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IDSF DISCIPLINARY COUNCIL

Procedural Decision

as of

7 June 2010

regarding

APPEAL AGAINST TERMINATION OF MEMBERSHIP

by

Malaysian Dancesport Berhad (MDSB)

Represented by George Lim Pang Cheong, President, Mailbox 27, Room 5, 1st Floor,
Wisma OCM, Jalan Hang Jebat, 50150 Kuala Lumpur/Malaysia

Email: georgelimpc@yahoo.com

- the “Appellant” or “MDSB” -

vs.

International DanceSport Federation (IDSF)

Represented by Mr. Marco Sietas, IDSF General Secretary,
c/Comte Vilardaga 135-137 bj. 3, E-08980 Sant Feliu de Llobregat/Spain

Email: marcosietas@idsfspain.com

- the “Appellee” or “IDSF” -



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1. Procedural

1. On **4 June 2009** a Formal Appeal (dated 3 June 2009) against the IDSF Presidium's Decision to terminate the Membership of the Malaysian Dancesport Berhad (the "Appellant") with the International DanceSport Federation (the "Appellee") has been submitted to the Chairman of the IDSF Disciplinary Council, alleging that aforementioned decision had been taken by violating the IDSF Statutes (Version as of 15 June 2008), in particular Art. 5, para 8.
2. According to Art. 10 of the IDSF Disciplinary Council Code as of 11 June 2006 (the "IDSF DC Code"), the *"IDSF Disciplinary Council shall act as the Second Instance in the following subject areas*
 - *Breach of the IDSF Statutes by a Member Federation, athlete or official*
 - *Breach of sports rules, regulations and principles*

It hears and decides upon appeals against any decision of the IDSF Presidium (in globo) or any IDSF Presidium member (acting individually according to his power)"
3. The IDSF Presidium's decision to terminate the Appellant's membership has been taken pursuant to *Articles 3.2 and 6.2 of the IDSF Financial Regulations and Articles 5(4), 7(4) and 14(1)(d) of the IDSF Statutes.*
4. Due to the fact that IDSF Presidium's decision is based on an alleged violation of the IDSF Statutes (in particular of the IDSF Financial Regulation) by the Appellant and the Appellant is directly affected by the respective Presidium's decision, the Appellant is actively legitimated to submit this Appeal according to Art. 5, para 1 of the IDSF DC Code.
5. On **7 June 2009** and according Art. 2 of the IDSF DC Code, the Chairman of the IDSF Disciplinary Council has officially initiated the IDSC DC proceedings by appointing and communicating the following Chamber in Charge:
 - **Erich Staeldi, Switzerland (Chairman)**
 - **Antun Marki, Croatia**
 - **Karina Geerts, Belgium**

No reservations against the appointed Chamber in Charge had been raised subsequently by the Appellant nor the Appellee.
6. On **21 June 2009** the Chamber in Charge of the IDSF Disciplinary Council has requested the parties to this Appeal to provide detailed information as well as answers to questions the Chamber in Charge had raised. The deadline to submit the respective answers had been set for **5 July 2009**.
7. The Appellant has provided its responses and further documents on **1 July 2009**. The Appellee's Statement of Defense has been submitted to the Chamber in Charge on **19 July 2009** following an extension of the deadline, which had been



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- granted by a Procedural Decision by the Chamber in Charge on **4 July 2009** and communicated to both parties.
8. On **26 July 2009** and according to Art. 14 (bullet point 4) of the IDSF DC Code, the Appellant has been given the possibility to submit a formal "Reply" to the "Statement of Defense" of the IDSF until **9 August 2009**. Such official and formal Reply has been provided on **7 August 2009** (dated as of 6 August 2009).
 9. By Procedural Decision by the IDSF Disciplinary Council dated **16 August 2009** and based on Art. 14 (bullet point 5) of the IDSF DC Code, the Appellee has been given the possibility to draft and file an official "Rejoinder" to the "Reply" provided by the Appellant until **30 August 2009**
 10. On **15 September 2009**, following a formal extension of the deadline granted on **30 August 2009** by the IDSF DC, the Appellee has submitted its official "Rejoinder"
 11. On **13 October 2009** the Appellee's "Rejoinder" has been communicated to the Appellant.
 12. On **12 April 2010** the IDSF Presidium has communicated the final agenda for the IDSF Annual General Meeting 2010, to take place on **13 June 2010** in Vienna/Austria, and has decided to present a formal motion as agenda item # 17 to formally expel Malaysian DanceSport Berhad (MDSB) from the IDSF according to Article 5 para 8 of IDSF Statutes.

2. Considerations

1. The Appellant in his Appeal as of 4 June 2009 (however dated 3 June 2009) is stating that the decision of revocation of membership with the IDSF made by the IDSF Presidium and communicated by letter dated as of 14 April 2009 to the Appellant, has been taken due to the failure to pay the annual membership fee of CHF 1'000.00 by due date of 31 March 2009. The Appellant outlines that the respective communication has only been received on 12 May 2009.
2. The official communication of the IDSF Presidium dated as of 14 April 2009 regarding the revocation of membership reads as follows (full text):

"Attention: Mr. George Lim, Chairman

Dear Sirs:

We advise that on April 6, 2009 the IDSF Presidium resolved that Membership of Malaysian DanceSport Berhad in IDSF be revoked, pursuant of Articles 3.2 and 6.2 of the IDSF Financial Regulations and Articles 5(4), 7(4) and 14(1)(d) of the IDSF Statutes.

This letter constitutes notice of the termination of your Membership in IDSF, and the consequent termination of the privileges of athletes and adjudicators formerly granted to you by IDSF.



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We expect that Malaysian athletes and adjudicators will be provided with an opportunity to participate in IDSF DanceSport again very shortly and we will publish all information with respect to such developments and opportunities, in the best interests of DanceSport.

Yours truly
INTERNATIONAL DANCESPORT FEDERATION

Sig. Marco Sietas, General Secretary

3. The Appellant further elaborates that any attempt to fulfill its financial obligations after receipt of the membership termination communication has not been accepted but has been rejected thus preventing the Appellant to remedy its breach according to the IDSF Statutes and the IDSF Financial Regulations respectively.
4. At the same time, the Appellant is arguing in its Appeal that the IDSF Presidium does not have the power under the IDSF Statutes to take a binding decision to terminate the membership of an IDSF Member Federation with the IDSF, as such action, based on Art. 14, para 1d of the IDSF Statutes, would stand in contradiction to Art. 5, para 8 of the IDSF Statutes on one hand and Art. 65 of the Swiss Civil Code on the other hand. In addition the Appellant takes the view that Art. 72 of the Swiss Civil Code has to be applied according which a decision of revocation of membership may only be taken on "material grounds" and such decision has to be taken by the General Meeting.
5. The Appellant furthermore is outlining that according Art. 8 of the Financial Regulations of the IDSF (Version as of 15 June 2008), "*Members who fail to pay any fees set out in these Regulations, by the time they are due, shall in addition to those fees pay a penalty of CHF 50.00 for each invoice which is paid late, and shall cease to be in good standing until all such fees and all such penalties are paid in full*". According to aforementioned provision a "Penalty" for late payment has been defined which does not include a revocation of membership.
6. Finally the Appellant is stating that before taking the – appealed – decision, the IDSF Presidium has not heard the Appellant, respectively has not given the MDSB any opportunity to mitigate any charges or alleged offence or misconduct before taking the decision to revoke the membership.
7. The IDSF in its official "Statement of Defense" submitted to the IDSF DC on 19 July 2009 is elaborating that the MDSB had been a failing and irresponsible Member for a long period of time prior to the IDSF Presidium's revocation of the MDSB's Membership and that the decision was based on a lengthy and ongoing failure of MDSB to function effectively in many ways.
8. It outlines that not only the failure to pay but non-compliance with the very broadly-expressed Article 5 para 4 of the IDSF Statutes is one of the reasons for revocation of membership. It argues that the alleged lack of cooperation and adherence to the obligations of a member body constitutes a violation of the



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IDSF Statutes and lists various duties which allegedly have not have been fulfilled in the past years (mainly under the former MDSB President, Mr. Apache Young) such as providing requested "reports", refusal of returning and answering e-mails and phone calls from IDSF Presidium Members, that following the resignation of the former MDSB President a governing body had been installed without proper, democratic elections and finally by a general inactivity by the Appellant to promote DanceSport in Malaysia. All of the above lead to a lack of trust by the IDSF Presidium that MDSB is still the right member to represent Malaysia DanceSport within IDSF.

9. Said Article 5 para 4 of the IDSF Statutes reads as follows:

"Admission to membership, and renewal of membership by payment of the annual Membership fee, constitutes a contract between the IDSF and the Member. The terms of that contract include the term that in return for membership in IDSF, Members agree to abide by the IDSF's Statutes, rules and regulations, and to abide by decisions of the IDSF's General Meeting and Presidium, and to comply with the World Anti-Doping Code, the IDSF Anti-Doping Code, including requiring all athletes and support personnel within their jurisdiction to recognize and be bound by the World Anti-Doping Code and the IDSF Anti-Doping Code."

10. The Appellee is outlining in its "Statement of Defense" that on 31 March 2009, "after carefully reviewing the facts, the IDSF President decided that in his view it was not possible for MDSB to work successfully for IDSF DanceSport in Malaysia for for MDSB to continue to represent IDSF in Malaysia." On 4 April 2009, the IDSF Presidium concluded its voting to revoke the membership of MDSB in IDSF.

3. Conclusions by the Chamber in Charge

1. The IDSF in its decision i.e. in its letter of announcement of revocation of membership, in its Statement of Defense as well as in its Rejoinder is listing a number of reasons, why it is of the opinion that the membership of MDSB had to be revoked. Some of which are affirmed with underlying evidence, some of which are not but merely allegations. To the extent they are not evidenced, they are disputed by the MDSB to a large degree. Whilst the Chamber in Charge has a clear view whether or not the alleged shortcomings constitute sufficient and severe grounds for membership revocation, the Chamber in Charge does not want to and is not in the position to judge on the conclusions and the grounds the IDSF Presidium has made to come to its decision.
2. The Chamber in Charge however is taking the view, that it lies in its competence to take a view and render a Formal Decision whether or not the IDSF Statutes as well as the applicable general and specific Articles if the Swiss Civil Code had been respected in proceedings of termination of membership.



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3. Article 5 para 8 of the IDSF Statutes reads as follows: *“A Member may be expelled by a two-thirds majority vote of the General Meeting. A Motion to expel a Member is not in Order unless the proposer has given the Member at least one month's notice of the proposer's motion to expel, by registered letter or facsimile transmission”*. Article 14 of the IDSF Statutes, outlining the IDSF Presidium's powers, states that when the General Meeting is not in session, the Presidium is empowered to make any decision which is not specifically reserved to the General Meeting, including taking actions against Members and list in para d) the right to revoke the membership of a Member.
4. Although disputed by the IDSF Presidium, the Chamber in Charge takes the view that these two paragraphs are contradicting each other and does not follow IDSF Presidium's statement that Article 5 para 8 would only apply during a General Meeting and Article 14 para 1d) on the other 364 days of a calendar year. Furthermore it is not to be understood why a revocation of membership by the General Meeting would require a quorum of a 2/3 majority (on that one day only) but that a Presidium's decision on the other days could lead to a revocation without and further pre-condition (such as a quorum, such as a prior notice).
5. Under the Swiss Civil Code it would be legally possible to assign the right of membership revocation to the Presidium of a federation organized according the Articles 60 ff. of the Swiss Civil Code (like the IDSF is). To that extent, the Chamber in Charge does not follow the Appellant's position that revocation of membership is a right solely reserved for the General Meeting.
6. However, taking the current Article 5 para 8 and Article 14 para 1d) into consideration the Chamber in Charge takes the clear position that such a delegation of powers away from the General Meeting to the Presidium has not taken place.
7. By submitting an official motion to the IDSF Annual General Meeting 2010 to take place on 13 June 2010 in Vienna/Austria, IDSF Presidium has taken and communicated the decision to follow Article 5 para 8 of the IDSF Statutes and to have this question decided by the IDSF General Meeting.
8. As the IDSF General Meeting is the highest decision making body within the IDSF, the Chamber in Charge of the IDSF Disciplinary Council has taken the view that it does not want to render a formal decision on this case as it would now be interfering with the rights and powers of the IDSF General Meeting.
9. At the same time the Chamber in Charge takes notice that the Appellant is given the respective right to defend, respectively present its position to the delegates of the IDSF General Meeting directly, by which the required “right to be heard” will be ensured.



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Based on all of the above, the Chamber in Charge of the IDSF Disciplinary Council takes the following:

Procedural Decision

- 1. The Chamber in Charge of the IDSF Disciplinary Council will not take a Formal Decision on the Appellant's Appeal but will leave the case to be decided by the highest decision making body within the IDSF, the IDSF General Meeting, by following and applying Art. 5 para 8 of the IDSF Statutes.**
- 2. Each of the parties to this Appeal shall bear their own costs incurred so far for the proceedings.**
- 3. The advance payment made for the IDSF DC proceedings by the MDSB in the amount of CHF 200.00 shall be reimbursed to the MDSB.**
- 4. The IDSF Presidium is advised to either submit a "Motion of Urgency" to the IDSF General Meeting 2010, according to Art. 11 para 8 of the IDSF Statutes or an ordinary Presidium's Motion to the IDSF General Meeting 2011 to clarify the process of membership revocation in the IDSF Statutes and the circumstances under which the decision of membership revocation may be delegated to and taken by the IDSF Presidium.**

Muenchenbuchsee/Switzerland, 7 June 2010

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The Chamber in Charge

Erich Staeldi, Chairman

Karina Geerts

Antun Marki