the Olympic Programme and between editions of the Olympic Games, so the decision to remove recognition from an IF is not one the IOC takes often or lightly.

321. In this appeal, the Parties proceeded on the basis of a number of questions. The Panel shall do likewise. The questions to be asked and answered by the Panel are therefore as follows:

a. Which Party bears the burden of proof?

b. What is the legal basis for the Appealed Decision?

c. Does the Appealed Decision constitute an independent decision?

d. Did the IOC respect the IBA's right to be heard?

e. Was there an abuse of dominant position by the IOC when issuing the Appealed Decision?

f. Was there a violation of the IBA's personality rights?

g. Did the IBA fulfil the conditions set by the IOC in its decision communicated to the IBA on 9 December 2021?

h. Does the Comprehensive Report prove the IBA's non-compliance?

322. Before addressing these questions, the Panel makes the following general observations.

323. The Panel notes that, pursuant to Article R57 of the CAS Code, the Panel has full power to review the facts and the law and may issue a new decision, which replaces or annuls the Appealed Decision. This appeal is therefore a *de novo* hearing.

324. The Panel notes that the appeal is against the Appealed Decision. The Appealed Decision was made by the IOC Session on 22 June 2023. It follows that the Panel will only take into account the facts, matters and circumstances extant as at that date, and thus available to the IOC Session at the time of the Appealed Decision, and will ignore any subsequent development.

325. The Panel also notes that the IOC is formed as an association and is governed by Title Two, Chapter Two of the SCC (Articles 60 *et seq.*). This law governs associations *"with a political, religious, scientific, cultural, charitable, social or other non-commercial purpose"* and provides for the formation, organisation, membership, and dissolution of associations as a matter of Swiss law. It is axiomatic that, as a matter of Swiss jurisprudence, Swiss associations enjoy great freedom of association, bolstered by Article 23 of the Swiss Constitution which, in summary, guarantees freedom of association and provides that every person has the right to form, join or belong to an association. As was noted in CAS 2014/A/3828, *"the autonomy of Swiss associations is particularly evident with regard to determining the composition of their membership. With respect to the exclusion of members, for example, the Swiss Civil Code has granted associations 'a freedom that almost reaches arbitrariness'";* see also CAS 2007/O/1237 where the panel observed that *"the principle of autonomy of the association […] means inter alia that the association is free to accept or refuse members. The association thus has a discretionary right in this respect"*.

326. The Panel acknowledges that we are not here dealing with the membership of the IOC (who are individuals) but, instead, the recognition by the IOC of the IBA for the sport of boxing,

which is similar but not the same. Nevertheless, the freedom of association enjoyed by the IOC applies with at least equal force in the context of recognition such that, as a matter of principle, the IOC enjoys an extraordinarily wide freedom to say who is and who is not to be recognised by it.

A) Which Party bears the burden of proof?

327. The Parties disagreed as to who bore the burden of proof. The IBA said that, in the absence of stated reasons for the Appealed Decision, the IOC must carry the burden.

328. The IOC argued that the burden of proof was on the IBA on the basis that there has been no sanction imposed on the IBA and that this is, instead, a case of non-compliance with the requirements set by the IOC for the recognition of the IBA.

329. The starting position is that the IBA is the appellant in these proceedings and seeks to set aside the Appealed Decision on the basis that it is, generically speaking, unlawful on the various grounds that it has put forward. It is therefore a matter for the IBA to sustain that challenge on those grounds.

330. In addition, for the reasons set forth below, the Panel takes the view that the Appealed Decision is analogous to the expulsion by the IOC of one of its members and that, in that context, it falls to the IOC to show that it has made the Appealed Decision for just cause (or for an important reason) pursuant to Article 72 of the SCC.

B) What is the legal basis for the Appealed Decision?

331. In their written submissions, the Parties contested the legal basis for the Appealed Decision.

332. The IBA argued, in its written submissions, that there was no legal basis for the decision. It was said that, while the Rule 59 of the Olympic Charter provided for the withdrawal of recognition in the event that there was a violation of the Olympic Charter, the IOC made no mention of any such violation and this was not a disciplinary matter. The IOC instead relied on Rule 3.7 of the Olympic Charter, but that provision simply identifies the power of the IOC Session to withdraw recognition and does not provide any legal basis to do so. Hence, it was said, there is no legal basis for the Appealed Decision.

333. For its part, the IOC contended that the legal basis on which the IOC decided to withdraw its recognition of the IBA is Rule 3.7 of the Olympic Charter (as was identified in the Appealed Decision itself). It was said that Rule 3.7 provides that: (a) the IOC is empowered to withdraw the recognition given to IFs; (b) any such withdrawal is to be decided by the IOC Session, as was the case here; and (c) all details of recognition procedures are determined by the IOC EB, as was the case here with the IOC Letter of 9 December 2021 and the subsequent correspondence.

334. Rule 3 of the Olympic Charter provides in relevant part as follows:

"3. ***Recognition by the IOC***

1 The IOC may grant formal recognition to the constituents of the Olympic Movement.

2 The IOC may recognise as NOCs national sports organisations, the activities of which are linked to its mission and role. The IOC may also recognise associations of NOCs formed at continental or world level. All NOCs and associations of NOCs shall have, where possible, the status of legal persons. They must comply with the Olympic Charter. Their statutes are subject to the approval of the IOC.

3. The IOC may recognise IFs and associations of IFs.

[…]

7. Recognition by the IOC may be provisional or full. Provisional recognition, or its withdrawal, is decided by the IOC Executive Board for a specific or an indefinite period. The IOC Executive Board may determine the conditions according to which provisional recognition may lapse. Full recognition, or its withdrawal, is decided by the Session. All details of recognition procedures are determined by the IOC Executive Board".

335. For the Panel's part, it is obvious that what is said at Rule 3 of the Olympic Charter does not provide any legal bases for the withdrawal of recognition. On its proper construction, Rule 3 provides for an allocation of the constitutional power on the part of the two principal IOC organs, the IOC EC and the IOC Session, to grant IOC recognition to IFs. There are two 'species' of recognition and withdrawal: one is provisional, and the other is full. The former is a matter for the IOC EC – it has the constitutional power to decide to grant or withdraw provisional recognition on an IF. The latter is a matter for the IOC Session – it has the constitutional power to decide to grant or withdraw full recognition on an IF.

336. True it is that the rule also provides that the IOC EB may determine the conditions according to which provisional recognition may lapse, but that is not engaged here because, for no other reason, we are not dealing with the provisional recognition of the IBA or its lapse. We are instead concerned with the withdrawal of the IBA's full recognition by the IOC as an IF.

337. It must be noted as well that the constitutional power to grant or withdraw recognition is a discretionary one. That is made plain by the use of the word *"may"* in the rule itself but it is also an essential element of the very nature of the IOC as a Swiss association, with a constitutional freedom of association, and thus with a broad measure of autonomy with respect to with whom it decides to associate and on whom, in this context, it decides to confer the status of IOC recognition.

338. One must therefore look elsewhere for the legal bases for the exercise of the constitutional power. For the reasons set forth below, the relevant legal bases are to be found at the confluence of Article 28 and Article 72 of the SCC, and for the reasons set forth below, the Panel is of the view that the Appealed Decision did have a sound legal basis.

339. Parenthetically, we note that the IBA argued that the French version of the Olympic Charter (which is to govern in the event of any contradiction between the French and the English, per Rule 23 of the Olympic Charter) uses the word *"définitive",* which, so it was submitted, is more

apt to mean final than full, such that once granted, recognition could not be revoked. In the Panel's view, this is a step too far. The French word *"définitive"* may well be translated to mean "final" but the use of that word should not, in the Panel's view, be understood as conferring irrevocable status on the IF so recognised. The better construction of the rule, both in French and in English, is that the recognition granted by the IOC EC is provisional whilst that granted by the IOC Session is final or full, in the sense that it is complete and no longer provisional. If the drafter of the Olympic Charter intended a different result by the use of the word *"définitive",* they would have made that clear. The Panel's interpretation is all the more strengthened when one considers the broad scope of freedom of association given to Swiss associations under Swiss association law.

C) Does the Appealed Decision constitute an independent decision?

340. Under this head, the IBA contends that the Appealed Decision was not an independent decision in as much as it was not made freely and independently by the IOC Session but was imposed on it by the IOC EB.

341. The Panel disagrees. True it is that the IOC EB made a recommendation to the IOC Session, but the IOC Session, as the supreme organ of the IOC, was plainly free to accept or reject the recommendation. There is no basis, and certainly no evidence, on which to say that the Appealed Decision was not a decision freely taken by the IOC Session in accordance with its constitutional powers. As a matter of general practise, boards like the IOC Session necessarily must act based on recommendations made by one of their members of constituent bodies and, based on the evidence, that is all that occurred here.

D) Did the IOC respect the IBA's right to be heard?

342. The IBA complains that the IOC did not respect its right to be heard in that it was not allowed the opportunity of addressing the IOC Session in person in the meeting at which the Appealed Decision was made.

343. The right to be heard is a fundamental right, protected by the Swiss Constitution (Article 29(2)) and also by Articles 182 and 190 of PILA. The Panel adopts the following passage from CAS 2020/A/7220 at ¶84, which related to a dispute between an IF and an NF but is equally apt to apply as between the IOC and the IBA in these proceedings:

"The right to be heard is a fundamental and general principle which derives from the elementary rules of natural justice and due process (see, for example, CAS OG 96/005para 7; CAS 2001/A/317 para 6). CAS has always protected the principle audiatur et altera pars in connection with any proceedings, measures or disciplinary actions taken by an international federation vis-à-vis a national federation, a club or an athlete (CAS 98/200, para 58; CAS 2004/A/777, para 20; CAS 2020/A/2275, para 30). There is no `doubt that the right to be heard is a legal principle which has to be respected by federations when taking their decisions and within their internal proceedings".

344. There are, however, three essential difficulties with the IBA's complaint in this respect.

345. The first is that it is well-settled that the right to be heard does not, however, include the right to present one's case orally: see, for example, ATF 117 II 346, 348. The IBA therefore had no right to appear at the IOC Session – as a third party non-member – and make oral submissions to the IOC Session in relation to the Appealed Decision. To find otherwise would impute a requirement into the Swiss law of associations that simply has no basis.

346. Second, that being so, the IBA's right to be heard was as a matter of fact respected by the IOC in that it afforded the IBA a number of opportunities over an extended period of time to make its case with respect to recognition, of which the IBA took advantage. That is abundantly clear when one has regard to the long factual history and the various occasions on which the IBA was called upon or permitted to set forth its position on the matters of concern. By way of example:

a. On 6 April 2023, the IOC provided the IBA with the Points of Potential Non-Compliance with the Olympic Charter and gave the IBA a four-week period to reply. The IBA was told that nothing after 3 April 2023 would be considered.

b. The IBA provided its Reply on 5 May 2023 and called upon the IOC *"to hear our arguments, note our progress and make a fair decision about the future of boxing"*.

347. Third, and in any event, as noted above, this appeal is a *de novo* hearing which acts to cure any defect in the right to be heard in and around the Appealed Decision. This has been made clear in a raft of CAS cases – the following will suffice to make the point for present purposes, per CAS 2016/A/4387 at ¶¶146-148 (footnotes omitted):

"146. The Sole Arbitrator notes that Article R57 of the CAS Code grants him full power to review this matter on a de novo basis and this has been confirmed by numerous CAS precedents. This full power of review means that procedural flaws, if any, in a first instance decision can often be cured by a CAS proceeding.

147. In CAS 2008/A/1574, the Panel dealt with the meaning of a CAS Panel's de novo powers and ruled that a de novo hearing is: "a completely fresh hearing of the dispute between the parties, any allegation of denial of natural justice or any defect or procedural error even in violation of the principle of due process which may have occurred at first instance whether within the sporting body or by the Ordinary Division CAS panel, will be cured by the arbitration proceedings before the appeal panel and the appeal panel is therefore not required to consider any such allegations".

148. Amongst the procedural violations in a first instance decision that can be cured by a de novo CAS proceeding is the 'right to be heard', and this has been consistently established in CAS jurisprudence. The Swiss Federal Tribunal ("SFT") has also confirmed the legality of the curing effect of the CAS de novo review. Accordingly, infringements on the parties' right to be heard can generally be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal in the first instance and in front of which the right to be heard had been properly exercised".

348. It follows that, in the event that the IBA did suffer from some measure of denial of its right to be heard before the IOC, that departure has now been cured by this appeal – in which the

IBA's right to be heard has been, as the IBA accepted at the conclusion of the oral hearing in this appeal, fully respected.

E) Was there an abuse of dominant position by the IOC when issuing the Appealed Decision?

349. The IBA argued that pursuant to the provisions of the LCart: (a) the IOC holds a dominant position in the relevant market; (b) the IOC's withdrawal of the IBA's recognition was an abuse of that dominant position; and (c) the said decision was not justifiable by legitimate business reasons.

350. Article 2(2) of LCart provides that *"This Act applies to practices that have an effect in Switzerland, even if they originate in another country"* (*"La présente loi est applicable aux états de fait qui déploient leurs effets en Suisse, même s'ils se sont produits à l'étranger"*). This is consistent with Article 137(1) of PILA which provides that *"Claims based on a restraint of competition are governed by the law of the state in whose market the restraint has direct effects on the injured party"*.

351. In this case, it is certainly the position that the IOC and the IBA have their seats in Switzerland but it is not at all clear to the Panel how the Appealed Decision gave rise to an effect in Switzerland so as to bring the matter within the LCart. The Panel is prepared, however, to proceed on the basis that the Appealed Decision has had an effect on the IBA and that, because the IBA is situated (and seated) in Switzerland, the Appealed Decision has had an effect in Switzerland.

352. That being said, the more fundamental difficulty for this challenge by the IBA is that it has not sufficiently grappled with what is said to be the relevant market as demanded by Article 7 LCart. The Panel notes that the burden is on the Appellant to establish a breach of a dominant position (CAS 2022/A/8865, 8866, 8867 & 8868, para. 104). Appellant did not submit any economic or expert evidence to support the existence of a market, the IOC's dominant position on that market or any of the alleged breaches of Article 7 LCart. It is simply asserted by the IBA that the relevant market is the *"market of Olympic entities"* or, which is different, a *"market for the organisation and marketing of Olympic sport"*. Even if these turns of phrase were capable of being understood with the requisite clarity and certainty, there is no evidence at all to support the contention that either is the relevant market. That failure of proof, of itself, is fatal to the IBA's challenge on this basis.

353. It also means that it becomes impossible for the IBA to sustain its contention that the IOC holds a dominant position in that relevant market; obviously, if one does not establish the relevant market one cannot assess whether any given participant enjoys a dominant position in that market.

354. Still further, as the IOC submitted, even if the Panel was in a position to conclude that the IOC held a dominant position in the relevant market, that, of itself, is not unlawful. The IBA must be able to show that the IOC has abused its dominant position by acting exploitatively *vis á vis* the IBA in the exercise of its dominant position; it is only then that the IOC can be said to be acting unlawfully. *See* ATF 129 II 497 at ¶6.5.1.

355. The IBA faces still further difficulties with respect to its allegations as to what the IOC has done by way of abuse of power. It prays in aid as abuse all of the matters it otherwise relies on for the setting aside of the Appealed Decision. It says, for example, that the IOC abused its power by issuing a decision with no legal basis; or that it never articulated with any specificity the conditions that the IBA was required to meet. Those matters, however, even if made out, could not properly be characterised as an abuse by the IOC of its dominant position by unfairly exploiting its strong position in the market to the commercial detriment of the IBA. They may be described as shortcomings in the decision-making process, which will stand or fall on their own account, but they do not, simply because they are done by an entity with a dominant market position, fall to be regarded as behaviour which is abusive.

356. Still further, even if the IOC abused its dominant position by withdrawing the IBA's recognition in the way that it did, it would be open to the IOC to say that such conduct was not unlawful because it was justified by legitimate business reasons. That plays straight into the discussion in relation to Article 72 of the SCC, as to which see below.

357. All in all, for all of the above reasons, the Panel is of the view that the IBA's challenge in this respect must fail.

F) Was there a violation of the IBA's personality rights?

358. The next ground of challenge argued for by the IBA is that the Appealed Decision violated the IBA's personality rights. It is said that Article 28 of the SCC prohibits infringements of personality rights by third parties and that the IOC's withdrawal of recognition infringed the IBA's personality rights, in particular its right to development and economic fulfilment in professional sport.

359. As a matter of Swiss law, protection against attacks on personality rights is governed by Article 28 of the SCC, which provides as follows:

"1 Any person whose personality rights are unlawfully infringed may petition the court for protection against all those causing the infringement.

2 An infringement is unlawful unless it is justified by the consent of the person whose rights are infringed or by an overriding private or public interest or by law".

360. Article 28 was explained in the Decision of the SFT 5A_21/2011 of 10 February 2012 (at ¶5.1) in the following way:

"[Article 28] *gives the person who suffers an unlawful violation of his or her personality the right to take legal action for protection against any person who participates in the violation (para. 1); a violation of personality is unlawful unless it is justified by the consent of the victim, by an overriding private or public interest, or by law (para. 2). It follows from this provision that the infringement is in principle unlawful, which follows from the absolute nature of personality rights (SFT 136 III 410, para. 2.2.1; 134 III 193, para. 4.6). It is therefore necessary to examine whether there has been an infringement of personal rights, and then whether that infringement is unlawful"* (Unofficial translation made by the Panel).

361. It is also well-settled that such rights may be invoked by natural and legal persons. SFT-Decision 5A_21/2011 (at ¶5.2). It is therefore open to the IBA to complain, as it does, that its personality rights have been infringed.

362. As a general matter, it is beyond peradventure that the IOC's recognition of an IF is of fundamental importance for an IF – and that it was and is for the IBA. IOC recognition gives the recognised IF *"a number of rights specified in the Rule 26 of the Olympic Charter, that includes control and direction of its sport at the Olympic Games"*. It is true to say, as the IOC does, that it is not the same as the IOC's recognition of a NOC because, in that context, should the recognition be withdrawn the NOC would cease to have a reason to exist. But while that is not the case for an IF such as the IBA, it remains the case that a very significant part of the role of the IF, namely representing the sport at Olympic level, is immediately lost upon withdrawal of recognition.

363. It is also the case that an IF will suffer an economic contraction from the loss of recognition; that follows, if nothing else, from the loss of IOC funding. The contraction does not appear to have been fatal to the IBA in that the IBA has, despite its recognition being suspended for the last five years, been able to maintain a level of activity regardless. But it cannot be gainsaid that the withdrawal of recognition has had a significant impact on the development and economic growth of the IBA, as well as its ability to participate in the highest level of elite sport.

364. On balance therefore the Panel takes the view that the withdrawal of recognition by the IOC has impaired the IBA's personality rights.

365. The question remains: was that impairment unlawful?

366. In this regard:

a. The IBA argued that the IOC has not identified any preponderant private or public interest and that, even if it had, any such interest would be "*far inferior*" to the IBA's private interest in maintaining recognition.

b. The IOC argued that it has a fundamental interest in choosing who to recognise and that, as a matter of Swiss law, an association's autonomy to exclude members under Article 72 of the SCC is to take precedence over the member's personality rights under Article 28 of the SCC because any prospective member will be aware of the statutory rules concerning the exclusion of members. This applies *a fortiori* here where the IOC set clear conditions for regaining recognition.

367. It is necessary therefore to consider the inter-relationship of Articles 28 and 72 of the SCC. At the outset, the Panel acknowledges that exclusion of a member as provided for in Article 72 of the SCC is not the same as the withdrawal of recognition. Nevertheless, they are analogous and the SFT was prepared to apply Article 72 of the SCC and its related jurisprudence in the context of the IOC's recognition of a NOC in SFT-Decision 5A_21/2011, and the Panel shall do likewise.

368. The IOC is incorporated as an association and is governed by Title Two, Chapter Two of the SCC (Articles 60 et seq.) which is headed 'Associations'. It governs associations *"with a political, religious, scientific, cultural, charitable, social or other non-commercial purpose"* and provides for the formation, organisation, membership, and dissolution of associations as a matter of Swiss law.

369. It is axiomatic that Swiss associations enjoy great freedom of association, bolstered by Article 23 of the Swiss Constitution which, in terms, guarantees freedom of association and provides that every person has the right to form, join or belong to an association. It is only in very limited circumstances that this right of freedom of association is fettered.

370. Article 72 of the SCC concerns *"exclusion"* of a member. In the English version, it provides as follows:

"1 The articles of association may specify the grounds on which a member may be excluded, but exclusion may also occur without reasons being given.

2 In such cases, the exclusion may not be challenged based on the reasons.

3 Unless the articles of association provide otherwise, exclusion requires a resolution by the members and good cause".

The manifest legislative intent behind Article 72 is to protect the association's freedom of association. In the first place, the association may choose to specify in its articles of association the grounds on which a member may be excluded. Or, second, it may choose to specify in its articles of association that a member may be excluded without being given any grounds at all. But in either instance, in the event that the association decides to exclude a member, it is not open to the member to challenge the association on the reason of its decision (BK-RIEMER, Die Vereine, Systematischer Teil und Kommentar zu Art. 60-79 ZGB, Art. 72 / V.-VI., paras. 90 *et seq.;* SFT 123 III 193, para. 2. c) aa)).

371. It is only where the association elects to take up neither of these options, and says nothing at all in its articles of association in this respect, that the association must be able to show that (a) it decided to exclude the member by way of a members' resolution and (b) the member was excluded for "good cause". In this context, showing "good cause" is sometimes described as showing that the member has been excluded for an "important reason" and is no doubt intended to defeat any action on the part of the association that was arbitrary or capricious (BK-RIEMER, Die Vereine, Systematischer Teil und Kommentar zu Art. 60-79 ZGB, Art. 72 / I.-IV., paras. 30 *et seq.*).

372. It is important to note that the legislative intent to protect the association's overarching freedom of association was, at the time the SCC was enacted in 1912, principally directed at the social or charitable club of small, local, stature with what was described as a non-economic *"idealistic purpose"*. The SFT has, however, since drawn a distinction between such associations and what might be described as more professional or business associations, or sporting associations with a monopoly position, where the exclusion of a member may have significant economic consequences for the member. For the SFT, where the association *"appears publicly as well as to the authorities or to potential customers of its members as the authoritative organization of the*

profession or industry in question" then it will not enjoy the otherwise unfettered autonomy that is provided by Article 72(1) and (2) of the SCC. Instead, any decision to exclude a member under Article 72 of the SCC will be subject to a consideration of the member's personality rights as protected by Article 28 of the SCC and a balancing or weighing exercise must be undertaken with respect to the two competing rights. This has been made clear in a series of SFT cases: see SFT-Decisions 5C_64/2006, dated 3 July 2006; 2C_887/2010, dated 28 April 2011 (at para. 9.2); 4A_558/2011, dated 27 March 2012 (at para 4.3.3); 5A_792/2022 dated 20 February 2023 (at paras 2.1-2.2).

373. It is also important to note, however, that regardless of whether the association falls under the first or second limb of Article 72(1) or under Article 72(3), it is always open to the excluded member to challenge the decision to exclude on the following grounds:

a. on what might be described as internal procedural grounds, i.e., where the association has put in place a certain procedure in respect of exclusion the member is entitled to challenge the decision if such procedure has not been followed; and/or

b. that, in violation of Article 2 of the SCC, the association has not acted in good faith and/or has exercised its right to exclude in Article 72 in a manner that was abusive.

374. See, e.g., SFT-Decision 5A_578/2021 dated 24 February 2022, where the SFT said the following (at para. 3.1):

"The exclusion of members from an association is regulated in Article 72 of the Civil Code, which reads as follows: The statutes can determine the reasons for which a member may be excluded, but they can also allow exclusion without stating the reasons (para. 1). In these cases, a challenge to the exclusion based on its reason is not permitted (para. 2). If the statutes do not contain any provision on this, exclusion may only take place by the association's decision and for important reasons (para. 3). An exclusion cannot be challenged on material grounds - apart from the exceptions not given here. However, a challenge based on formal deficiencies, namely procedural deficiencies within the association, is permissible. Ultimately, every exclusion is subject to abuse of rights (SFT 131 III 97 E. 2.1 with numerous references)".

375. In the context of this appeal, the Panel takes the view that it can fairly be said that the IOC appears publicly as well as to authorities as the authoritative organisation with respect to the Olympic Games. It must follow therefore that the IOC's decision to withdraw recognition must be justified by an important reason, and that a balancing or weighing exercise must be undertaken with respect to the IOC's interests in the withdrawal of recognition pursuant to Article 72 of the SCC and the IBA's interests in maintaining recognition pursuant to Article 28 of the SCC.

376. The issue for consideration therefore is whether, pursuant to Article 72 of the SCC, the IOC had good cause to withdraw the IBA's recognition (or, put slightly differently, whether the IOC had an important reason to do so) and whether, in the Panel's view, that outweighs the IBA's interest to protect its Article 28 personality rights associated with recognition. In essence, the same question arises under Article 28 itself in that, per Article 28.2, an infringement of Article 28 personality rights will not be unlawful if it is justified by, *inter alia*, an overriding private or public interest.

377. The Parties approached this question by way of an assessment of whether or not the conditions set by the IOC in relation to the IBA's recognition were met, the IBA arguing that the conditions were met by the IBA, the IOC arguing that they were not. On this basis, the IOC argued, in effect, that its withdrawal of recognition was for an important reason, namely the failure on the part of the IBA to satisfy the conditions set by the IOC for recognition.

378. It is on that basis therefore that the task for the Panel is to assess whether or not the IBA did satisfy the conditions set by the IOC with respect to recognition.

G) Did the IBA fulfil the conditions set by the IOC in its decision communicated to the IBA on 9 December 2021?

379. The apparent starting point, therefore, is the IOC Letter of 9 December 2021. It is important to recognise, however, that this decision did not spring from nowhere. It was based on the long history of back and forth between the IOC and the IBA in the period following the 2016 OG Rio and, in order to understand its terms, one needs to appreciate its context. For present purposes, the Panel takes note of the following matters:

a. Following the OG Rio 2016, a number of allegations were levelled at the IBA in relation to the corrupt conduct of IBA senior staff and IBA referees and judges in the OG Rio 2016 (and in previous Olympic Games in Athens Sydney and London).

b. At that time:

i. The IBA's own investigation committee, the SIC, concluded that there was a *"bad culture"* within the IBA that was driven by *"power, fear and lack of transparency"*.

ii. The IOC EB requested the IBA to undertake steps to address serious concerns related to its governance and financial stability. The IOC EB requested a financial audit, an independent review, and changes to the rules relating to referees and judges.

c. On 6 December 2017, the IOC EB suspended the IOC's financial contributions to the IBA until the IBA's problems over governance and finances were resolved and the IBA.

d. On 12 December 2017, the IOC told the IBA that, at the meeting of the IOC EB the previous week, the IOC EB expressed its concerns regarding governance and financial stability at the IBA and set forth a number of *"expected steps"* on which the IBA was asked to submit a full report by 31 January 2018. These steps included (a) governance, (b) financial and (c) changes to the referees and judges to ensure sporting integrity.

e. On 27 January 2018, the IBA elected Mr Rakhimov as interim president. Mr Rakhimov was designated by the US Department of Treasury as a member of an international crime syndicate.

f. On 31 January 2018, the IBA submitted its 2018 IBA Progress Report to the IOC setting forth what the IBA proposed to do with respect to, *inter alia*, governance; financial; and changes to the referees and judges to ensure sporting integrity *"to further improve in each areas"*.

g. On 7 February 2018, the IOC EB decided to maintain its suspension of the IBA's funding and opened an investigation into the governance of the IBA to be conducted by the IOC Chief Ethics and Compliance Officer; and the IBA was so informed the following day. The IOC also responded to what the IBA had said in its 2018 IBA Progress Report in relation to governance, financial, refereeing and judging.

h. On 25 April 2018, the IBA submitted a further report to the IOC, by which the IBA provided further information as to its actions in the fields of governance, finance, and refereeing and judging.

i. On 3 May 2018, the IOC informed the IBA that it had decided to maintain its suspension of funding and noted that there remained a number of key areas requiring further information. The IOC also forth a number of actions which the IBA was required to do by 6 July 2018 in relation, inter alia, to governance, finance, and refereeing and judging.

j. On 6 July 2018, the IBA submitted a progress report in response to the IOC request of 3 May 2018.

k. On 20 July 2018, the IOC decided to maintain its suspension of the IBA's funding. In an annex to its letter to the IBA, the IOC set forth a number of actions which the IBA was required to do by 12 November 2018 including on governance, finance, and refereeing and judging.

l. On 2-3 November 2018, the IBA elected Mr Rakhimov (the individual appearing on the US Government sanctions list as a result of alleged involvement in criminal activity) as president.

m. On 3 December 2018, the IOC informed the IBA that it had decided to establish an inquiry into the IBA: (a) to analyse and investigate the IBA's progress with respect to various matters including governance, finance, and refereeing and judging; and (b) to make a recommendation on potential measures and sanctions in accordance with the Olympic Charter. The IOC thus opened an inquiry. It did so expressly pursuant to Rule 59 of the IOC Charter.

n. On 21 May 2019, the IOC Inquiry Committee issued the IOC Inquiry Report. It concluded that:

    i. There was a *"continuous disregard of basis governance standards in breach of the Olympic Charter and the IOC Code of Ethics"*.

ii. There were insufficient safeguards to ensure the sustainable and fair management of refereeing and judging.

iii. The IBA was over-indebted and it was impossible to confirm that it was operating as a going concern.

o. The IOC Inquiry Committee recommended that *"such an accumulation of risks would justify the withdrawal of the recognition"* of the IBA as an IF by the IOC but, in the interest of the sport of boxing and its athletes, the IOC should suspend the IOC's recognition of the IBA *"until sustainable improvements have been made in the areas of governance, ethics, refereeing and judging as well as financial stability and going concern"*.

p. On the basis of the IOC Inquiry Report, the IOC EB recommended to the IOC Session, and the IOC Session thus decided that the IOC should withdraw the IBA's recognition as an IF. The decision to suspend was made pursuant to Rules 3.7, 18.2.8, 18.2.11 and 25 §2 of the Olympic Charter. Of these, Rule 25 §2 provides as follows:

"The statutes, practice and activities of the IFs within the Olympic Movement must be in conformity with the Olympic Charter, including the adoption and implementation of the World Anti-Doping Code as well as the Olympic Movement Code on the Prevention of Manipulation of Competitions. Subject to the foregoing, each IF maintains its independence and autonomy in the governance of its sport".

q. On 15 November 2021, the GRG issues its GRG Recommendations setting out the steps required to be taken by the IBA.

r. On 26 November 2021, the IBA Board adopted the GRG Recommendations.

s. On 8 December 2021, the IOC issued the interim report prepared by the IOC DG and the IOC CECO. It recommended that the IOC EB task the IOC DG and the IOC CECO with defining a roadmap etc.

t. On 9 December 2021, the IOC EC issued the IOC Letter of 9 December 2021.

380. The IOC Letter of 9 December 2021 says, in terms, that the IOC was "*tasking*" the IOC DG and the IOC Chief Ethics and Compliance Officer with defining a "*roadmap*" in consultation with the IBA with respect to three areas of concern:

a. Finance: *"With regard to finance, to increase financial transparency and sustainability including through diversification of revenues"*.

b. Sporting integrity: *"With regard to the credibility of the boxing competitions, to change its R&J process to ensure its integrity under the monitoring of PwC, including a monitoring period for AIBA's own competitions ahead of the Olympic Games Paris 2024"*.

c. Governance: *"With regard to governance, to ensure the full and effective implementation of all the measures proposed by Professor Haas and his team, including the change of culture"*.

381. It was said within the IOC Letter of 9 December 2021 that *"should the above-mentioned conditions be met by AIBA to the satisfaction of the IOC, the suspension of AIBA's recognition could be lifted in 2023"*.

382. Pausing there, it is apparent that the IOC Letter of 9 December 2021 did not, of itself, specify the particular steps that made up the so-called roadmap; these were left to be designed by the IOC in consultation with the IBA. The IOC Letter of 9 December 2021 did, however, make it plain that the three "conditions" that the IBA needed to satisfy related to the IOC's three areas of concern: finance, sporting integrity (as to the referees and judges), and governance.

383. In fact, as is made plain by the long history that has been set out above, these were the IOC's three long-standing areas of concern with respect to the IBA and had been discussed at some considerable length in the IOC DG/ CECO Interim Report dated 8 December 2021 on which the IOC Letter of 9 December 2021 was based. This report has been set out above in some detail but the following elements bear repeating:

a. As to finance:

i. The IOC acknowledged that sponsorship revenue from Gazprom had facilitated the repayment of the Benkons debt but that there remained a contingent liability to FCIT in the amount of USD 18.9 million.

ii. There was no "*real*" financial transparency inasmuch as the IBA had declined to share its sponsorship contract with Gazprom, despite the IOC's willingness to enter into an NDA in that respect.

iii. The IBA's reliance on a single source of sponsorship revenues presented a problem. For its long-term sustainability, the IBA should have a more diversified revenue stream.

iv. The IBA's reliance on a state-owned sponsor also raised concerns in relation to conflict of interest and autonomy.

v. The IOC will continue to monitor the IBA's financial situation.

b. As to refereeing and judging:

i. PwC performed an audit of the IBA Men's World Championships in Belgrade and highlighted risks related to the potential for human interference in the in refereeing and judging process.

ii. The IOC put in place refereeing and judging processes for the OG Tokyo 2020 in a way that preserved the credibility of the results, which processes were supported by the vast majority of the athletes NFs.

iii. The IOC therefore encouraged the IBA to change its own refereeing and judging processes to ensure the integrity of its competitions.

iv. PwC would monitor the IBA's refereeing and judging processes ahead of the OG Paris 2024.

c. As to governance:

i. The IOC acknowledged the improvements in this area, as reflected in the ASOIF survey.

ii. However, the GRG Recommendations still need to be fully implemented and the IBA was encouraged to implement the GRG Recommendations fully and effectively.

384. Whilst therefore there is something in the IBA's complaint that the IOC did not specify at that time the particular steps required for the so-called roadmap, the IOC did make clear that the IBA needed to address the three stated areas of concern, and that if it did so, the IOC's suspension of the IBA recognition could be lifted in 2023. These were the conditions.

385. The IBA well understood this, as is made clear by, amongst other things, its response to the IOC Letter of 9 December 2021 in which the IBA recognised that it *"has only been able to make […] progress on the key issues of sporting integrity, financial integrity and governance reform because we have been working to a clear roadmap, that we look forward to developing further with the IOC"*. In the end, the IBA very fairly accepted that these conditions were indeed part of the so-called roadmap (see, for example, the IBA Reply). It says, instead, that it successfully met these three conditions.

386. Moreover, following the IOC Letter of 9 December 2021, the IOC made it clear to the IBA as early as 21 January 2022 that *"the final assessment of the situation"* was to take place in 2023. The IBA thus well knew that the IOC's final assessment of the IBA's progress on these three conditions would take place in 2023. The IBA was well aware, therefore, of the timetable.

387. It is true that this was, at that time, cast by the IOC as an assessment of whether or not the IOC's suspension of the IBA's recognition would be lifted. But it was also made clear to the IBA that one consequence of its failure to comply with the conditions was the withdrawal of recognition altogether. For example, on 6 April 2023, the IOC sent to the IBA a copy of the IOC Points of Potential Non-Compliance Report and said, in terms, that *"If the elements mentioned in the 'Points of Potential Non-Compliance with the Olympic Charter' are confirmed, the IOC Session could decide <u>to withdraw IBA's recognition</u> on that basis"*.

388. The IBA appreciated this. In the IBA Reply sent by the IBA to the IOC on 5 May 2023, the IBA argued that it had made *"significant progress within last years" such that "<u>withdrawal</u> of the IBA's full recognition by the IOC will be not justified, fair and legally correct decision"*.

389. Returning to the IOC Letter of 9 December 2021, the three "conditions" set by the IOC in relation to recognition were therefore as follows:

a. Finance: *"With regard to finance, to increase financial transparency and sustainability including through diversification of revenues"*.

b. Sporting integrity: *"With regard to the credibility of the boxing competitions, to change its R&J process to ensure its integrity under the monitoring of PwC, including a monitoring period for AIBA's own competitions ahead of the Olympic Games Paris 2024"*.

c. Governance: *"With regard to governance, to ensure the full and effective implementation of all the measures proposed by Professor Haas and his team, including the change of culture"*.

390. The Appealed Decision was issued on 22 June 2023. It purported to take into account on the entirety of the facts and developments during the period of time from the IOC Letter of 9 December 2019 (i.e., the decision to suspend the IBA's recognition) up to until date on which the three expert reports (namely, those of EY, PwC and Ms Potts) were to be provided to the IOC.

391. For the IOC, by its letter of 23 February 2023, it had informed the IBA that the decision of the IOC Session would be made upon consideration of the state of affairs as at 3 April 2023. The IOC argued that this was therefore a cut-off point and that the Panel should disregard any development after that date. From the Panel's point of view, the important date is the date on which the Appealed Decision was taken, i.e., 22 June 2023 and it is the facts, matters and circumstances extant at that date that are to be brought to account. In the event, there does to appear to be any matter in between 3 April 2023 and 22 June 2023 that bears upon the integrity of the Appealed Decision.

392. The Panel will therefore determine whether the IBA has met these conditions as at 22 June 2023.

1) Finance

393. The first stated condition relates to finance. The IOC called upon the IBA *"to increase financial transparency and sustainability including through diversification of revenues"*.

394. On 23 February 2023, the IOC informed the IBA that, as part of its continued monitoring of the IBA, the IOC had *"mandated external experts to assess the IBA's status, practice and activities, its progress or the absence of progress"*. With respect to finance, the IOC engaged EY *"to conduct an updated assessment of IBA's financial situation, in particular following the approval of IBA's financial statements and budget, as well as other financial decisions taken during its last Congress"*.

395. The IOC asked the IBA *"to send or make available to EY on site in Lausanne […] as soon as possible but no later than 3rd March 2023"* various financial statements (including the audited accounts as at 30 June 2022) and the key sponsorship contracts.

396. In response, the IBA did two things. First, it said that it could not provide the accounting documentation to EY by 3 March 2023 because its staff were otherwise occupied at the IBA World Championships in India until the end of March 2023. The IOC contends that any association with its house in order would be able to provide such documentation in short order. That may or may not be so, but the point is by and large overtaken by the fact that, second, the IBA asked EY to sign an NDA in advance of being provided with any IBA documents. The NDA language is set forth in full above; for current purposes, the Panel notes

that it contained a prohibition on the disclosure by EY of any of the IBA's confidential information to the IOC.

397. It was, of course, open to the IBA to insist on such an NDA but, as the IOC submitted, such a restriction would plainly prevent EY from carrying out the very task that the IOC had asked EY to do, and in that sense the IBA did prevent EY from fulfilling its mandate. It meant that, in the absence of a first-hand report by EY, the IOC's assessment of whether or not the IBA increased its financial transparency and sustainability including through diversification of revenues had to take place against the publicly available information.

398. On this, the IOC relied on the determination set forth in the IOC Comprehensive Report. On finance, the report said this:

a. *"The constant uncertainty around operating as a going concern in the mid to long term, raised by the IBA's external auditors' report for the period beyond 30 June 2022, persists. The ability to continue operating for the period beyond 30 June 2023 is conditional upon the capacity of the IBA to find new sustainable sources of revenue"*.

b. The IBA's sources of revenue were primarily derived from its previous contract with Gazprom; and no new sources of revenue were *"demonstrated by any new signed contracts"*.

c. As a consequence, *"the absence of sustainable financing and the dependence on a state-owned former sponsor have not been remedied, which demonstrates that the IBA did not effectively improve its financial governance culture and meet the conditions set out by the IOC"*.

399. Is that finding correct?

400. The persistent uncertainty to which the IOC alludes is that articulated by the IBA's external auditors, Moore Stephens, with respect to the financial year ended 30 June 2022. As noted above, the auditors noted that there was uncertainty as to whether the IBA was operating as a going concern in the mid to long term and that, in particular, its ability to continue operating for a period of over 12 months was conditional upon (a) the ability of the IBA to find sources of revenue and (b) the risk of potential litigation with FCIT.

a) Sources of Revenue

401. As to the former, sources of revenue, the IBA's principal source of revenue at the time was Gazprom. That was plainly of concern for the IOC from a number of perspectives, each of which was articulated by GRG in its GRG Summary. First, a single source of revenues is, for obvious reasons, a precarious basis for any business. Two, the various boxing programmes were costly and the Gazprom financing horizon was rather short. Three, Gazprom is a Russian state-owned entity so that, it presented a risk to the IBA, which risk made all the more acute upon the Russian invasion of Ukraine in February 2022.

402. On various occasions (9 December 2021, 12 April 2022, 10 May 2022, 8 September 2022), IBA was asked to indicate to the IOC of the steps taken by it to diversify its revenue sources. In response, the IBA indicated that the Gazprom sponsorship deal was terminated on 31

December 2022 and that it had secured alternative sponsorship from Sting, an Australian equipment manufacturer.

403. It appears, however, that, despite its statement that it has brought the Gazprom agreement to an end, at the IBA's Congress in December 2022 the IBA's President endorsed the continuation of the arrangement, which proposal was supported by the membership. In this respect, it subsequently announced by the IBA that it was looking to extend the Gazprom sponsorship contract if possible. By its IBA Reply, the IBA sought to minimise the continued reliance on Gazprom by saying that the inclusion of the Gazprom logo on the IBA website was a *"goodwill gesture"* and that it had in any event been taken down. It so happens that, as the IOC submitted, certainly as at the date of the hearing, the Gazprom logo remains prominent on the IBA's website.

404. The IBA also said that its budget income statement (which is publicly available) shows that the total operating income expected for the current financial year was CHF 12m made up of sponsorship at CHF 6m, sports events at CHF 5.6m, and licensing at CHF 400,000, therefore demonstrating sponsorship revenues from all sponsors, including Gazprom and Sting, are less than 50% of the total revenues. The difficulty for the IBA in this respect is that it did not provide to the IOC (and has not provided) any evidence of the terms of the new sponsorship arrangement with Sting, or any evidence as to the financial wherewithal of Sting, and no supporting documentation was before the Panel.

405. In the circumstances, the Panel agrees with the IOC in this respect in that it appears, on the material made available by the IBA, that the IBA has not shown that it has achieved financial transparency and sustainability through the diversification of its revenues.

b) FCIT

406. As to the latter, the risk of potential litigation with FCIT, the position appears to be as follows.

a. In May 2009, IBA's World Series of Boxing ("WSB") was formed, through which the IBA intended to issue worldwide franchises for a semi-professional league of boxing.

b. In 2012, the IBA incorporated a subsidiary called Boxing Marketing Arm SA ("BMA"), a Swiss limited liability company to act as the IBA's marketing arm for, in particular, the WSB.

c. FCIT (i.e., First Commitment International Trade) is a Hong Kong based private entity, chaired by a Mr Di Wu.

d. In 2014, the IBA and FCIT entered into a 'framework agreement' by which FCIT agreed to invest CHF 39m in BMA in return for a 35% equity stake in BMA. The transaction was structured as a share purchase agreement by which FCIT was to pay the funds to the IBA and the IBA was to reinvest the same in BMA, with FCIT becoming a shareholder of BMA.

e. In the event, no shares were ever transferred and the funds were brought to account instead as a loan from FCIT to BMA. The funds so loaned by FCIT amounted to approximately CHF 19m.

f. BMA went into bankruptcy in April 2018.

g. FCIT did not seek to prove any claim in the bankruptcy, and the proceedings were closed in April 2019.

h. On 30 September 2020, FCIT initiated a debt enforcement procedure on 30 September 2020 by serving an 'order to pay' on the IBA for CHF 18'991'229 plus 5% interest since 10 December 2016, resulting in a total claim in excess of CHF 24m.

i. In October 2022, FCIT renewed the claim (so as to prevent its automatic closure).

j. IBA has filed an objection and rejects this claim on the basis that IBA does not owe anything to FCIT.

407. Against that background, the auditors were unable to predict whether, and if so to what extent, the IBA would be liable for any damages in the claims asserted by FCIT against the IBA. The auditors therefore took the view that there was a *"material uncertainty"* in relation to that contingency. A provision in the sum of CHF 300,000 for legal costs was set aside in the accounts.

408. The IBA seeks to rely on a memorandum from its former lawyer, Mr Claude Ramoni, which IBA says shows that the IBA has no liability to FCIT and has a strong chance of prevailing in any dispute.

409. That may or may not be right. The Panel is not in a position to decide whether the facts as outlined by the IBA sustain the position that it has no indebtedness to FCIT. The Panel does, however, accept what is said by Moore Stephens that the claim for the debt contributes to the uncertainty surrounding the IBA's ability to operate as a going concern. It is plainly a matter that the auditors, and the IOC, were right to bring to account when considering the IBA's financial position and its financial sustainability.

410. In light of what has been said above, the Panel agrees with the finding of the IOC Comprehensive Report that the IBA did not satisfy this condition in relation to finance; and that as at the date of the Appealed Decision, the IBA had not increased its financial transparency and sustainability including through diversification of revenues.

2) Integrity of boxing competitions

411. The second stated condition set forth in the IOC Letter of 9 December 2021 relates to sporting integrity and was in these terms: *"With regard to the credibility of the boxing competitions, to change its R&J process to ensure its integrity under the monitoring of PwC, including a monitoring period for AIBA's own competitions ahead of the Olympic Games Paris 2024".*

412. The IOC thus imposed a requirement on the IBA to change its referee and judging processes so as to ensure the integrity of its competitions and to do so under the monitoring of PwC.

413. Did the IBA do so? Two issues arise:

a. Did the IBA impede PwC's ability to monitor the referee and judging processes?

b. Did the IBA make changes to its referee and judging processes so as to ensure the integrity of its competitions?

414. By way of background, the Panel notes the following matters:

a. In May 2019, the IOC Inquiry Committee delivered its findings in respect of the IBA's referee and judging processes. Upon a review of the processes in place for the OG Athens 2004, OG Beijing 2008, OG London 2012, and OG Rio 2016, the IOC Inquiry Committee concluded that the consistent allegations related to refereeing and judging processes and decisions show that the IBA was unable to establish an effective firewall between the professional judges and referees on one hand and the IBA political leadership and management on the other, thereby representing a significant risk for the IOC and the Olympic Movement.

b. For the OG Tokyo 2020 (held in July 2021), the IOC's BTF organised the qualifying competitions for and the competitions, using the BTF's process for the selection of referees and judges, which was based on the principle of eliminating human intervention.

c. In December 2021, the IOC DG and the IOC Ethics and Compliance Officer issued the IOC DG / CECO Interim Report, which Interim Report concluded that the processes put in place by the IOC for OG Tokyo 2000 showed that it was possible to organise boxing competitions without putting the credibility of the results into doubt. The report also noted the audit conducted by PwC of the processes in place at the IBA Men's World Championships in Belgrade (Serbia) which highlighted the remaining risks regarding integrity linked to potential human interference.

d. On 23 February 2023, the IOC informed the IBA that it had engaged PwC to monitor the R&J processes put in place by the IBA for the IBA Women's World Boxing Championships (New Delhi) on 15-26 March 2023.

e. On 6 April 2023, the IOC issued the IOC Points of Potential Non-Compliance Report which noted that:

i. The IBA required PwC to sign an NDA which was unacceptable as it would have prevented PwC from sharing its findings with the IOC and that, as a result, PwC was unable to gain access to the requested information, to attend IBA's competition in New Delhi and to fulfil its mission.

ii. For the pre-competition phase, no documents are available in the public domain and thus not accessible to all team delegations. Consequently, the assessment of these pre-competition phase was not possible and the transparency of this part of the process remains questionable.

iii. For the competition phase, a number of potential risks in the integrity of IBA's R&J processes are apparent from the analysis of the rules available in the public domain, which contain a number of inconsistencies and contradictions, in particular with regard to the draw, R&J evaluation, bout review and competency of the Observer.

iv. The on-site R&J draw is a key element of the integrity of the competition process; extraordinary changes prior to the start of the competition may only be undertaken under certain pre-defined criteria. The IBA's rules allowed such extraordinary changes requests but without defining the criteria. As a consequence, the lack of pre-defined criteria could give the Draw Commissioner the opportunity to submit unjustified extraordinary change requests, influencing the R&J draw sheet and potentially the outcome of the bout.

v. The IBA's rules do not define the procedure to (re)allocate a new referee or judge in case of extraordinary change. As a consequence, the Draw Commissioner could be able to allocate the positions according to own preferences or other considerations that can potentially risk the integrity of the draw sheet and, as such, the outcome of the bout.

vi. The IBA's rules do not provide a second Judge Evaluator or an Observer as a comparison for the Judge Evaluator's performance, as such comparison would minimise the risk of underperformance by the Judge Evaluator officiating on the bout. This creates a risk to the objectivity and the independence of the evaluation of the judges.

vii. Sanctions and suspensions for underperforming R&Js are essential for the efficiency of the process yet there are no provisions in IBA's (publicly available) rules regarding any measures in case of underperformance. This questions the IBA's willingness to set up a robust process.

viii. The conditions under which a bout review could be initiated seem inconsistent as there are different rules (IBA Technical and Competitions Rules - Rule 20.2.1, Rule 20.4.3 and Rule 20.5.1) and there is no indication as to which rule applies in which case. This uncertainty and potential contradiction could pose a risk to the integrity of the bout review process as the rules and roles remain unclear and could be applied inconsistently by the respective boxing officials. Similarly, it is unclear what the consequences could be if the Observer and the Judge Evaluator disagree on a bout result.

ix. In the Rules, it is neither part of the Referee Evaluator's (Rule 30.3) nor the Observer's duty (Rule 35.3) to score the bouts. Rule 20.2.3 defines that the bout review must be concluded within five minutes after its activation. Within such a short timeframe, it seems unlikely that the Referee Evaluator or the Observer would have time to re-watch the bout in order to score each round before making a decision. As a consequence, there is a risk for the integrity of the bout's outcome if the Referee Evaluator or the Observer must decide on the outcome of the bout without having both previously scored each round during the bout (Rule 20.6.1) and without having had enough time to review the bout. Such sequence of rules in practice may allow two non-randomly appointed officials to overrule the collective score of the five randomly appointed judges.

f. On or about 26 March 2023, the IBA sent to the IOC a report prepared by McLaren Sport headed 'Summary of Key Integrity Achievements'. The salient points are as follows:

i. While the IBA's work with respect to R&J *"is still a work in progress, "noteworthy progress has been made to promote the current and future integrity""* of the IBA's competitions.

ii. McLaren Sport has attended nine IBA competitions since October 2021. As a result of interventions by McLaren Sport, 22 officials were stood down by the IBA.

iii. The IBA has introduced a 'detect and protect' policy for the detection of corruption by IBA officials and for the protection of *"clean and trusted"* officials. The level of scrutiny meets the highest standards of integrity testing.

iv. In the past 18 months there has been a *"marked improvement"* in the professionalism of the IBA's referees and judges.

v. The draw for the referees and judges *"has historically been the focus of much criticism and is still a work in progress"*. The IBA has made significant strides to improve the procedures to reduce the need for manual amendments. There is an ongoing process across the IBA which will take time to implement fully. It is accepted that automated filters cannot always replace manual amendments but this should be the exception rather than the rule.

vi. Significant improvements have been made in the selection process for the continental referees and judges.

vii. The bout review process has undergone a series of changes over the past 18 months. The process is now much more open and much less open to abuse. The process is still evolving; there are plans for it to be fully automated.

viii. The IBA has taken over control of the accreditation process and increased its dialogue with local organising committees. There are still external influences who may seek to corrupt competition officials or undermine the integrity of the competition. While security at some IBA events is not perfect, the blame is not entirely with the IBA.

g. On 5 May 2023, the IBA issued its IBA Reply. It made a number of points in relation to the integrity of its competitions, as have been set forth in some detail above.

a) PwC

415. As has been set forth above, on 23 February 2023, the IOC informed the IBA that it had engaged PwC to *"continue monitoring IBA's major events, specifically the upcoming IBA Women's World Boxing Championships (New Delhi) on 15-26 March 2023"*. The IOC asked the IBA to send to PwC by 3 March 2023 various documents relating to the refereeing and judging of the championships, pre-competition, in-competition, and post-competition.

416. On 3 March 2023, the IBA provided copies of certain of the requested documents but, because the IBA was heavily committed in the organisation of the IBA Women's World Boxing Championships in India from 15 to 26 March 2023, invited the IOC to inspect the remaining documents at the IBA's head office after 31 March 2023, upon return of the IBA staff from India. The IBA also put down a marker in relation to confidential information. It said: *"IBA is open to cooperate to the maximum extent possible and we will provide to the IOC and the appointed experts all necessary documentation, unless these documents are confidential or involve third parties who do not agree to disclose particular documentation"*.

417. On 7 March 2023, the IOC wrote to the IBA making the following inter alia points: (a) PwC have prepared and will send to the IBA a list of *"missing documents still to be received"*; (b) all documents should be provided by the deadline of 13 March 2023; and (c) no information and/or development after 3 April 2023 would be taken into account.

418. On 10 March 2023, the IBA replied to the IOC. Amongst other things, the IBA noted that it was good governance to require the IOC's external experts to sign an NDA. The IBA also asked PwC to monitor not only IBA Women's World Boxing Championships in India but also the IBA Men's World Boxing Championships in Tashkent in May 2023.

419. On or about 14 March 2023, the IBA sent to the IOC an NDA for PwC to sign in advance of being provided with any IBA documents. As noted above, the language of the NDA prohibited PwC from sharing with the IOC any confidential information provided to PwC by the IBA and the IBA did not authorise PwC to disclose to the IOC any such confidential information *"by any means currently existing or existing in the future"*.

420. On 14 March 2023, the IOC noted that no NDA was requested *"during the previous missions and we see no reason to change this practice"*.

421. On 16 March 2023, the IBA responded to the IOC. The IBA made the following points:

a. As to PwC, it is true that there was no NDA in the past but to have an NDA is good governance and is *"particularly important because the appointed experts will have access to all the management and know-how of the competition. Also, considering the rumours that IOC […] is cooperating with other National Federations in creating parallel events and an association, we want to prevent the confidential information from getting into the wrong hands and using it against IBA interests"*.

b. The IBA was *"sorry to hear"* that PwC would not attend the IBA Men's World Boxing Championships in Tashkent in May 2023. *"We do believe that PwC would have an entire picture having opportunity to observe the Competition Officials selection process from the very beginning"*.

c. The IBA's *"firm intention* [is] *to cooperate with PwC* […] *subject that they comply with our internal policy by signing the NDA* […] *and cooperate with* [McLaren Sport]*"*.

422. In the event, the IOC and PwC declined to sign the NDA in those terms on the basis that to do so would negate the very point of the exercise, and PwC did not attend the IBA Women's World Boxing Championships 2023 in India.

423. In its submissions, the IBA suggested that it was concerned about *"the potential copying of IBA's system for working with competition officials by the IOC, without IBA's consent"* and that it therefore requested PwC to sign a NDA, which was aimed at protecting the IBA's confidential information. It was conceded that the IBA may have *"been mistaken"* about the intentions of the IOC to copy the IBA system but nevertheless:

a. PwC's refusal to sign the NDA *"might have raised concerns that they could potentially use the information for purposes beyond assessing IBA's progress in the competition area"*. The content of the NDA did not prevent PwC from performing its task. The NDA provided that *"confidential information will be provided for the sole purpose of permitting PwC to perform all its duties in the framework of its activities entrusted by IOC"*.

b. The NDA therefore allowed PwC to fulfil its mandate and *"allowed PwC to conduct a comprehensive assessment and prepare the required report without any hindrance"*.

c. PwC *"was not restricted in access to any necessary information related to the IBA competitions in order to assess IBA activity in this area"*. The possible restriction on PwC in the sharing of information with the IOC *"did not in any way infringe on the right of the PwC to carry out its mandate"*.

424. The Panel does not accept these submissions. There was no reason, and certainly no evidence, to support the notion that PwC were liable to use the IBA's confidential information relating to its referees and judges processes for ulterior purposes. It is also obvious that the terms of the NDA were such that, had PwC agreed to sign it, the NDA would have significantly affected the ability of PwC to report to the IOC on the very matters it was engaged to review. It would have been an all but pointless exercise.

425. The IBA's additional argument that PwC had a conflict of interest because it was also appointed by the IOC to monitor the IOC qualifying events should also be rejected. As the IOC submitted, there is no reason (and certainly no evidence) to suggest that the IOC was organising Olympic qualification and the Olympic boxing tournament in order to supplant the IBA as the IF for boxing.

426. On balance therefore the Panel takes the view that the IBA's insistence on an NDA with PwC in the terms proposed by it had the effect of preventing PwC (and therefore the IOC) from obtaining access to the IBA's documentation in relation to its referees and judging processes and from attending the event to form its own view *in situ* of these processes as they were applied by the IBA, and to report its findings to the IOC. In the result, the IOC was put in the position whereby it was left to draw its own conclusions based upon information that was publicly available.

427. It follows therefore that the IBA did not satisfy the condition set by the IOC in that it did not change its R&J process under the monitoring of PwC. The conduct of the IBA in and around its insistence on the NDA and the failure to provide documentation relating to its R&J processes meant that PwC was excluded from the process.

b) Did the IBA make changes to its referee and judging processes?

428. It is therefore unnecessary for the Panel to go on to consider the next question as to whether the IBA made changes to its referee and judging processes so as to ensure the integrity of its competitions.

429. It is plain from the evidence that the IBA certainly made changes to its referee and judging processes, and that there have been significant improvements in this respect since, say, OG Rio 2016.

430. Nevertheless, by adopting the stance that it did with respect to PwC, and thereby denying PwC the ability to assess whether the changes implemented by the IBA were sufficient to ensure the integrity of its competitions, the IBA created the circumstances where the IOC was not in a position to satisfy itself that the improvements put in place by the IBA were sufficient to ensure the integrity of the IBA's competitions.

3) Governance

431. As set forth in the IOC Letter of 9 December 2021, the IOC called upon the IBA *"to ensure the full and effective implementation of all the measures by Prof. Haas and his team, including the change of culture"*.

432. The IOC thus imposed a requirement on the IBA to implement the GRG Recommendations effectively and in full. Did the IBA do so?

433. As can be seen, the IBA engaged the GRG to assist the IBA with its governance reform. Led by Prof. Haas, the GRG was comprised of a group of highly regarded legal practitioners

experienced in matters of governance for sports governing bodies such as the IBA. It issued the GRG Recommendations, which have been set out above in some detail. It appears from the terms of the GRG mandate and from the correspondence between the IBA and the GRG that it was at one time contemplated that the GRG would (a) stay in post until the end of 2022 and (b) assist the IBA with the implementation of the GRG Recommendations.

434. In the event, however, the IBA took the decision to bring the GRG mandate to a close in the middle of 2022 at a time when the GRG Recommendations had not been fully implemented. The IBA took the decision that it would see to the implementation of the recommendations on its own, using internal resources, without the assistance of the GRG.

435. On its departure, the GRG issued its GRG Summary, which summarised the position on implementation as at 25 August 2022. It is clear on reading that report that the IBA had made a swathe of changes to its governance structure but that, also, a number of matters remained outstanding as at that date in full: for example, the recommended BIIU had not been created and some but not all of the recommended commissions and committees had been established.

436. In this respect, on 23 February 2023, the IOC informed the IBA that, as part of its continued monitoring of the IBA, the IOC had *"mandated external experts to assess the IBA's status, practice and activities, its progress or the absence of progress"* and, in light of the fact that the IBA had terminated the services of GRG, the IOC had asked Ms Potts, a UK barrister with expertise in sports law and governance, to assess the implementation of the GRG's recommendations.

437. Ms Potts delivered her report on 31 March 2023. The stated scope of Ms Potts' review was to assess the IBA's implementation of the GRG Recommendations. She was asked to do so 'on the papers' as a result of which she reviewed only those papers provided to her by the IBA and the IOC and did not conduct any wider investigation.

438. Ms Potts' conclusions have been set out in full above. For present purposes, the Panel notes the following matters:

a. The IBA had made *"numerous"* changes since 2020 with the aim of improving its governance structure.

b. The IBA has not yet implemented the GRG Recommendations in full. *"In particular, there remains considerable work to be done to establish a fully operational and independent BIIU and fully 'staffed' and functioning committees"*.

c. There are several issues that continue to raise concerns about the governance culture, as to which there may be adequate explanations on the part of the IBA. However, taken together and against IBA's history of poor governance, it continues to leave question marks.

d. It cannot be said that the GRG Recommendations have been met in full, albeit it was noted that *"there has been considerable progress towards implementing them"*.

439. Based principally but not only on Ms Potts' report of 6 April 2023 and the IBA Reply, the IOC Comprehensive Report concluded that its concerns in relation to the IBA's governance *"are still unaddressed"* and that *"the IBA's practice and activities is [sic] still not sufficient to confirm that the IBA fulfils […] the specific conditions regarding effective good governance as set out in the Roadmap 2021-2023"*.

440. Was that conclusion correct?

441. The following issues arise for consideration:

a. The termination of the GRG.

b. The establishment of the BIIU.

c. The establishment of the IBA Committees.

d. Democracy.

a) Termination of GRG

442. The IOC argued that, while working with GRG was not an express requirement, the premature termination by the IBA of GRG's mandate raised concerns about IBA's commitment to implementing the GRG Recommendations and supervision by GRG was *"at least an implicit term"* of the IOC's requirements because: (a) on 21 January 2022, the IOC asked to be regularly updated by Prof. Haas on the implementation of the GRG Recommendations; and (b) on 31 March 2022, the IBA not only agreed to GRG oversight but renewed the GRG mandate to support implementing the GRG Recommendations.

443. The Panel does not accept these submissions. The IBA was perfectly entitled to form the view that it should carry out the implementation of the GRG Recommendation for itself; there was no requirement from the IOC that compelled the IBA to use the GRG to achieve implementation and there is no proper basis on which to infer some measure of want of commitment on the part of the IBA in this regard. Nor is there any proper basis to imply some sort of term to this effect into the arrangement.

444. The Panel does however agree with the IOC's submission that, in terminating the GRG, the IBA *"lost a crucial independent mechanism to demonstrate substantive process"*. In the Panel's view, by terminating the GRG as and when it did the IBA lost not only the considerable expertise of the GRG in the implementation of its own recommendations but also an objective and respected voice on the issue of implementation of the much-needed governance reforms.

b) The BIIU

445. As noted by Ms Potts, IBA had not, as at the date of her report, implemented the GRG Recommendations in full and, in particular, there was considerable work to be done to establish a fully operational and independent BIIU, one of the principal recommendations by the GRG.

446. In riposte, the IBA relies on the following matters:

a. On 11 October 2022, the IBA called for candidates for the BIIU.

b. On 15 October 2022, the IBA entered into the agreement with McLaren Sport as a service provider to the BIIU.

c. On 8 March 2023, the board of the BIIU was appointed as follows: Mr Bernhard Welten, chair; Mr James Kitching; Mr Nader Alawadhi; and Mr Richard Young; with one vacant position.

d. On 23 March 2023, the BIIU Board held its first meeting, at which Mr Gustaf Segerström was appointed as the BIIU Managing Director.

e. On 25 April 2023, the BIIU Board held its second meeting at which the following BIIU units were formed: the Compliance Unit, Tribunal; Compliance Unit, DRC; Nomination Unit; Education and Development Unit.

f. The BIIU Report dated 21 July 2023, which identifies statutory changes to the IBA Constitution in order to implement the BIIU.

447. It will be immediately apparent that (a) the first meeting took place just prior to the IOC's cut-off date of 3 April 2023 and (b) the last-mentioned report post-dates the Appealed Decision and was therefore not part of the factual matrix brought to account with respect to that decision by the IOC Session. In any event, the report does not contain any information over and above the appointments just noted, and there is nothing from the IBA, whether before or after the date of the Appealed Decision, that shows that the BIIU is operational as a matter of fact. It appears to have met on two occasions but there is no indication of what business was conducted and, more importantly, as was submitted by the IOC there is no indication of *"actual implementation like staffing, budgets, activities, or outputs"*.

c) The IBA Committees

448. As noted by Ms Potts, the IBA established the various committees and commissions in accordance with the GRG Recommendations, such that it is safe to conclude that the IBA has met this recommendation, at least on paper.

449. The evidence shows, however, that, in the first place, none of the committees had met as at the time of Ms Potts' report so a question arises as to the implementation of this recommendation in practice as at the date of the Appealed Decision -- and the evidence of Ms Dlala, the IBA Director of Administration and HR, spoke only to matters as at the end of July 2023, well after the Appealed Decision.

450. More importantly, the evidence also shows that there have been a number of resignations from committee positions. It appears that in December 2022, some seven months after appointment, all of the members of the Audit Committee and one member of the Finance Committee resigned and that, certainly as at the date of Ms Potts' report, the positions

remained vacant. It also appears that five members of US Boxing resigned their committee positions on the basis that the IBA does not value the input of its committee members. There was no explanation from the IBA for these resignations. As Ms Potts noted, these resignations plainly give rise to concerns as to the mode of governance in place at the IBA.

d) Democracy

451. In her report, Ms Potts considered the turn of events relating to decision of the INU to bar the CCA Candidates from standing in the elections,

452. That turn of events has been set forth above in some detail. A summary is as follows:

a. On 3 February 2022, the IBA called for candidates for election to the IBA Board to be held in Istanbul, Turkey on 13-14 May 2022. It was said that nominations would be vetted by the INU.

b. On 2 March 2022, the CCA Candidates lodged their nomination forms for the coming IBA elections for president and the board of directors.

c. On 11 and 13 April 2022, the Serbian Boxing Federation and the Venezuelan Boxing Federation filed complaints against the CCA Candidates, alleging, inter alia, that they had campaigned outside the electoral period and had colluded together in a fraudulent effort to manipulate the elections.

d. On 21 April 2022, the INU issued its list of eligible candidates for the elections, including the CCA Candidates.

e. On 28 April 2022, the INU requested the IBA Disciplinary Committee to determine whether the conduct of the CCA Candidates amounted to a breach of the IBA Disciplinary Code and whether, if so, they should be sanctioned.

f. On 11 May 2022, the IBA Disciplinary Committee issued its decision, finding the CCA Candidates not guilty of all charges.

g. On 12 May 2022, the INU issued its decision finding that the CCA Candidates had engaged in prohibited electioneering through the CCA and declared that the CCA Candidates were ineligible to participate in the elections.

h. On 13-14 May 2022, the IBA held its Extraordinary Congress in Istanbul, Turkey, the principal purpose of which was to conduct elections for president and for independent board directors. Mr Kremlev was voted in as President, unopposed.

i. On 17 May 2022, the CCA Candidates appealed to the CAS against the decision of the INU.

j. On 14 June 2022, the Sole Arbitrator in CAS 2022/A/8862 issued his award setting aside the INU's decision to exclude the CCA Candidates from the election. The Sole

Arbitrator noted that, while he had no power to order a new election, a new election would be the *"logical"* thing to do.

k. On 25 September 2022, the IBA Extraordinary Congress took place in Yerevan, Armenia. The Congress discussed the CAS 8862 Award and a vote was taken as to whether another presidential election should be held. By a majority, it was decided not to hold another presidential election.

453. The IOC Comprehensive Report identifies the lack of democracy as the most problematic example of governance issues identified by Ms Potts, being a particular reference to the episode just described by which (a) the INU chose to exclude certain individuals from standing in the elections and (b) the IBA decided that, despite the fact that the INU decision had been set aside and despite the fact that the Sole Arbitrator in CAS 2022/A/8862 had noted that, while he had no power to order a new election that was plainly the logical thing to do, a new election was not necessary.

454. The Panel agrees that this episode demonstrates a disregard for the electoral process and agrees with the conclusions reached by Ms Potts and the IOC in the IOC Comprehensive Report that the episode raises serious concerns as to the overarching attitude of the IBA towards good governance.

455. As to the matters raised by the IBA in mitigation or explanation:

a. The assertion that the CAS Award came to a *"contradictory and wrong conclusion"* that the IBA President had also engaged in early campaigning is misplaced. The CAS 8862 Award clearly shows that, while the IBA President did not author the letter that was considered inappropriate, it was nevertheless attributable to him.

b. The assertion that the CAS Award did not set aside the election because the CCA Candidates did not request a new election is also misplaced. The CCA Candidates did request provisional measures, which were opposed by the IBA, and the Sole Arbitrator explicitly noted that the logical thing to do would be to hold new elections.

c. The IBA's reliance on Prof. McLaren's view that the IBA President would have been re-elected had there been a new election is also misplaced. That is not the point; the point is, instead, that the use of the IBA's internal bodies to counter political opponents shows a cynical manipulation of the election process.

e) Conclusion on governance

456. In light of these matters, the Panel is of the view that, as at the date of the Appealed Decision, IBA had not fully and effectively implemented the GRG Recommendations, which was an expressly stated necessary condition of continued recognition by the IOC.

4) Conclusion

457. In light of the above, it follows that the Panel is of the view that, as at the date of the Appealed Decision, the IBA had not complied with the conditions set down by the IOC for recognition, namely:

a. The IBA had not increased its financial transparency and sustainability including through diversification of revenues.

b. The IBA had not changed its R&J process to ensure its integrity under the monitoring of PwC, including a monitoring period for IBA's own competitions ahead of the Olympic Games Paris 2024.

c. The IBA had not ensured the full and effective implementation of all the measures proposed by Prof. Haas and his team, including the change of culture.

458. It follows as well that, in the Panel's view, these three matters amount to important reasons that justify the IOC's decision to withdraw recognition pursuant to Article 72 of the SCC; or, put another way, the IOC's decision to withdraw recognition was, pursuant to Article 28 of the SCC, justified by an overriding interest on the part of the IOC to ensure that those IFs on which it confers recognition comply with the conditions articulated by the IOC for such recognition. It follows therefore that the impairment of the IBA's personality rights was not unlawful but justified.

459. That may well be a complete answer as a matter of Swiss law: i.e., the decision to withdraw the IBA's recognition was lawfully made by the IOC pursuant to the constraints applied by Article 72 of the SCC and its related jurisprudence and, because it was lawful, there has been no infringement of the IBA's personality rights under Article 28 of the SCC.

460. Nevertheless, should it be necessary to weigh the two competing rights in the balance, the Panel takes the view that the IOC's right to control the circumstances in and the conditions on which it confers recognition outweighs the IBA's personality rights. The important reasons shown by the IOC are sufficient to outweigh the incursion upon the personality rights enjoyed by the IBA as a recognised IF. The Panel also takes note of the following matters:

a. The IOC is a Swiss association, with freedom of association.

b. It is the supreme authority with respect to the Olympic Movement and, with it, has an overarching responsibility to maintain the sporting integrity of all Olympic sports and to ensure compliance by other and all members of the Olympic Movement with the Olympic Charter.

c. The conditions set by the IOC for the IBA were directed to that end. They were the product of longstanding, and multiply expressed, concerns on the part of the IOC with respect to the integrity of the sport of boxing as governed by the IBA and the viability of the IBA to remain recognised as the IF for the sport of boxing.

d. The IOC has not acted precipitously but has worked with the IBA over an extended period of time (over a decade) in an effort – by both Parties – to remedy matters.

e. The three areas of concern – finance, governance, sporting integrity – are significant matters; and the failure on the part of the IBA to meet the IOC's concerns in these respects was a significant failure. We are not here dealing with minor transgressions or mere annoyances. The IOC's areas of concern raised serious concerns central to sport governance and administration.

f. The IBA does not enjoy a right to be recognised; recognition is within the sound discretion of the IOC. And once recognised, the recognition of an IF is not permanent and can always be subject to review by the IOC.

g. The IBA does enjoy personality rights by dint of its IOC recognition and enjoys economic and sporting benefits as a result, but those rights are contingent upon continued recognition which the IOC has the sound discretion to determine. In addition, the IBA does have a *raison d'être* outside of its role as the IF for boxing such that the withdrawal of recognition should not, of itself, mean its dissolution. This is made plain by the fact that it organises a raft of events outside the Olympic Movement to this day.

461. Taking each of these matters into account, the Panel is of the view that the IOC's right to withdraw recognition must prevail over the IBA's personality rights.

XI. CONCLUSION

462. In view of all the above considerations, the Panel holds and determines that the Appellant's appeal must fail and that Appealed Decision is upheld.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the International Boxing Association on 27 June 2023 against the International Olympic Committee in relation to the decision of the IOC Session of 22 June 2023 is denied.

2. The decision of the IOC Session of 22 June 2023 is confirmed.

3. (…).

4. (…).

5. All other and further claims or prayers for relief are dismissed.