



**Arbitration CAS 2011/A/2500 & 2591 Amateur Boxing Association of Thailand (ABAT) v. International Boxing Association (AIBA), award of 20 January 2012**

Panel: Prof. Luigi Fumagalli (Italy), President; Prof. Brigitte Stern (France); Mr Luc Argand (Switzerland)

*Boxing*

*Membership of a national federation in the international federation*

*CAS Jurisdiction*

*Decision imposing an obligation or a sanction on a member*

*De novo decision*

1. **Article 63 para. 1 of the AIBA Statutes does not limit the CAS jurisdiction to the decisions rendered by the Executive Committee acting as “Appeal Authority” under AIBA rules: indeed, the plain wording of the arbitration clause contained in the Statutes does not “qualify” in any way the Executive Committee decisions from which an appeal to the CAS is open. In addition, if the respondent did not raise any objection to the CAS jurisdiction to issue previous provisional measures, but rather discussed the merits of the application, it cannot claim the lack of jurisdiction at a later stage.**
2. **There is a need for a firm legal basis for any decision adopted by an association or a federation imposing an obligation or a sanction on one of its members, and chiefly so when the member’s participation in the association or federation is at stake.**
3. **In order to replace a decision that has been set aside by a decision taken *de novo*, a panel must have all the relevant elements capable of informing such a decision. In addition, in the exercise of its power to review the facts and the law, the panel cannot exceed its jurisdiction, by granting remedies not requested or reviewing decision or issues not covered by the arbitration clause.**

The Amateur Boxing Association of Thailand (ABAT; the “Appellant”) was constituted in 1953 as the national federation governing the sport of boxing in Thailand. As such, it has been for years a member of the International Boxing Association. The dispute heard by this Panel precisely concerns the status of ABAT as the national boxing federation of Thailand and its membership of the International Boxing Association.

The International Boxing Association (AIBA; the “Respondent”) is an association pursuant to Articles 60 *et seq.* of the Swiss Civil Code, with its seat in Lausanne, Switzerland. Its objectives are, amongst

others, to improve, promote, and spread worldwide the sport of boxing in all its forms, as well as to regulate boxing in all its aspects.

On 16 March 2011, the Appellant sent to all its members the registration form and the election procedure for the ABAT Congress. Such Congress was scheduled to take place on 27 March 2011. The mandate of the (then) president of ABAT, General Taweeep Jantararoj (“Gen. Jantararoj”), in fact, was to expire in 2011.

In a letter to ABAT of 24 March 2011, AIBA requested information about the election for president and a list of the candidates.

On 25 March 2011, the Disciplinary Commission of AIBA (the “Disciplinary Commission”) issued a decision (the “DC Decision of 25 March 2011”) suspending with immediate effect Gen. Jantararoj *“from any activity at AIBA, Continental, other international and National (...) levels”* and all of ABAT’s officials (i.e., *“all ABAT representatives, except for athletes, coaches and referees & judges: President, Secretary General, Vice-President, Executive Committee Member, Secretary, Treasurer and anyone who holds a titled ABAT governance position, to include all board members”*) *“from any activity at AIBA, Continental or other international levels”*. The DC Decision of 25 March 2011 was rendered within disciplinary proceedings opened in 2010, following a decision rendered by the Bureau of the Executive Committee of AIBA on 29 September 2010, that had already imposed a provisional suspension stayed by an order issued by the Deputy President of the Appeals Arbitration Division (the “Deputy President”) of the Court of Arbitration for Sport (CAS) (CAS 2010/A/2243, Order on provisional measures of 28 October 2010).

32 members, out of 39 eligible common members, and 4 uncommon members, out of 10 eligible uncommon members, registered at the ABAT Congress.

On 27 March 2011, the ABAT Congress took place. In addition to 3 uncommon members (that had no voting rights), 30 common members and 18 of the 19 members of the ABAT executive committee were in attendance, for a total of 48 participants having the right to vote. General Narin Tabprasit was elected as the new ABAT President. The minutes of the ABAT Congress record 43 votes for General Narin Tabprasit and 5 abstentions.

On 28 March 2011, ABAT and Gen. Jantararoj filed an appeal with the CAS against the DC Decision of 25 March 2011 (CAS 2011/A/2385). Such decision was stayed by CAS (Order on provisional measures of 1 April 2011)<sup>1</sup>.

On 28 and 29 March 2011, AIBA received complaints by Colonel Sakda Petijnda, Secretary of the Special Force Boxing Club, addressed also to Sport Authority of Thailand (SAT) and to the National Olympic Committee of Thailand (NOCT), as follows<sup>2</sup>:

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<sup>1</sup> The DC Decision of 25 March 2011 was definitively set aside, together with the decision rendered on 17 April 2011 by the AIBA Executive Committee on appeal therefrom, by the CAS in the award of 3 August 2011, in the joined proceedings CAS 2010/A/2243, CAS 2011/A/2358, CAS 2011/A/2385 & CAS 2011/A/2411.

<sup>2</sup> All the misspellings are in the documents transmitted to the Panel, but they are so many that the Panel did not underscore them with “*sic*” or otherwise.

in an email of 28 March 2011:

*“The Election had very big problem. Gen. Taweep did not let 10 people from our side go in to the conferent room and We walk out and Notice to the SAT for new election. The new President is Gen. Narin Tanprasit (Gen. Taweep’s Nominee). (...)”*

in a letter of 29 March 2011:

1. *The election of ABAT’s president was over. Gen. Narin Tapprasit the Vice President of ABAT was elected without other candidate.*
2. *The election was conducted unconstitutionaly and absolutely unfair as follows.*
  - 2.1 *ABAT issued Rules and Regulation of election with in short notice which is unable for club member to comply with in a fixed dated (only 7 days). This is because majority of clubs are government sport club They have to follow their own steps before taking any decision. Each step need a proper time to get it done.*
3. *Many of club chairman and club representative who came to attend the meeting by Themselves but were not allowed to attend They were told that they were not comply with Rules and Regulation issue by ABAT. Those clubs urgued that they are unable to follow those regulation because they did not received the said documents in short notice.*
4. *This meeting was un-opened meeting. Only clubs in their favour were allowed to Attend. It is a normal practice of all election of sport Association president in Thailand the meeting will be opend for all members including presses but it was not this time.*
5. *It was very strange, more than half of club members were not allowed to get into the meeting room, but after the election the announcement of number of voting right voted for the new present is almost full.*
6. *Majority of public concerned felt that this newly elected president is “Taweep’s Nomenee and it was a Blocked Votes”*
7. *Club members are appealing to*
  - 7.1 *Sports Authority of Thailand*
  - 7.2 *Sport Commission of the Senators Royal That Government*
  - 7.3 *Sport Commission of People’s Representations, Royal Thai Government*
  - 7.4 *Thailand NOC*
  - 7.5 *Minister of Tourism and Sports of Thailand*
  - 7.6 *AIBA president*
8. *We ask you to kindly consider our appeal and take an appropriate action.*
9. *This meeting was a “one man show” all controlled by Taweep only*
10. *Presses wrote against the election processes. It is a big scandal election”.*

Letters having equivalent content were thereafter sent to AIBA by the Sukhothai Boxing Club and the Ubonrajchathanee Boxing Club.

In a letter to ABAT of 29 March 2011, AIBA declared the following:

*“Since all ABAT officials including the President have been barred from any activity at AIBA, Continental and other international levels following the decision of the AIBA Disciplinary Commission dated March 25, 2011, these Elections cannot be approved nor recognized by AIBA (please refer to Article 13 E of the AIBA Statutes)”.*

In a letter of 6 May 2011, AIBA informed the Appellant that it intended to start an investigation on ABAT’s elections.

Meetings therefore took place on 13 May 2011 in Bangkok. During such meetings, the AIBA representatives interviewed Colonel Petijnda, the representatives of 6 clubs members of ABAT, a lawyer representing a candidate to the election as ABAT president who had withdrawn his candidature just prior to the election, representatives from SAT and the NOCT, representatives of ABAT and the former Secretary General of ABAT.

In an email of 20 May 2011, AIBA requested the production of several documents from ABAT.

On 27 May 2011, a *“Preliminary Report of AIBA Investigation into ABAT Presidential Election that took place on 27 March 2011”* was submitted for consideration by the Bureau of the Executive Committee of AIBA.

On 30 May 2011, AIBA sent the following letter to the NOCT:

*“As you know, the Amateur Boxing Association of Thailand (ABAT) held its elections on March 27, 2011. However, before and after these elections took place, AIBA received several complaints with concrete evidence that these elections were done violating ethics and rules. Therefore, AIBA did not approve these elections (article 14 of the AIBA Statutes).*

*For your reference, the AIBA Disciplinary Commission decided on March 25, 2011 to suspend all official of ABAT thus the president, secretary general, vice-presidents, executive committee members, secretary, treasures and anyone who holds a titled ABAT governance position including all board members from any activity at AIBA; Continental and other international level for a period of 12 months. Gen. Taveep Jantararoj was suspended from any activity at AIBA, Continental, other international and national (ABAT) levels, for a period of 24 months.*

*An investigation was carried out on site in Thailand by Mr Tom Virgets, the AIBA Disciplinary Commission Chairman and by Mrs Michelle Riondel, the AIBA Legal Director, in view of the outcome of this investigation, AIBA is now requesting you to organize new elections within 1 month thus before 30 June 30, 2011. These new elections will have to be prepared under the supervision of an AIBA Observer.*

*If this request is not fulfilled, AIBA will exclude ABAT and cancel its membership rights according to article 18 of the AIBA Statutes”.*

On 31 May 2011, ABAT sent documents to AIBA intended to answer AIBA’s request of 20 May 2011.

In a letter of 6 June 2011, AIBA informed the NOCT that the suspension imposed on Gen. Jantararoj and ABAT on 25 March 2011 had been stayed by the CAS on 1 April 2011; it underlined, however, that “*ABAT Officials and Gen. Taweep Jantararoj were aware that the suspension was in force when the elections took place on March 27, 2011*”.

On 9 June 2011, ABAT replied to the AIBA letter to NOCT of 30 May 2011, to confirm that “*the elections (...) were organized in full accordance with our [ABAT] internal regulations, Thai laws and AIBA regulations*”, and to make the following requests:

- *That AIBA provides us with a full copy of the case file, including the outcome of the investigation made by Ms. Riondel and Mr. Virgets in Thailand;*
- *That AIBA grants ABAT a reasonable deadline of at least 3 weeks upon receipt of such documents in order to provide evidence and a submission on all issues;*
- *That AIBA grants the officials the opportunity to be heard before the competent body within AIBA before issuing any decision on that matter”.*

By a decision of 10 June 2011, the SAT ordered ABAT to organise new elections by 30 June 2011 as follows<sup>3</sup>:

*“Sports Authority of Thailand, Ministry of Tourism and Sports, has examine the facts, points of law, and documents in connection with 2010 Annual Ordinary General Meeting, and discovered the following issues.*

1. *The Association did not allow seven Member Clubs with membership and voting rights to attend the Meeting as those clubs had failed to submit certain documents to the Association for preparation of Participant Cards within the period of time prescribed. Such action is deemed to restrict Ordinary Members’ rights under the Articles of Association of Amateur Boxing Association of Thailand, Article 6.1.4, providing for “Being entitled to attend the general meetings”, and Article 6.1.7, providing for “Being entitled to elect the Committee by voting for resolution in the General Assembly Meeting at one vote each (...)”.*
2. *The Board of Executive Committee of the Amateur Boxing Association of Thailand exercised its rights to vote for election of the President of Amateur Boxing Association of Thailand at the Annual Ordinary General Meeting. However, as the Articles of Association of Amateur Boxing Association of Thailand, Article 12.1, provides for “Term of Board of Executive Committee: The Board of Executive Committee assumes its office for 2 years each term as from the date of election by the General Assembly Meeting (...)” (The President of Amateur Boxing Association of Thailand was elected by 2008 Annual*

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<sup>3</sup> The quotation is from the English translation provided by the Appellant. In a shorter English text provided by the Respondent, the letter of SAT reads as follows: “*Refer to the letter of ABAT, sending us copied additional documents, the report of ABAT General Assembly in 2010 which be held on 27 March 2011 and the results of the investigation as Sports Authority of Thailand on behalf of Ministry of tourism and sports have itself investigated all documents concerning ABAT General Assembly in 2010 show that 1. There are 7 legal members who were neglected to attend the ABAT General Assembly by ABAT. The reason is they didn’t follow the ABAT Statutes according to article 6.1.4 of the ABAT statutes. 2. The ABAT’s election which held on 27 March 2011 was unlawful because member of ABAT Executive Committee have term expired and no right to have election vote for the ABAT President according to 12.1 of the ABAT statutes. 3. Conflicting of ABAT may lead to withdrawal from AIBA’s member. The ABAT can’t attend any International Games which sanction by AIBA that may bring the disadvantage to the kingdom of Thailand. 4. The election was not carried out in full accordance with its own internal regulations or Thai law regulations. For the best interest of ABAT’s members, also for the following 53, 54 of SAT statutes, the ABAT should organize a new election of the ABAT President by 30 June 2011 as AIBA requested”.*

*Ordinary General Meeting on January 25, 2009. The President of Amateur Boxing Association of Thailand and the Board of Executive Committee completed their office term on January 24, 2011); that the Amateur Boxing Association of Thailand held 2010 Annual Ordinary General Meeting on March 27, 2011 resulted in the Board of Executive Committee of the Amateur Boxing Association of Thailand being ineligible to exercise its rights to vote for election of the President of the Association on the said date in accordance with the Article 11.16 and the Article 12.2.1 of the Articles of Association of Amateur Boxing Association of Thailand. Consequently, that the Executive Committee of the Amateur Boxing Association of Thailand exercised their voting rights for election of the President of Amateur Boxing Association of Thailand expressly violated the Articles of Association of Amateur Boxing Association of Thailand. Election of the President of Amateur Boxing Association of Thailand on March 27, 2011 was thus unlawful.*

3. *The Association is in conflict with International Boxing Association (AIBA: Association Internationale de Boxe Amateur), and the International Boxing Association may revoke the membership of the Amateur Boxing Association of Thailand, which may affect the Amateur Boxing Association of Thailand on assigning certain athletes to participate competition events, accredited by the International Boxing Association (AIBA), and consequently cause disgrace to the national sports and be in discrepancy with the Statute of Sports Authority of Thailand, No. 6, governing Control over Association, the Key Objectives of which are in relation to Sports or Sports Promotion directly, Section 14 (1), providing for “Association may not carry out any of the following:*
  - (1) *To carry out any action, causing disgrace to the national sports directly or indirectly”.*

*In order to comply with the provisions of Section 54 of Sports Authority of Thailand Act, B.E. 2528, providing for “Associations, authorized by the Sports Authority of Thailand under Section 53, shall be under control of the Sports Authority of Thailand and observe the Statute, regulated by the Sports Authority of Thailand by approval of the Board”, and Section 22 of the Statute of Sports Authority of Thailand, No. 6, governing Control over Associations, the Key Objectives of which are in relation to Sports or Sports Promotion directly, providing for “If any association holds a Board of Directors or Association Members’ Meeting and passes a resolution in violation with the Act or Articles of Association of the association, the Sports Authority of Thailand shall be competent to order that such association remedy it within the prescribed period of time. Should the association fail to comply with such order of the Sports Authority of Thailand, the Sports Authority of Thailand shall be competent to order suspension of use or revoke the license as may be deemed expedient”. It is requested that Amateur Boxing Association of Thailand proceed with holding of the general meeting in order to elect the President of Amateur Boxing Association of Thailand within June 30, 2011. However, the Amateur Boxing Association of Thailand is entitled to lodge an appeal against such order of the Sports Authority of Thailand before the Chairman of the Board of Directors of Sports Authority of Thailand within 7 days as from the date of such order acknowledged. The adjudication of the Chairman of the Board of Directors of Sport Authority of Thailand shall be final in accordance with Section 25 of the Statute of Sports Authority of Thailand, No. 6, governing Control over Associations, the Key Objectives of which are in relation to Sports or Sports Promotion directly”.*

In a letter to NOCT of 16 June 2011, AIBA confirmed that *“it is in the best interest of ABAT’s members and their boxers for there to be a new election as soon as possible. (...) A new election shall take place by 30 June 2011. If this request is not fulfilled, AIBA will proceed to exclude ABAT and cancel its membership rights according to article 18 of the AIBA Statutes”.*

On 20 June 2011, AIBA further wrote to the NOCT to emphasize (i) that the ABAT elections had to be organised by the NOCT and not by ABAT, (ii) that all ABAT legitimate members should have the right and enough time to consider their best candidate for the new election, (iii) that an AIBA representative should be allowed to attend, and (iv) that the election should be open and transparent and run according to the law.

In a letter to AIBA of 22 June 2011, SAT underlined that SAT and NOCT had no authority to govern and manage the election of the ABAT president. At the same time, however, SAT stressed that in the event such election was not held by the set deadline of 30 June 2011 “SAT will revoke the Association’s right to use the phrase ‘of Thailand’ as parts of its name as of July 1, 2011 and cut off all financial support from the government. The case will be considered in accordance with SAT’s regulations volume 6 in no. 22 and there will be no longer The Amateur Boxing Association of Thailand. From July 1, 2011, SAT and NOCT will be responsible for the selection of Thailand boxing team and send them to participate in any international boxing events in place of the Association”.

On 23 June 2011, the NOCT confirmed to AIBA the consequences of an ABAT’s failure to hold new elections indicated in the SAT’s letter of 22 June 2011.

On or about 1 July 2011, the AIBA Executive Committee Bureau issued and posted on the AIBA’s website a decision (the “Bureau Decision”), whereby the Respondent excluded ABAT from its membership with immediate effect:

*“Since the Amateur Boxing Association of Thailand (ABAT) has not held a new election for the presidency of the organization by June 30, 2011, as requested by the International Boxing Association (AIBA), the AIBA Executive Committee Bureau today decided to provisionally exclude ABAT from AIBA membership with immediate effect. This decision will subsequently be submitted to the AIBA Congress for ratification. In addition, the Ministry of Sports of Thailand also removed their recognition of current ABAT two weeks ago (...).”*

The Bureau Decision was not notified to the Appellant.

On 1 July 2011, the SAT issued an “Order of Revocation of License conferred on Amateur Boxing Association of Thailand under the Royal Patronage” (the “SAT Order”), as follows<sup>4</sup>:

- “1. Sport Authority of Thailand has authorised the Amateur Boxing Association of Thailand to establish the Association and use the words “of Thailand” in accordance with Section 53 and Section 59 of Sports Authority of Thailand, Act, B.E. 2528, as per two Licenses No. 014/2531, dated April 21, 1988, under Sports Authority of Thailand Act, B.E. 2528.*
- 2. The Sports Authority of Thailand requested that the Amateur Boxing Association of Thailand under the Royal Patronage hold a general meeting so as to elect the new President of the Association within June 30, 2011 due to the fact that the Amateur Boxing Association of Thailand held 2010 Annual Ordinary General Meeting to elect the President of the Association on March 27, 2011 and passed a resolution in violation with the Articles of Association of the Amateur Boxing Association of Thailand and the Sports Authority of Thailand as follows.*

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<sup>4</sup> The quotation is from the English translation provided by the Appellant.

- 2.1 *The Amateur Boxing Association of Thailand did not allow seven Member Clubs with membership and voting rights to attend the Meeting, which was considered to restrict Ordinary Members' rights under the Association's Article of Association, Article 6.1.4, providing for "Being entitled to attend the general meetings", and Article 6.1.7, providing for "Being entitled to elect the Committee by voting for resolution in the General Assembly Meeting at one vote each..."*
- 2.2 *That the Executive Committee of the Amateur Boxing Association of Thailand exercised their voting rights for election of the President of the Association violated the Association's Articles of Association. Election of the President of Amateur Boxing Association of Thailand on March 27, 2011 was thus unlawful.*
- 2.3 *The Association is in conflict with International Boxing Association (AIBA), and the International Boxing Association may revoke the membership of the Amateur Boxing Association of Thailand, which may effect the Amateur Boxing Association of Thailand on assigning certain athletes to participate competition events, accredited by the International Boxing Association (AIBA), and consequently cause disgrace to the national sports and be in discrepancy with the Statute of Sports Authority of Thailand, No. 2, governing Application for Permission, Permission, and Terms of Permission on Use the Words "of Thailand", or with any Letter to sign, indicating a Society, Club, or Body of Persons, generating Activities in relation to Sports on behalf of the Nation of Thailand, Section 9, and Statute of Sports Authority of Thailand, No. 6, governing Control over Associations, the Key Objectives of which are in relation to Sports or Sports Promotion directly, Section 14(1).*
3. *The Sports Authority of Thailand ordered that the Amateur Boxing Association of Thailand remedy the situation by holding of the general meeting in order to elect the new President of the Association within June 30, 2011. However, the Association failed to comply with such order of the Sports Authority of Thailand, which was considered violation with the Association's Articles of Association, intentional violation with the Act, and ignorance of the order of the Sports Authority of Thailand for remedy or cessation of such violation. Such behaviour caused damage to the Sports Authority of Thailand and the amateur boxing sports of Thailand as well. That is to say, when the Association failed to hold the meeting within the prescribed period of time, while the Association itself understood well that it would encourage the International Boxing Association (AIBA) to revoke the Association's membership, it may disable certain athletes to participate competition events, accredited by the International Boxing Association (AIBA). Thai people always hope for victory from amateur boxing sports in Olympic Games, and so, if Thai athletes are ineligible for participation in the competition, it would strongly affect Thailand and may be subsequently irremediable. Process of reinstatement and reactivation of membership of the International Boxing Association would take long time and may last beyond the schedule of assigning athletes to join qualifying competition for the chance to Olympic Games.*
4. *The Sports Authority of Thailand is thus competent in accordance with the Sports Authority of Thailand Act, B.E. 2528, Section 55 (2), to revoke the permission, conferred on the Association. By virtue of Section 54 and Section 55 of Sports Authority of Thailand Act, B.E. 2528, coupled with Section 9 of the Statute of Sports Authority of Thailand, No. 2, governing Application for Permission, Permission, and Terms of Permission on Use of the Words "of Thailand", or with any Letter to Sign, indicating a Society Club, or Body of Persons, generating Activities in relation to Sports on behalf of the Nation or Thailand, Section 14 (1) and Section 22 of the Statutes of Sports Authority of Thailand, No. 6, governing Control over Associations, the Key Objectives of which are in relation to Sports or Sports Promotion directly; Sports Authority of Thailand, Ministry of Tourism and Sports, hereby revoke the*



*license, conferred on the Amateur Boxing Association of Thailand under the Royal Patronage in accordance with Section 53 as per the License No. 014/2531, dated April 21, 1988, and Section 59 as per License No. 014/2531, dated April 21, 1988, of Sports Authority of Thailand Act, B.E. 2528. From now on, the Amateur Boxing Association of Thailand shall discontinue and cease its operation. However, the Amateur Boxing Association of Thailand is entitled to lodge an appeal against such order of the Sports Authority of Thailand before the Chairman of the Board of Directors of Sports Authority of Thailand within 7 days from the date of such order acknowledged. The adjudication of the Chairman of the Board of Directors of Sports Authority of Thailand shall be final in accordance with Section 25 of the Statute of Sports Authority of Thailand, No. 6, governing Control over Association, the Key Objectives of which are in relation to Sports or Sports Promotion directly”.*

In a letter of the same date, SAT informed AIBA of “*the current situation of boxing in Thailand*” and of its decision “*to revoke the existence*” of ABAT as of 1 July 2011 “*according to SAT’s regulations*”. At the same time, SAT explained to AIBA the next steps of SAT’s actions, “*as being recommended by AIBA*”, which included the setting up of a new boxing association in Thailand, its recognition by SAT and NOCT, and its application for AIBA membership.

At its meeting held on 31 July and 1 August 2011, the Executive Committee of AIBA (the “Executive Committee”, the “ExCo” or the “EC”) adopted a decision to ratify the Bureau Decision (the “ExCo Decision”), as follows:

“Decision N. 7: Amateur Boxing Association of Thailand

*On May 27, 2010, the AIBA EC Bureau approved to send a letter to the National Olympic Committee of Thailand instructing for new ABAT elections to be organized within 1 month (June 30, 2011) under the supervision of an AIBA Observer for the following reasons:*

- *The Amateur Boxing Association of Thailand held its elections on March 27, 2011. However, before and after these elections took place, AIBA had received several complaints with concrete evidence that the elections were done violating ethics and ABAT rules. Therefore, AIBA issued a letter to inform ABAT that the elections were not approved for the newly elected administration including the President. This letter mentioned that should ABAT or the NOC of Thailand not follow AIBA’s Instructions, AIBA was determined to exclude ABAT and to cancel all its membership rights according to article 18 of the AIBA Statutes.*

Decision N. 8: Amateur Boxing Association of Thailand

*On July 1, 2011 the AIBA EC Bureau approved to provisionally expel the Amateur Boxing Association of Thailand (ABAT) for the following reasons:*

- *On March 27, 2011, the ABAT conducted elections for presidency despite the fact that the AIBA DC had in its decision dated March 25, 2011 barred all ABAT officials from any activity at AIBA, continental and other international levels for a period of 12 months.*
- *Although the Court for Arbitration of Sport stayed the suspensions against Gen. Jantararoj and ABAT on April 1, 2011, on March 27, when these elections took place, Gen. Jantararoj and ABAT were still suspended and failed to cancel these elections.*

- *Following the receipt of several complaints, AIBA sent a letter to ABAT informing that these elections would not be recognized by AIBA as per article 13E of the AIBA Statutes.*
  - *Moreover, an investigation was carried out on site by Mr. Tom Virgets, Chairman of the AIBA DC and by Mrs Michelle Riondel, AIBA Legal Director and all findings about wrongdoings were presented to the AIBA EC.*
  - *By a Mall Vote dated May 27, 2011, the AIBA EC Bureau decided for a letter to be sent to the NOC of Thailand advising it that the ABAT elections were unlawful and requesting for new elections to be held within one month, thus by June 30, 2011 otherwise ABAT would provisionally be expelled from AIBA.*
  - *Despite this letter sent to the NOC of Thailand and several mail exchanges with both the NOC of Thailand and the Sports Authority of Thailand, ABAT refused to hold new elections.*
  - *The Sports Authority of Thailand revoked its recognition of ABAT as of July 1, 2011.*
- The AIBA Executive Committee unanimously ratifies all above decisions”.*

Also the ExCo Decision was not notified to the Appellant.

ABAT started the following proceedings before the Thai judicial authorities:

- i. on 19 August 2011, the court case No. 1271/2554 was opened before a civil court against the SAT’s governor and a number of individuals constituting the organizing committee of a new Thai boxing entity;
- ii. on 19 August 2011, the court case No. 3361/2554 was opened before a criminal court against the SAT’s governor as “*being (...) the officer who wrongfully exercises or do not exercise any of his functions to the injury of any person / defames by advertising by documents*”;
- iii. on 23 August 2011, the court case No. 1725/2554 was opened before an administrative court against, *inter alia*, SAT, seeking, also by way of *interim* relief, the annulment of the SAT Order and an order preventing the establishment of another Thai boxing federation. In such proceedings, the request for provisional measures was dismissed by court’s order of 25 August 2011.

In a letter dated 23 August 2011, AIBA informed SAT of its approval of the statutes of the Thailand Boxing Association (TBA), meant to replace ABAT as the new National Federation for Thailand.

In a email of 25 August 2011, SAT informed AIBA of the meeting of TBA held on 24 August 2011 with the participation of 46 member clubs, resulting in the election of General Boonlert Kaewprasit as its president.

On 26 August 2011, the ExCo Bureau accepted the application for AIBA membership submitted by TBA, subject to ratification by the AIBA Extraordinary Congress to be held in Baku on 24 September 2011 (the “2011 Congress”).

In a letter of 30 August 2011, the TBA was invited to attend the 2011 Congress.

At the 2011 Congress, AIBA decided, *inter alia*, “to ratify the new membership of the Thailand Boxing Association (TBA); however, the recognition of the Amateur Boxing Association of Thailand (ABAT) will be maintained until CAS’s final decision in the case concerning ABAT”.

On 12 July 2011, the Appellant filed a statement of appeal with the CAS pursuant to Article R47 of the Code of Sports-related Arbitration (the “Code”) against AIBA to challenge the Bureau Decision. The arbitration proceedings so started were registered by the CAS Court Office as CAS 2011/A/2500.

The Appellant requested the CAS to rule as follows:

1. *The Decision issued on 1 July 2011 by AIBA excluding the Amateur Boxing Association of Thailand from AIBA’s membership with immediate effect is set aside.*
2. *The Amateur Boxing Association of Thailand is reinstated as full AIBA Member.*
3. *AIBA shall bear all the costs of this arbitration if any.*
4. *AIBA shall compensate the Amateur Boxing Association of Thailand for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Panel”.*

In filing its statement of appeal, the Appellant also applied for a stay of the Bureau Decision, pursuant to Article R37 of the Code.

On 15 July 2011, the Deputy President issued the operative part of an Order on Provisional and Conservatory Measures (the “Order of 15 July 2011”) as follows:

1. *The application for provisional and conservatory measures filed by the Amateur Boxing Association of Thailand on 12 July 2011 in the matter CAS 2011/A/2500 Amateur Boxing Federation of Thailand v. AIBA concerning the decision rendered by AIBA on 1 July 2011 is partially granted.*
2. *The challenged decision issued by AIBA on 1 July 2011 is stayed pending the final resolution of the present case by the CAS.*
3. *Boxers affiliated to ABAT shall not be prevented to take part in any national or international boxing competitions because of the challenged decision until final resolution of the present matter by the CAS.*
4. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration.*
5. *All other requests are dismissed”.*

In a letter of 22 July 2011, the Deputy President informed the parties that, according to the Order of 15 July 2011, “the Appellant is no longer to be considered as excluded from AIBA as long as the CAS procedure is pending”.

On 9 August 2011, the Appellant filed its appeal brief with 5 exhibits. The Appellant requested the CAS to rule as follows:

1. *The decision issued on 1 July 2011 by AIBA Executive Committee Bureau excluding the Amateur Boxing Association of Thailand from AIBA’s membership with immediate effect is null and void, subsidiarily is set aside.*

2. *AIBA shall bear the costs of this arbitration if any.*
3. *AIBA shall compensate the Amateur Boxing Association of Thailand for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the panel”;*

On 1 September 2011, the Respondent filed its answer brief, with 25 exhibits attached. The answer of the Respondent contained also an application for provisional measures, asking the Panel to revoke the Order of 15 July 2011.

The Respondent was seeking the following relief:

- “1. *An order that the appeal filed by Amateur Boxing Association of Thailand is inadmissible. Alternatively, an order that Amateur Boxing Association of Thailand is dismissed of all its prayers for relief.*
2. *An order that Amateur Boxing Association of Thailand pays all costs of and occasioned by the arbitration as well as legal costs incurred by AIBA.*
3. *Any other or opposite conclusions of Amateur Boxing Association of Thailand be dismissed”.*

On 12 September 2011, the Appellant filed with the CAS Court Office the answer, with 8 exhibits, to the Respondent’s application for provisional measures, requesting its dismissal. At the same time, the Appellant lodged another application for provisional measures, asking the Panel issue a new order intended to “*maintain the status quo*” pending the CAS arbitration.

On 23 September 2011, the operative part of an order on provisional measures was issued as follows:

- “1. *The application for provisional and conservatory measures filed by the International Boxing Association on 1 September 2011 in the matter CAS 2011/A/2500 Amateur Boxing Federation of Thailand v. AIBA is denied.*
2. *The Order on provisional and conservatory measures rendered by the Deputy President of the CAS Appeals Arbitration Division on 15 July 2011 is confirmed.*
3. *The application for provisional and conservatory measures filed by the Amateur Boxing Association of Thailand on 12 September 2011 in the matter CAS 2011/A/2500 Amateur Boxing Federation of Thailand v. AIBA is granted as follows:*
  - *The decision of the Executive Committee Bureau of the International Boxing Association announced on 1 July 2011 shall be given no effect unless and until it is upheld by the award of the CAS and therefore the Congress of the International Boxing Association should not approve or ratify the disputed Decision until the Panel has issued an award on the merits. Therefore, the Amateur Boxing Association of Thailand is not to be considered as excluded from the International Boxing Association and is allowed to participate in the Congress of the International Boxing Association scheduled on 24 September 2011 in Baku, Azerbaijan. The International Boxing Association is ordered to take all proper arrangements in order to allow the representatives appointed by the Amateur Boxing Association of Thailand to travel to and attend the Congress of 24 September 2011.*
  - *Communications and information issued by the International Boxing Association, in any form, shall avoid referring to the exclusion of the Amateur Boxing Association of Thailand or the*

*recognition of the Thailand Boxing Association as the national federation of boxing in Thailand unless they also mention in an equally prominent fashion that such status is “contested before the Court of Arbitration for Sport”. Thus any existing statements on the International Boxing Association’s website and in any other International Boxing Association’s materials must be appropriately amended without delay.*

4. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration.*
5. *All other requests are dismissed”.*

On 7 October 2011, the Appellant filed with the CAS, pursuant to Article R47 of the Code, a new statement of appeal, with 5 exhibits, to challenge the ExCo Decision. The arbitration proceedings so started were registered by the CAS Court Office as CAS 2011/A/2591. The Appellant indicated, for the purposes of Article R51 of the Code, that such statement of appeal would also serve as appeal brief, and requested that the new appeal be consolidated with CAS 2010/A/2500 and heard by the same Panel at the same hearing.

The Appellant requested the CAS to rule as follows:

- “1. *The Decision issued by AIBA Executive Committee at the occasion of its meeting held from 31 July to 1 August 2011, ratifying the exclusion of the Amateur Boxing Association of Thailand from AIBA’s membership with immediate effect, is set aside.*
2. *The Amateur Boxing Association of Thailand is reinstated as full AIBA Member.*
3. *AIBA shall bear all costs of this arbitration if any.*
4. *AIBA shall compensate the Amateur Boxing Association of Thailand for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the panel”.*

On 2 November 2011, the Respondent filed its answer brief in CAS 2011/A/2591 with 1 exhibit attached.

The Respondent was seeking the following relief:

- “1. *An order that the appeal filed by Amateur Boxing Association of Thailand is inadmissible. Alternatively, an order that Amateur Boxing Association of Thailand is dismissed of all its prayers for relief.*
2. *An order that the Appellant pays all costs of and occasioned by the arbitration as well as legal costs incurred by AIBA.*
3. *Any other or opposite conclusions of the Appellant be dismissed”.*

On 15 November 2011, a hearing was held in Lausanne. At the hearing, declarations were rendered by Ms Michelle Riondel, Mr Tom Virgets (on the phone), General Boonlert Kaewprasit (on the phone), Mr Somporn Chaisongkram (on the phone) and Colonel Sakda Petjinda (on the phone), being the witnesses indicated by the Respondent; and by Gen. Jantararoj, Mr Kammanit Nareerakx (via

video) and Colonel Direklarp Duangurai (via video), being the witnesses indicated by the Appellant. General Narin Tabprasit also rendered some declarations.

Following the presentation of evidence by the parties, the Panel set (a) a deadline for the filing with the CAS Court Office (i) by ABAT of the minutes of the Congress held on 27 March 2011, together with an English translation, and (ii) by AIBA of copy of the report on the investigation carried out in Thailand in May 2011; as well as (b) a subsequent deadline for the filing of observations on the documents produced by the other party.

At the conclusion of the hearing, the parties, after making submissions in support of their respective cases, confirmed that the Panel had respected their right to be heard and to be treated equally in the arbitration proceedings.

Within the deadlines set, the parties lodged with the CAS Court Office the documents and the comments mentioned at the hearing.

## LAW

### Jurisdiction of the CAS

1. In accordance with the Swiss Private International Law Act (Article 186), the CAS has the power to decide upon its own jurisdiction.
2. Article R47 of the CAS Code states that *“an appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”*.
3. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognise the CAS as an arbitral body of appeal.
4. Article 63 of the AIBA Statutes, in the version in force at the time the Challenged Decisions were rendered and the appeals against them were filed, provides that:
  - “1. AIBA recognizes the Court of Arbitration for Sport (CAS), with headquarters in Lausanne, Switzerland, as the authority to resolve appeals against decisions made by the Executive Committee of AIBA. Each Confederation and National Federation must recognize CAS as the authority of appeal against decisions made by the legal bodies of such Confederation or National Federation.
  2. CAS will not have authority to deal with appeals relating to:

- (A) *decisions under the AIBA Technical & Competition Rules, including any pronouncements of violations of the AIBA Technical & Competition Rules;*
- (B) *suspension of less than three (3) months (with the exception of decisions made in accordance with the World Anti-Doping Code)”.*

5. The CAS jurisdiction is denied by the Respondent under several perspectives.
6. The Panel finds, however, that the CAS jurisdiction to hear an appeal against the Challenged Decisions has to be affirmed.
7. In support of such conclusion, the Panel notes that:
  - i. the Respondent, in its answer dated 14 July 2011 to the request for provisional measures filed by the Appellant on 12 July 2011, did not raise any objection to the CAS jurisdiction to issue the requested measures, but rather discussed the merits of the Appellant’s application. Such attitude can be seen to be suitable, pursuant to Article 186.2 of the Swiss Private International Law Act, to prevent the Respondent from claiming the lack of jurisdiction at a later stage, and therefore to lead to the establishment of the CAS jurisdiction: the reasons for the Respondent’s failure to timely file a jurisdictional objection seems in that context irrelevant, also considering that the evaluation of the jurisdiction is part of the assessment to be made by CAS when ordering provisional measures according to Article 37, third paragraph of the Code;
  - ii. contrary to the Respondent’s contentions, Article 63.1 of the AIBA Statutes does not limit the CAS jurisdiction to the decisions rendered by the Executive Committee acting as “*Appeal Authority*” under AIBA rules: indeed, the plain wording of the arbitration clause contained in the AIBA Statutes does not “qualify” in any way the ExCo decisions from which an appeal to the CAS is open – if not falling in one of the categories contemplated in Article 63.2.
8. The finding by the Panel of the CAS jurisdiction, based on the AIBA’s behaviour in this arbitration and on the wording of the AIBA Statutes, to hear an appeal against the Challenged Decisions is not contradicted by:
  - i. the fact that the decision challenged in CAS 2011/A/2500 was taken by the Bureau of the Executive Bureau. Under Article 40.3 of the AIBA Statutes, in fact, the Bureau functions in place of the Executive Committee for all matters requiring settlement between two meetings of the Executive Committee: the Bureau Decision, therefore, stands for a decision of the Executive Committee – that in any case ratified it by the ExCo Decision;
  - ii. the fact that the ExCo Decision has to be ratified by the AIBA Congress: the AIBA Statutes provide for CAS jurisdiction to hear appeals against decisions rendered by the Executive Committee, whatever their fate, and irrespective of the need of their ratification by another AIBA body; in addition, the provisions contained in the AIBA Statutes (Articles 17 and 18) concerning the suspension and the exclusion of Members make it clear that a Member is suspended or excluded by decisions adopted by the Executive

Committee (or its Bureau), even though subject to ratification by the Congress. In other words, the ExCo decisions are the resolutions affecting the condition of the addressee, and do not constitute “internal acts” merely preparatory to final Congress decisions;

- iii. the fact that the exclusion of ABAT might be the result of the SAT’s decisions: the clear lack of CAS jurisdiction to evaluate the decisions passed by the Thai authorities does not imply the lack of CAS jurisdiction to review the decisions rendered by AIBA falling within the scope of the arbitration clause contained in the AIBA Statutes.

9. The Panel considers, therefore, that the CAS has jurisdiction to decide the present dispute.

### **Appeal Proceedings**

10. As these proceedings involve appeals against decisions rendered by an international federation (AIBA) in a disciplinary matter brought on the basis of rules providing for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a disciplinary case of international nature, in the meaning and for the purposes of the Code.

### **Admissibility**

11. The statement of appeal in CAS 2011/A/2500 was filed on 12 July 2011, within the deadline set in the AIBA Statutes and is therefore admissible.
12. In the same way, the statement of appeal in CAS 2011/A/2591 was filed on 7 October 2011, within the deadline set in the AIBA Statutes. It is therefore admissible.

### **Scope of the Panel’s Review**

13. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

### **Applicable Law**

14. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.
15. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute  
*“... according to the applicable regulations and 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*



16. The Panel notes that the Challenged Decisions were rendered on the basis of the AIBA rules and regulations. Therefore, the Panel considers the AIBA rules to be the “applicable regulations” for the purposes of Article R58 of the Code. Swiss law, being the law of the country in which AIBA is domiciled, applies subsidiarily to the interpretation of AIBA rules and to the Challenged Decisions.
17. The provisions set in the AIBA Statutes which are relevant in this arbitration include the following:
- i. Article 8 “Membership”
    - 8.1 *Any legal entity which:*
      - (A) *is responsible for governing the sport of boxing in its country; and*
      - (B) *which has been admitted to membership in accordance with article 9,**is a National Federation recognized as a member of AIBA and, subject to these Statutes, may exercise all such rights as are attributable to a National Federation.*
    - 8.2 *AIBA shall admit only one National Federation from each country. Any entity affiliated to a National Federation cannot be affiliated to AIBA separately.*
    - 8.3 *A National Federation cannot be affiliated to or recognized by any professional boxing organization or body or any other world, continental, or international boxing federation or association other than the World Series of Boxing. This does not apply to National Federations that already have an existing professional program at the date these Statutes come into force. New applications to develop a new professional program made on or after the date these Statutes come into force will not be accepted.*
    - 8.4 *Maintaining admission to membership of AIBA is the primary obligation of any National Federation. The obligations of a National Federation under these Statutes supersede the obligations of a National Federation to any other body.*
  - ii. Article 9 “Admission and Loss of Membership”
    - 9.1 *Any legal entity may be admitted as a Provisional Member by a decision of the Executive Committee.*
    - 9.2 *A Provisional Member is admitted as a National Federation with full membership rights on a decision of Congress ratifying the decision of the Executive Committee to admit the Provisional Member.*
    - 9.3 *A National Federation may have its membership status cancelled if the National Federation:*
      - (A) *resigns such membership;*
      - (B) *is excluded from AIBA by a decision of the Executive Committee ratified by Congress; or*
      - (C) *if the relevant legal entity comprising the National Federation is dissolved.*
  - iii. Article 14 “Exclusion of all External Interference”
    - 14.1 *The election and appointment processes adopted by each National Federation must be approved by AIBA and each National Federation must prevent any and all external interference in their election and appointment processes. AIBA may send an observer to the election in the discretion*

*of the President or at the request of the National Federation (in which case the National Federation shall pay the costs and expenses of such observer).*

14.2 *Any person elected or appointed as an officer of the National Federation who is not selected in compliance with article 14.1 shall not be recognized by AIBA.*

14.3 *Decisions passed by bodies that have not been elected or appointed in compliance with article 14.1 shall not be recognized by AIBA.*

iv. Article 16 “Dissolution”

*If a National Federation is disbanded or dissolved, its membership of AIBA shall automatically be cancelled.*

v. Article 17 “Suspension”

17.1 *A National Federation may be suspended in accordance with the Code of Ethics, the Disciplinary Code or the Procedural Rules by the Executive Committee, the EC Bureau or the Disciplinary Commission, if need be with immediate effect. The membership rights of a suspended National Federation shall automatically lapse during the suspension period, unless the Executive Committee, the EC Bureau or the Disciplinary Commission, as the case may be, determines otherwise. All decisions to suspend a National Federation will be reviewed by the Disciplinary Commission in the first instance in accordance with the Disciplinary Code and the Procedural Rules. Appeals from decisions of the Disciplinary Commission will be heard by the Executive Committee or the EC Bureau, at the discretion of the President and depending on the urgency of the appeal.*

17.2 *Other National Federations must not entertain sporting contact or any AIBA business relations with a suspended National Federation. Any National Federation which violates this article 17.2 will be subject to a sanction in accordance with the Disciplinary Code.*

17.3 *Any National Federation not up to date with all Annual Fees due six (6) months before the Congress will automatically lose its rights in accordance with article 12.1 except for the right to participate in AIBA Approved Events in accordance with article 12.1(E) (or article 12.2(A) in the case of a Provisional Member). After the Congress, rights will be granted back to the National Federation, but only upon payment of all Annual Fees due.*

17.4 *Any National Federation not participating in any of the AIBA Approved Events listed in article 56.3 of these Statutes, during the period between two Ordinary Congresses up until one month before the new Congress, shall have no right to propose candidates, apply for positions and take part in the Congress, thus voting in the elections generally.*

17.5 *A National Federation shall be suspended if the National Federation is no longer performing as the governing body of the sport of boxing in its country as determined in the discretion of AIBA.*

vi. Article 18 “Exclusion”

18.1 *If a National Federation is excluded, its membership rights shall automatically be cancelled.*

18.2 *A National Federation may be excluded by a decision of the Executive Committee if the National Federation commits a severe violation of these Statutes, the AIBA Bylaws, the AIBA Technical & Competition Rules, the Code of Ethics, the Disciplinary Code and Procedural Rules. The Executive Committee may, in its discretion, warn a National Federation that its conduct may lead to exclusion before making such decision. Any decision by the Executive Committee to exclude a National Federation must be made subject to ratification by Congress.*

vii. Article 23 “Powers of Congress”

*The Congress is the supreme body of AIBA. The Congress has the following powers:*

(...)

(G) *ratifies the admission or exclusion of National Federations following the decision of the Executive Committee;*

(...).

## The Dispute

18. The dispute object of these arbitrations concerns the membership of ABAT in AIBA. Such dispute arose between the parties following the elections held at the ABAT Congress of 27 March 2011, which AIBA decided not to recognize, and an order adopted by AIBA, and then by SAT, that new elections be organized by ABAT: appeals were therefore brought against the decisions that were issued by AIBA on the basis of ABAT’s failure to organize those new elections. Such dispute is however somehow linked to an enduring conflict between AIBA, on one side, and ABAT or its former president, Gen, Jantararoj, on the other side, which was made the object of several CAS arbitration proceedings (CAS 2010/A/2188, award of 29 July 2011; CAS 2010/A/2243, CAS 2011/A/2358, CAS 2011/A/2385 & CAS 2011/A/2411, award of 3 August 2011; CAS 2011/A/2421 & 2450, award of 10 October 2011).
19. In the present two consolidated arbitration proceedings, the Appellant is asking this Panel to set aside the Challenged Decisions, that excluded ABAT from AIBA’s membership, and to reinstate ABAT as full AIBA member. On the other side, AIBA is requesting the Panel to dismiss the appeals filed by ABAT.
20. As a result of the Appellant’s requests for relief, there are two main questions that the Panel has to examine:
  - i. the first is whether the Challenged Decisions are to be set aside;
  - ii. the second is whether ABAT is to be reinstated as full AIBA member.
21. The Panel shall consider each of said questions separately.
  - A. *Are the Challenged Decisions to be set aside?*
22. The decisions challenged in these arbitrations are the Bureau Decision, whereby it was “*decided to provisionally exclude ABAT from AIBA membership with immediate effect*”, and the ExCo Decision, ratifying the Bureau Decision to “*expel*” ABAT. The exclusion of ABAT from AIBA was justified, in the Challenged Decisions, by a number reasons:
  - i. the Bureau Decision mentioned:
    - the failure of ABAT to organize new elections, following the AIBA decision (contained in a letter of 29 March 2011) not to recognize the elections held on 27

- March 2011 (because “*all ABAT officials including the President have been barred from any activity at AIBA, Continental and other international levels following the decision of the AIBA Disciplinary Commission dated March 25, 2011*”), and
- the fact that “*the Ministry of Sports of Thailand also removed their recognition of current ABAT two weeks ago*”;
- ii. the ExCo Decision referred, as a basis for the Bureau Decision it was ratifying, to the fact that:
- the ABAT elections were held despite the fact that all ABAT officials had been barred from any activity at AIBA, continental and other international levels for a period of 12 months: although the CAS stayed the suspensions against Gen. Jantararoj and ABAT, when these elections took place, Gen. Jantararoj and ABAT were still suspended and failed to cancel these elections;
  - several complaints had been received and an investigation carried out with respect to such elections, showing “*wrongdoings*”;
  - the ABAT elections had not been recognized by AIBA as per Article 13E of the AIBA Statutes;
  - ABAT refused to hold new elections;
  - the SAT revoked its recognition of ABAT as of 1 July 2011.
23. In other words, the elections organized by ABAT were the “factual” point that triggered the measures adopted by AIBA. AIBA decided not to recognize them because they had been held under the authority of suspended officers; then, AIBA requested that new elections be organized, indicating that the elections had been conducted in violation of ethics and rules; finally, AIBA adopted the Challenged Decisions because such elections had not been organized within the set deadline. The Challenged Decisions, at the same time, refer also to the SAT Order, which had revoked the license to ABAT to act as the boxing governing body in Thailand. Such SAT Order, in turn, is based on reasons corresponding to those invoked by AIBA in support of the measures adopted against ABAT.
24. In such latter respect, in the course of these proceedings, AIBA underlined the impact of the SAT Order, to hold that the cancellation of the ABAT’s membership should not be examined as a case of exclusion pursuant to Article 18 of the AIBA Statutes, but rather as a case of automatic cancellation of membership according to Articles 8.1, 9.3 and 16 of the AIBA Statutes. In the Respondent’s opinion, as a result of the SAT Order, ABAT had its license revoked and is to be considered as dissolved and no longer the federation governing the sport of amateur boxing in Thailand – situation which triggers an automatic cancellation of its AIBA membership, irrespective of any concomitant case of exclusion.
25. The reasons adduced to support the Challenged Decisions are denied by the Appellant, that also contends that the Bureau of the Executive Committee had no competence to adopt a decision (such as the Bureau Decision) excluding a Member from AIBA, that the Challenged Decisions breached the principles of legality and of proportionality, and that no ground existed justifying the exclusion of ABAT from AIBA.

26. The first point raised by the Appellant concerns, therefore, the competence of the Bureau of the Executive Committee to adopt the decision challenged in CAS 2011/A/2500.
27. The Panel does not agree with the Appellant's submission. Preliminarily, the Panel notes that the AIBA Statutes grant the Executive Committee the duty and responsibility (and therefore the competence) to adopt decisions with respect to admission and loss of membership (Article 9.1 and 9.3(B)), suspension (Article 17) and exclusion (Article 18) of National Federations. In addition, the Panel remarks, as already mentioned (para. 8 (i) above), that Article 40.3 of the AIBA Statutes provides that the Bureau functions in place of the Executive Committee for all matters requiring settlement between two meetings of the Executive Committee. The Bureau Decision, therefore, stands for a decision of the Executive Committee, whose competence was exercised by the Bureau in the period between two meetings of the Executive Committee, that in any case ratified it. As a result, the Bureau of the Executive Committee was competent to adopt the Bureau Decision.
28. The second point concerns the merits of the Challenged Decisions, *i.e.* whether grounds existed for the decision to "expel" ABAT from AIBA.
29. The Panel remarks that the nature itself of the measure adopted against ABAT is not very clear: the Challenged Decisions, which do not contain any reference to any AIBA provision<sup>5</sup>, described it as an "exclusion" (Bureau Decision) or as an "expulsion" (ExCo Decision); AIBA, then, before this Panel, characterized it as a "cancellation" of membership pursuant to Articles 8.1, 9.3 and 16 of the AIBA Statutes.
30. The rules governing the procedures and the conditions for the admission of a legal entity to AIBA and its recognition as a National Federation Member of AIBA, as well as for the loss of AIBA membership by a National Federation, are set by the AIBA Statutes. More specifically, pursuant to Article 9.3 of the AIBA Statutes, a National Federation may lose its membership status if it resigns, if it is excluded by a decision of the ExCo (to be ratified by Congress), or if the legal entity comprising it is dissolved. Such circumstances are further detailed in other provisions set in the AIBA Statutes: resignation is considered by Article 15, dissolution by Article 16, suspension by Article 17, exclusion by Article 18. More specifically, exclusion may be decided by the ExCo (subject to ratification of Congress) if the National Federation commits "*a severe violation*" of the AIBA Statutes or regulations (Article 18.2).
31. In light of the foregoing, failing a resignation by ABAT, the question is whether a different event (dissolution or exclusion) occurred justifying the loss of AIBA membership by ABAT. The question of a mere suspension is not raised either, as the Bureau Decision decided to "provisionally exclude" and the ExCo decision to "provisionally expel" the ABAT, provisionally referring not to a mere suspension, but to the need for a ratification by the Congress.
32. As to dissolution: the question is whether ABAT can be considered as dissolved or disbanded for the purposes and within the meaning of Article 16 (and Article 9.3(C)) of the AIBA Statutes

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<sup>5</sup> A reference to Article 18 of the AIBA Statutes was contained only in the letter of 30 May 2011 ordering new elections.

as a result of the SAT Order. The Panel does not agree with such a contention and notes, on the basis of the parties' submissions and evidence, that ABAT is still in existence, with the possibility to use training facilities and the capacity to send boxers to attend competitions. In any case, no evidence has been brought to prove that, as a result of the SAT Order, ABAT is no longer to be considered as a valid and existing legal entity under Thai law: the SAT Order, indeed, seems in its face to affect only the capacity of ABAT to act as the entity governing exclusively the sport of boxing in Thailand, and not the very existence of the legal entity comprising ABAT. The Panel therefore cannot find the situation made relevant by Article 16 of the AIBA Statutes to have occurred.

33. As to exclusion: the question is whether ABAT committed "*a severe violation*" of the AIBA Statutes or regulations (Article 18.2). In the Challenged Decisions, such violation was found to consist in the failure by ABAT to hold new elections, to replace elections that were not recognized to be valid (because they had been organized by suspended officers and affected by severe irregularities).
34. The Panel does not find, however, any provision allowing AIBA to order a National Federation to hold new elections under the sanction of exclusion. In that respect, the Panel underlines the necessity of a firm legal basis for any decision adopted by an association (such as AIBA) imposing an obligation (or a sanction) on one of its members (such as ABAT), and chiefly so when the Member's participation in the association is at stake (see CAS 2009/A/1823, award of 11 December 2009, para. 9.5; BADDELEY M., *L'association sportive face au droit*, Genève 1995, p. 95-99)<sup>6</sup>. Such clear legal basis to support the Challenged Decisions is lacking. In fact:
  - i. Article 13(E) of the AIBA Statutes obliges National Federations to submit to AIBA the results of any election for "*final approval and recognition*", but does not allow AIBA to order new elections: AIBA has only the power to deny its "*approval and recognition*";
  - ii. Article 14.2 allows AIBA not to recognize officers selected in violation of Article 14.1 ("*Exclusion of all external interference*"): not to order new elections;
  - iii. AIBA is not granted an overall "policing" authority on the respect by every Member of its internal regulations and of the local laws.
35. In any case, the Panel finds that, even if existing, the power of AIBA to order ABAT to hold new elections was not properly exercised. Indeed:
  - i. the decision of 29 March 2011 not to recognize the elections of 27 March 2011 was based on a suspension imposed on all ABAT officers including the President. Such circumstance was confirmed also in the letter of 30 May 2011, whereby AIBA ordered new elections: that suspension, however, did not cover activities at ABAT's level, and therefore did not preclude the holding of a congress by ABAT, and the participation thereto by the officers internationally suspended; in any case, the suspension of such officers, and of Gen. Jantararoj, was lifted by CAS on 1 April 2011, and therefore could

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<sup>6</sup> In other words, the Panel does not exclude in absolute terms the possibility for AIBA to order new elections and to exclude a Member not complying with such order: the Panel only underlines the necessity that this possibility be contemplated in the association statutes.

not be taken as a basis for the request to organize new elections contained in the AIBA letter of 30 May 2011;

- ii. no such major irregularities appear to have occurred. In fact:
  - the congress was called upon a prior notice that, however short, was given in compliance with the ABAT's statutes;
  - no evidence has been given that the regulations for participations in the election procedures adopted by ABAT prior to the congress run against any ABAT or Thai provision;
  - the fact that the press was not allowed to attend the congress, notwithstanding the past practice, does not constitute a violation of any rule affecting the regularity of the elections;
  - all eligible members were invited and allowed to participate in the elections;
  - the circumstance that the ABAT members' that had not paid their membership fees were not eligible to attend the elections appears to be in line with the ABAT statutes;
  - the quorum, the voting procedure and the election results do not seem to run against any applicable provision;
  - the representative of SAT, Mr Nattawut Ruengwat, who was present at and witnessed the ABAT's elections stated in an article published in the *Bangkok Post* on 28 March 2011, the day after the elections, that they were conducted according to the rules;
- iii. the right to be heard of AIBA was not fully respected. In fact, AIBA did not wait for the documents it had requested (see above) and the Challenged Decisions were adopted without giving ABAT the opportunity to state its case before the deciding body: the finding of "severe violations" for the purposes of Article 18.2 of the AIBA Statutes is of such a nature and effect to require the opportunity to be heard (CAS 2009/A/1823, para. 9.9). Moreover, none of the two Challenged Decisions were notified to the Claimant. In other words, ABAT's right to due process has not been respected, as it was not given an opportunity to be heard *before* the decisions were taken and was not notified of such decisions *after* they were taken.

36. The Bureau Decision mentions as a supporting reason for the "expulsion" of ABAT also the fact that "*the Ministry of Sports of Thailand also removed their recognition of current ABAT two weeks ago*". Without prejudice to the illustrations below (para. 38-45), the Panel notes however that such justification was not accurate: no decision had been taken "*two weeks*" before the Bureau Decision by any Thai authority to remove the "*recognition of (...) ABAT*".

37. In conclusion, it appears to the Panel that no reason justifying the exclusion of ABAT existed. The Challenged Decisions that held otherwise are therefore to be set aside.

B. *Is ABAT to be reinstated as full AIBA member?*

38. It is established jurisprudence of the CAS that under Article R57 of the Code, the Panel's scope of review is fundamentally unrestricted. In CAS 2008/A/1700 & 1710, para. 66, the CAS held as follows: "*It has full power to review the facts and the law and may even request ex officio the production of further evidence. In other words, the Panel not only has the power to establish whether the decision of the disciplinary body being challenged was lawful or not, but also to issue an independent decision based on the regulations of the interested federation (CAS 2004/A/607; CAS 2004/A/633; CAS 2005/A/1001; CAS 2006/A/1153)*".
39. However, in order to replace a decision that has been set aside by a decision taken *de novo*, the Panel must have before it all the relevant elements capable of informing such a decision. In addition, in the exercise of its power to review the facts and the law, the Panel cannot exceed its jurisdiction, by granting remedies not requested or reviewing decisions or issues not covered by the arbitration clause.
40. In the present case, the situation is indeed unclear both at the international level and at the national level.
41. At the international level, it is known that in Baku, during the AIBA 2011 Congress, a decision was issued whereby the recognition of ABAT as a member of AIBA was maintained until CAS's final decision on the matter. However, in the same decision, AIBA decided "*to ratify the new membership of the Thailand Boxing Association (TBA)*" (see above). This seems to be in contradiction with AIBA's own Statutes, which provides in its Article 8.2 that "*AIBA shall admit only one National Federation from each country*".
42. At the national level, the situation is even more confused. In particular, the respective situations of ABAT, which was created in 1953 and has been the governing body of the sport of boxing in Thailand for more than 50 years, and TBA (the Thailand Boxing Association) which was created in August 2011, and therefore has an existence of less than 6 months, are not definitely settled. It has, among others, to be noted that there are still three proceedings before the Thai judicial authorities, respectively before a civil, a criminal and an administrative court, launched by ABAT to challenge the SAT Order, which are still to be decided. It is also unclear in the mind of the Panel, which entity really governs the sport of boxing in Thailand. It might be inferred from the fact that the TBA received the license that it is the *de jure* body governing the sport of boxing, but there are also indications that *de facto*, it might still be ABAT that plays the leading role: it results from documents in the file, and has also been emphasized at the hearing that, for example, ABAT registered boxers for the International Boxing Tournament in Islamabad in December 2011; to the contrary, no relevant information was provided to the Panel concerning concrete activities of TBA during the last few months.
43. In view of the very confused situation concerning the two competing Thai federation, and notwithstanding the above conclusion to the effect that the Challenged Decisions have to be set aside, the Panel is not in a position to draw its apparently automatic consequence, along the



request for relief submitted by ABAT, i.e. to declare that ABAT is to be reinstated as full AIBA member.

44. In addition, the Panel notes that Article 17 of the AIBA Statutes provides for the suspension of a National Federation as a Member of AIBA if the National Federation is no longer performing as the governing body of the sport in its country “*as determined at the discretion of AIBA*”. It might be argued whether the final loss of such capacity triggers in any case the loss (not only the suspension) of the AIBA membership by the entity in question. Such condition, in reality, appears to correspond to a requirement for admission: the AIBA Statutes, in fact, provide, *inter alia*, that, to gain admission, the applicant must be responsible for governing the sport of boxing in its country (Article 8.1(A)), as confirmed by an official document issued by the competent authorities supervising sport in that country (Article 10.1(B)). In other words, an entity which does not govern the sport of boxing in its country could not claim participation (by way of admission or continued membership) in the international federation whose mission is to govern the sport of boxing in all its forms worldwide.
45. Such situation might be occurring in the case of ABAT, as a result of the SAT Order, mentioned also in the ExCo Decision: however based on the same reasons adduced by AIBA in support of the Challenged Decisions, such SAT Order cannot be evaluated and set aside by this Panel, as it falls outside the CAS scope of jurisdiction. Consequently, this Panel can only draw the consequences of the existence of the SAT Order within the context of the Appellant’s request for relief: however challenged before the Thai courts, the SAT Order is in force, and, as mentioned in the preceding paragraph, affects the ABAT’s membership in AIBA. For the purposes of this award, the Panel does not need to tell whether ABAT is to be considered as suspended or excluded from AIBA, or even a member of AIBA, as would result from the decision taken in Baku: in any case, ABAT cannot be considered and declared by this Panel to be a full member of AIBA.
46. In light of the foregoing, the request that ABAT be reinstated as full AIBA member cannot be granted. It is however the duty of AIBA to take a decision concerning ABAT’s membership in the world federation, in conformity with the governing rules, taking into consideration this Panel’s decision to set aside the Challenged Decisions and the fate of the SAT Order, as challenged before the Thai courts.

**The Court of Arbitration for Sport rules:**

1. The appeals filed by the Amateur Boxing Association of Thailand are partially granted as follows:
  - i. the request that the decision of 1 July 2011 of the Bureau of the Executive Committee of the International Boxing Association (AIBA) (CAS 2011/A/2500) and the decision adopted on 31 July/1 August 2011 by the Executive Committee of the International Boxing Association (AIBA) (CAS 2011/A/2591) be set aside is upheld;
  - ii. the request that the Amateur Boxing Association of Thailand be reinstated as full Member of the International Boxing Association (AIBA) is denied.

(...)

4. All other prayers for relief are dismissed.