

Appendix C

The Board of Officers (“the Board”) of the Sports Federation & Olympic Committee of Hong Kong, China (“SFOC”) proposed to SFOC that sanctions should be imposed on the Karatedo Federation of Hong Kong, China Limited (“KFHKC”) as the Board found the allegations of a few complainants substantiated, namely, there was maladministration and unfairness in selection of athletes on the part of KFHKC. The Board also found KFHKC’s corporate improvement plans and policy documents not up to standard. In response, KFHKC alleged that the Board’s handling of the case exemplified maladministration and unfairness on the part of the Board, quoting examples in 8 broad areas as below.

1. Making pre-trial judgement and jeopardizing the interests of the athletes

On the subject of nomination of karate athletes to participate in the 2018 Asian Games (which will commence on 18 August 2018), KFHKC has since 13 April 2018 exchanged correspondence with the Board urging for an early commencement of KFHKC’s nomination of athletes for submission to SFOC for approval.

On 30 April 2018 KFHKC submitted to the Board KFHKC’s selection criteria and confirmed full compliance with all the conditions imposed by the Board as a pre-requisite to the nomination process (including (i) members of the selection committee shall include at least 50% from outside KFHKC; (ii) two independent observers to be appointed by the SFOC to oversee the selection process and (iii) KFHKC’s nomination list must have the consent of the observers).

On 17 May 2018 the Board issued notice to convene a General Meeting on 8 June 2018 to consider passing a special resolution to cease KFHKC’s membership and announced that SFOC has prepared to set up an independent Provisional Selection Panel to take over the selection of athletes in the event KFHKC’s membership is ceased. KFHKC emphasized that unless and until KFHKC ceases to be a member of SFOC, they are entitled to exercise their rights as a member and that must include the nomination of athletes to participate in the Asian Games. However, the Board replied on 24 May 2018 to reject KFHKC’s request to commence the nomination process. This is tantamount to a pre-trial judgement that effectively deprives KFHKC’s rights as a member.

Importantly, the prolonged delay in the selection process has affected the karate athletes' morale and training. There will not be sufficient time for them to prepare for the Asian Games, thus affecting adversely their chances to win medals for Hong Kong. This is grossly unfair to them and to Hong Kong.

2. Exercise of autocratic power by the Board

Example 1

It was the Board which concluded at the outset that the complaints against KFHKC were substantiated and that KFHKC's membership should be ceased. At the SFOC's General Meeting of 26 March 2018, it was decided that instead of imposing the sanction of membership cessation upon KFHKC, KFHKC should be asked to improve its corporate governance to address the issues highlighted by the complaints. However, it was also the Board which was given the delegated authority to consider if KFHKC's improvement plans are up to standard. There was no third-party oversight in the process.

Example 2

Pursuant to Article 59(4) of the SFOC's Articles of Association, a member may appeal against a decision made by the General Meeting or the Board. However, the members of the appeal panel were all proposed by the Board. The Board also decide on which members of the appeal panel hear an appeal.

Example 3

At SFOC's General Meeting of 26 March 2018 where the special resolution to cease KFHKC's membership was considered, KFHKC's representatives asked for 20 minutes to briefly explain KFHKC's grounds of appeal. In response, the Board promised to allocate 10 minutes and eventually no time at all was allocated to KFHKC to explain its grounds of appeal.

3. The lack of objective standards for evaluating KFHKC's improvement plans supports an arbitrary decision

At the General Meeting of the SFOC on 26 March 2018, the resolutions pertaining to the proposed suspension of KFHKC's membership from SFOC were adjourned. Instead, KFHKC was asked to submit to the Board a comprehensive plan of actions for improving its corporate governance.

On 13 April 2018, KFHKC submitted their improvement plans to the Board which aim to address the various problems highlighted by the athletes' complaints in the past two years. On 13 May 2018 KFHKC submitted to the Board the progress update of implementing the improvement plans and the associated policy documents (including selection policy, appeals policy; complaints policy and code of conduct).

Meanwhile, the Board has not provided explicit indications as to the standards they would apply to evaluate KFHKC's improvement plans. Upon KFHKC's enquiry, they vaguely hinted two requirements:

- (a) Whatever demands the complainants make, KFHKC should comply with. (KFHKC did not find this acceptable.)
- (b) What is fair should be judged by the public, not by the Board nor KFHKC, hence the need for KFHKC to conduct a press briefing to explain why KFHKC considered the complaints unjustified. (KFHKC did convene such press briefing on 17 April 2018: see press release and associated statement at <http://www.hkkaratedo.com.hk/images/documents/2018/Press-Release.pdf>)

On 17 May 2018 (only 4 days after KFHKC's submission of the progress update of implementing the improvement plans and the associated policy documents), the Board wrote to KFHKC stating that they maintain the view that KFHKC is unable to demonstrate the level of integrity and professionalism expected of a Member Association of SFOC. The SFOC Board did not specify what specifically KFHKC's shortfalls are, with the exception that the Board commented: "In particular, (KFHKC) has failed to formulate a fair and transparent system to address the complaints and the Board is most concerned about the addition of the following term in the Code of Conduct: 'Athletes also need to be loyal to the KFHKC and not to bring (KFHKC) into disrepute'." In fact, this is not what KFHKC has included in

the Code of Conduct. The exact wordings in the Code of Conduct for compliance by all members of KFHKC (including Executive Committee members, referees, judges and athletes are: “Not engage in activities which jeopardise the general interest of (KFHKC) or bring (KFHKC) and/or Karate into disrepute.” The erroneous quoting by the Board cast doubt on whether the Board has, as it claimed, “carefully considered the improvement plan of KFHKC”. The fact that the Board has only taken 4 days to complete reviewing all the policy documents submitted by KFHKC and make a conclusion further aggravate the doubt.

The rule in question is actually based on the Code of Conduct template included in ICAC’s publication: *Good Governance and Internal Control in Public Organizations* which reads: “ ... always act in the best interest of the organization, place public interest above private interest and ensure that his conduct would not bring the Organization into disrepute.” KFHKC finds it baffling that adherence to the recommendations of ICAC is regarded by the Board as unacceptable.

KFHKC’s Selection Policy submitted to the Board is actually jointly compiled with the Hong Kong Sports Institute (“HKSI”) (see paragraph (5) of the document). With the rejection of this policy document by the Board based on a broad-brush approach, KFHKC is at a complete loss.

4. Non-disclosure of pertinent information in KFHKC’s favour

Example 1

Pursuant to Article 4(d) of the SFOC’s Articles of Association, before KFHKC’s membership is suspended, SFOC has to consult and coordinate with the World Karate Federation (“WKF”). Indeed, the Board wrote to WKF twice in March 2018 before the General Meeting on 26 March 2018. In their replies dated 13 March 2018 and 19 March 2018, WKF stated very clearly that:

(a) WKF has found no irregularity nor fraud in the selection method adopted by KFHKC;

(c) It is entirely proper for the Office Bearers of KFHKC to also hold at the same time technical positions within KFHKC supervising technical matters for the organization (although the referee or judge of a particular bout

should not be of the same organization as that of the athletes participating in that bout); and

(d) WKF does not agree that KFHKC should be suspended from SFOC based on the issues of selection of athletes.

Example 2

In preparation for the General Meeting on 8 June 2018 to re-consider suspension of KFHKC's membership, the Board still does not include WKF's letters of support to KFHKC in the background papers sent to SFOC members. The Board only mentioned that the letters are available on KFHKC's website, without providing a hyperlink.

5. Understating information which favours KFHKC

Example 1

In preparation for the General Meeting on 8 June 2018 to re-consider suspension of KFHKC's membership, the Board wrote on 17 May 2018 to all members to "clarify" that "WKF has given letters of support to KFHKC **in general terms.**" Considering the very specific support that WKF has given to KFHKC (see above), this "clarification" is an understatement.

Example 2

In a "kata" competition which involved a mis-deployment of referees, the Referee Director on site decided that as a remedial measure the score of the misplaced referee should be discounted and only the scores of the remaining 4 referees were counted. The complainant insisted that the correct method should be deducting the highest and lowest scores of the 4 valid scores, counting only the remaining 2 scores.

In the background papers sent to all members for preparation for the SFOC General Meeting of 8 June 2018, the Board agreed with the complainant's approach, thus finding the complaint justified. The background papers omitted the following pertinent information stated in KFHKC's appeal letter of 16 Mar 2018: (1) WKF, after a review of the complaints referred to by SFOC, has

confirmed that they found no irregularity nor fraud in the selection method adopted by KFHKC; (2) The choice between the scoring method adopted by KFHKC as a remedial measure and the so called correct (but not agreed by WKF) scoring method proposed by the complainant is academic. This is because the results in terms of the final ranking of the contestants are unaffected. No athlete suffered any prejudice as a result of the inadvertent mistake of mis-deployment of referees.

Example 3

The complainant claimed he did not receive KFHKC's notification that he was not selected and hence he missed the opportunity to lodge an appeal.

KFHKC cannot prove that they have dispatched the notifications as, in accordance with their normal office practice, they were sent by ordinary post.

Importantly, as stated in KFHKC's appeal letter of 16 Mar 2018 but omitted in In the background papers prepared by the Board for all members in preparation for the SFOC General Meeting of 8 June 2018: (1) The complainant was the only one contestant who claimed non-receipt of the notification; (2) The complainant admitted himself he had found out by himself on the internet that he was not on the list of selected athletes; and (3) The complainant was well aware that his right to appeal had not been jeopardized on this occasion as he had in previous similar circumstances made such an appeal to KFHKC and his appeal was entertained. He simply chose not to appeal on this occasion.

With the inclusion of this pertinent information in the background papers, the complaint could not possibly be justified by the Board.

6. Making decisions based unilaterally on the complainant's version of events and without giving KFHKC an opportunity to provide an explanation

In the background papers prepared by the Board for all members in preparation for the SFOC General Meeting of 8 June 2018, the Board has introduced complaints not covered in the papers for the previous General Meeting of 26 March 2018. On this occasion, the Board find the complaints substantiated simply

based on the complainant's version of events and without giving KFHKC an opportunity to provide an explanation.

Example 1

Based on the complainant's assertion that he received a particularly low score from a referee and without giving KFHKC an opportunity to provide an explanation, the Board concluded that there was a strong indication of biased judgement on the part of the referee and KFHKC had violated the principle of fair play. This approach and the judgement itself were unfair. The fact was: although the referee habitually gives low scores to athletes; the "low score" he awarded to the complainant was actually the highest among all contestants in question. The credibility of the Board's conclusion is in grave doubt.

Example 2

A HKSI elite athlete lost in a local tournament and thus failed to gain a seat in the limited number of places for participation in a particular overseas tournament. She complained that KFHKC refused to process her application to join the tournament on a self-funded basis.

The decision to reject her application was jointly made by KFHKC and HKSI for the reason that it would affect the training programme designed by HKSI for the athlete and cause additional workload to the coaches accompanying the selected team (in terms of providing athlete care, ensuring athlete safety and supervising athlete's performance).

The Board challenged the decision as if it is the sole decision of KFHKC, quoting KFHKC's previous statement that self-funded participation was allowed on the basis of "competition as practice".

The fact is: "competition as practice" is a principle adopted by HKSI in formulating the training programmes for individual elite athletes. KFHKC is not in a position to interfere with the design of these tailor-made training programmes. Although previous HKSI training programmes did incorporate overseas competitions as practice, the policy HKSI has adopted since Jan 2018 is that athletes must strictly adhere to the training programmes designed for them and self-funded participation in overseas competitions is no longer allowed. Athletes not complying with this new HKSI rule will be disciplined by HKSI. KFHKC sees no

reason not to cooperate with HKSI and will therefore turn down any athlete's application for participation in overseas competitions on a self-funded basis.

Importantly, KFHKC has not been given the opportunity to fully explain the above arrangements before SF&OC concluded that the complaint was substantiated and KFHKC had violated the principle of fair play. This is ridiculous.

7. Trumping the autonomy of KFHKC as an SFOC member

Example 1

At the SFOC's General Meeting of 26 March 2018, there were 5 attendees from KFHKC. The Board told KFHKC that only one person could speak on behalf of KFHKC. The Board further instructed that KFHKC must appoint their Chairman to speak on behalf of the association and the Board would not accept any other spokesman.

Example 2

In submitting KFHKC's policy documents (including selection policy, appeals policy; complaints policy and code of conduct) to the Board on 13 May 2018, KFHKC made it clear that the policy documents had gained the overwhelming support of the association (74% of the votes casted at KFHKC's EGM of 12 May 2018). The documents were later passed by resolution at KFHKC's General Committee Meeting.

The Board has always emphasized SFOC's respect for the autonomy of National Sports Association. At the same time, it has not provided any guidelines for KFHKC to draw up its policy documents. In the circumstances, it does not make sense that the Board could turn down KFHKC's policy documents that have gained an overwhelming support from its own members.

Example 3

KFHKC's policy is that it would not and (due to resource constraint) could not assume responsibility for members' participation in overseas events as individuals not representing "Hong Kong China".

This policy gained an overwhelming support of members at the EGM on 12 May 2018 (74% of votes casted). The policy was passed by resolution at the General Committee Meeting on 17 May 2018. However, the Board insisted that KFHCL has the duty and responsibility to help karatedo athletes participate in international competitions as individuals not representing “Hong Kong China”.

8. Disregard individuals’ privacy and could contravene the Personal Data (Privacy) Ordinance

Example 1

The information provided by the Board to members in preparation for the General Meetings on 26 March 2018 and 8 June 2018 included an allegation of abuse of power and pursuit of private interest by a KFHKC referee. The full name of the referee was spelt out in the papers. Subsequently, the name of the referee and his alleged misconduct was widely reported in the media.

KFHKC had in its appeal letter of 16 March 2018 made it clear with supporting evidence that the allegations were based on mere speculations without any concrete proof.

Abuse of power and pursuit of private interest are serious allegations. They affect seriously the referee’s reputation. The Board’s continuation to disclose the referee’s name and his alleged misconduct in the papers for the SFOC General Meeting of 8 June 2018 is a total disregard for the referee’s privacy and could well be a contravention of the provisions of the Personal Data (Privacy) Ordinance.

Example 2

This refers to the case mentioned above where the athlete complained about the low score awarded by a referee for his “kata” performance. In mentioning this complaint in the papers for the General Meeting of 8 June 2018, the Board disclosed the full name of the referee.

As explained above, although the referee habitually gives low scores to athletes, the “low score” he awarded to the complainant was actually the highest among all contestants in question. However, the Board, without mastering the full facts of the case, concluded that there is a strong indication of biased judgement on

the part of the named referee. This offhand approach again shows a total disregard of the privacy of the referee and could well be a contravention of the provisions of the Personal Data (Privacy) Ordinance.

Example 3

KFHKC has sought expert legal advice which confirmed that athletes' scores are "personal data" and subject to protection under the Personal Data (Privacy) Ordinance.

However, the Board held the view that the KFHKC's privacy concern is "neither convincing nor valid", and carried on to conclude that the complaint in question was substantiated.