



International Correspondence Chess Federation

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Report to the Executive Board

ICCF Registration

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Dear Members of the Board,

This report is a summary of the different e-mails that I sent to you since December 2010 and from which it is possible to see the general principles that I used to propose the modifications of the ICCF Statutes.

Just a word to remind you that this work was possible thanks to many talks and meeting with Eric Ruch, and the precious – and free – advice of:

Counsel Antoine Diesbecq, associate lawyer in the firm *Racine*, Paris – France
Counsel Frédéric Epitoux, lawyer at *Oberson Avocats*, Geneva – Switzerland

The Registration Predicament

The registration of the ICCF was identified as a predicament as soon as Eric Ruch opened a bank account in France and during year 2010 with different enquiries and requests for information from the PayPal Company, which blocked the account several times.

Once the Congress 2010 decided to make the ICCF a legal entity, it quickly appeared that it was a sensible decision and that it could not wait too much longer.

First, because of the level of money that ICCF has in bank accounts. The fact is that all the banks, except in offshore places, are subjected to more and more controls because of money laundering problems. To be clearer, the ICCF French bank account should not exist. *Crédit Lyonnais* made a mistake when it allowed Eric Ruch to open an ICCF account, whereas, Eric was not able to prove the legal existence of the ICCF - which is commonly done by exhibiting the legal notice which has to be published in the Official gazette of the French Republic, le *Journal Officiel*. From that mistake, we have to fix the situation quickly.

Second, because of the money laundering issue, France has a specific agency, called TRACFIN, and all French banks have investigation services on this issue. A similar equivalent system exists throughout the world, especially in most of the Western countries. Investigators work sometimes at random and sometimes because some odd indicators of

suspicious activity show up. Unfortunately, the ICCF has a rather strange financial behavior as time goes on. Money is constantly growing, coming from everywhere in the world, from very improbable organization or people; money is not invested but just sleeping in the account; they are few transfers outside. Therefore, the account is becoming more and more a call for investigation.

Third, tax problems: since the ICCF is not registered, it is a *de facto* organization - as such, ICCF cannot claim to be a non-profit association entitled not to pay any taxes. Non-profit associations are registered, then and only then, they can claim for exemptions. As a *de facto organization*, the ICCF has no taxes privileges. It will be considered as a company and the taxes could be evaluated, in France for instance, back to 4 years behind.

The French ICCF Office

The main drawback of transferring the current Swiss-based, not registered ICCF, in France in order to set up a French association was related to taxes.

What would the French taxes administration think about our financial assets? Either they would consider that the Swiss-based ICCF had no legal existence and that the setting up of the ICCF in France would necessarily be a creation from scratch. In that case, they could consider our current money as a **capital inflow**, as such taxable.

Then our research in the French and Swiss Civil Codes allowed us to discover:

1) that the current Swiss-based ICCF could qualify for being **already** a legal person (Swiss Civil Code providing that “*political, religious, scientific, artistic associations, of charity, of recreation or the others which have no economic purpose acquire the personality as soon as they express in their statutes their will to be organized in a body*”);

2) that the French law authorizes foreign associations to set up offices in France. It even recognizes those **offices as legal entities** as long as their statutes are declared and published according to the French Law.

So that our assets **could not be considered as taxable capital inflow** brought to a **new** association.

On my advice, the Executive Board therefore decided to:

1) **stabilize the ICCF association in Switzerland**: the only and crucial missing point in the current ICCF status was the address. Ulrich Baumgartner and the *Schweizer Fernschachvereinigung* accepted that the ICCF nests into its seat. The discussions between the ICCF and the Swiss Member Federation came up to an Agreement that is ready to be signed at the 2011 Congress.

2) **create an ICCF French Office in France** in declaring the mother Swiss ICCF association to the French Authorities.

This decision meant to **make some changes** in the current status, notably to withdraw what is relevant only for the internal needs of the ICCF management and to put it in an Internal Regulations or Bylaws. This way of making the Statutes shorter allows avoiding ceaseless

declarations to the French Authorities every time the Congress changes a bit of a sentence in the statutes as they are written today.

3. General Principles of the New Legal Organization

The draft version of the new statutes and other proposals brought to the 2011 Congress are the consequences of the analysis exposed above.

3.1. *Seat of the ICCF in Switzerland, Office in France*

Thanks to the agreement between the ICCF and the modification of the statutes, the ICCF will be a legal Swiss entity. To confirm the non-profit character of the ICCF in the Swiss Law, I have drafted a new article 2 clarifying that the ICCF is a recreational activity and has no economic purpose. To confirm the non-profit character of the ICCF in the French Law, this article 2 also point out that chess is a sport activity and that ICCF Officials can only work on a honorary basis, with no exception. One consequence of this solution is that the Official documentation must be in French Language, which an official language both in Switzerland and in France.

3.2 *ICCF Finance*

Since the question of finance, membership fees, and commercial income is critical, I have gathered and detailed the related provisions in articles 5, 6, and 7.

The main point was to make it clear that, except for the Direct Entry fees paid by players (and only for the part not credited to Members); **all the income of the ICCF should be considered as a membership fee**, and as such not subject to taxes or VAT, or at a minimum rate. Specifically, the contribution levied against a rate for each tournament organized by ICCF multiplied by the number of players must not be considered as a commercial income equivalent to a selling prize:

- Contrary to a selling prize, the contribution is collected long after the service has been delivered,
- Contrary to a selling prize, the failure in paying the prize do not lead to deprive the National Federation from the service – delivered beforehand - but to the exclusion of the association.

This also why former article 2.6 of the Statutes has been withdrawn: it allowed the WTD to accept the participation of a player in an ICCF tournament against the will of the relevant Member Federation. Such an intervention of the WTD could lead the tax administration to consider that the second part of the Membership fee is, *de facto*, rather a kind of Entry fee since the WTD has authority regarding the participation of a player, hence an impact, even minimal, on the second part of the Membership Fee.

This is also why I had to explicitly recall in new article 6, 4 that the ICCF does not require that rate of the Membership second part effectively match the amount of the playing fees that the Federations may require from their members to participate in ICCF tournaments. Moreover, I recall that the ICCF does not interfere in the economic and financial management of member federations.

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You will discover other minor changes in the various documents that I am communicating to you, but I wanted the Executive Board to be fully aware of the main principles governing the proposed new Statutes.

I hope that the Executive Board will be content with enough of my work and will be willing to present it to the next Congress.

/s/

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