

MINUTES OF THE MEETING OF THE IFCAI COUNCIL

held at China World Hotel, Beijing, on the occasion of the 17th ICCA Conference

8.30am, 16 May 2004

IFCAI COUNCIL MEMBERS PRESENT:

Ulf Franke (President)
M.I.M Aboul-Enein
Tang Houzhi
Pierre Karrer
William Slate
Adrian Winstanley

ALSO IN ATTENDANCE:

Robert Briner (ICC)
Milanka Kostadinova (Editor IFCAI Newsletter)
Erik Wilbers (WIPO)

APOLOGIES:

Apologies had been received from:

Francis Gurry
Eva Horváth
Alexander Komarov
Antonio Parra
Anne Marie Whitesell

1. WELCOME

1.1 The President welcomed Council members and said that he was anticipating a good turnout at the general meeting, which would follow immediately after this meeting.

1.2 The President reminded the meeting that the key items for discussion at the general meeting would be VAT; the IBA guidelines on disclosure; and the publication of awards. He said that the meeting would also hear an update from Warren Wood on the research programme of the Global Center.

1.3 The President thanked Professor Tang for his kind invitation to lunch.

2. **MINUTES OF THE PREVIOUS MEETING**

2.1 The Minutes of the previous meeting, held on 26 June 2003 at the Arbitration Centre of the Austrian Federal Economic Chamber, Vienna, were approved by the Council and signed by the President.

3. **FINANCES AND MEMBERSHIP**

3.1 The President said that Adrian Winstanley would report to the general meeting on finances and membership, but asked him briefly to summarise the position.

3.2 Adrian said that reserves were standing at around US\$80,000, as at the beginning of May 2004, and suggested that proposals be sought from the general membership for ways in which these funds could be put to use.

3.3 He confirmed that the decision to expel members who were more than two years in arrears was being implemented and that current membership stood at 63.

4. **8TH BIENNIAL CONFERENCE, 2005**

4.1 The President confirmed that the date for the 8th IFCAI biennial conference was 3 June 2005, to be preceded, on 2 June 2005, by a two-hour Council meeting and a General Assembly.

4.2 Milanka Kostadinova confirmed that practical arrangements were well in hand for these events and the Council again recorded its thanks to ICSID for agreeing to host them.

4.3 The President invited Council members to consider, and to send to him, their proposals for suitable themes for the General Assembly and for the Conference, so that programmes for both could be finalised and circulated in good time.

4.4 It was agreed that the agenda of the Council meeting in Washington should include proposals for the use of IFCAI funds; a broad review of membership; and the adoption of a new Constitution.

5. **KIEV MEETING**

5.1 Concern was expressed that no firm date had yet been fixed for the proposed seminar in Kiev, to be hosted by the Ukraine Centre, this October. Council members noted that a number of other seminars were now scheduled for the autumn, including a CIArb European Branch conference in Vilnius, and meetings of the Milan club, of DIS and of the Stockholm Chamber.

5.2 It was agreed, therefore, that whilst Ukraine was a thriving market for arbitration and a good venue for an IFCAI seminar, Adrian Winstanley should

write to Professor Pobirchenko to ask him to consider whether it might be better to re-schedule the Kiev event for a later date, to avoid clashing with competing seminars.

6. NEWSLETTER

6.1 The President thanked Milanka for her continuing efforts in coordinating and producing another excellent issue of the IFCAI Newsletter.

6.2 It was agreed that the format was a good one and that IFCAI members should be encouraged to submit more news items from their institutions and/or jurisdictions.

6.3 It was agreed also that the lead article on the front cover of the newsletter should always be something of common interest to all IFCAI members and should never be an item of news from one institution only.

6.4 It was agreed, further, that the date of despatch of each issue should be synchronised with the cover date and, for this purpose, that each issue of the newsletter should be designated "*spring*" or "*autumn*", rather than by any particular month of the year.

7. VAT

7.1 Adrian reported that he had had only 13 responses to the more-than 60 VAT questionnaires that had been circulated to IFCAI members; a particularly disappointing response given the effort that had gone into preparing so detailed a survey.

7.2 The few answers that had been received served only to confirm an inconsistency of approach from jurisdiction to jurisdiction; generally informed by advice received from the relevant tax authorities. As the focus of the present debate was Europe, the information was even less illuminating, as only three institutions from EU jurisdictions had replied and each of those used different criteria in the application of VAT.

7.3 Robert Briner said that, in principle, liability for VAT was dictated by the place of residence of the arbitrator, not by the place where the services were rendered. He said that many tax authorities, including the UK, did not, however, enforce this rule and that other tax authorities did not even look at the VAT issue, but left it to the individual institutions.

7.4 Robert said that the ICC's view was that nothing further should be done until the proposed new consolidating directive was in place; though the latest draft was ambiguous as to whether the services of arbitrators as arbitrator was included.

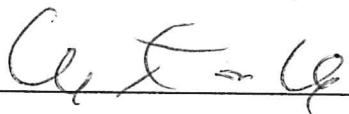
7.5 Robert proposed that Adrian Winstanley and Emmanuel Jolivet should continue to liaise with a view to seizing the moment at which all EU IFCAI members could coordinate a lobbying effort with their respective Ministries of Finance.

7.6 In response to a question from Bill Slate, Robert added that he thought that the desired outcome would be that the services of arbitrators working outside the EU should be treated as exports and, therefore, not subject to VAT. That is, that the criterion for the application of VAT would be the place at which the work was actually done.

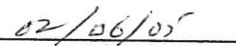
7.7 Robert stressed that the question of VAT as applied to the charges of institutions was an entirely separate matter.

8. **CLOSE OF MEETING**

8.1 There being no further business, the meeting was declared closed at 9.25am.



President



Date