



International Actuarial Association
Association Actuarielle Internationale

IAA Incorporation of the IAA
Secretariat as a Canadian Not-for-
Profit (NFP) Corporation

Master Document

6 February 2024

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Executive Summary

The goal

The proposed revision of the operational structure of the International Actuarial Association (IAA) aims to regularise the legal structure of the IAA in order to address legal risk exposure in Canada where the IAA is headquartered without incorporation.

The initial mitigation plan was to move the seat of the IAA to Canada, thus aligning seat and operations. This was discussed in 2021-2022 and was not supported by some Full Member Associations (FMAs). To avoid division amongst FMAs, the current proposal has been developed.

The plan is to create International Actuarial Association Services (IAA Services), a Canadian Not-for-profit (NFP) corporation, to house the IAA Secretariat, including the staff/Human Resource (HR) contracts and operational liabilities. IAA Services will effectively be a subsidiary (wholly controlled) of the IAA (Swiss verein).

Other alternatives have been assessed, notably a for-profit corporation. Based on the analysis and recommendations of IAA lawyers and tax experts, the NFP is the recommended option. The NFP offers flexibility, favorable reporting treatment and tax-exempt status not offered under other options.

Corporate structure

A Canadian NFP corporation is a standalone legal entity consisting of at least one member and directed by its Board of Directors who are elected and reports to its member via the annual meeting of the member. The IAA will be the sole member of IAA Services, thus as the sole member, the IAA will retain full control of the Board of IAA Services and its direction and will remain the ultimate decision-making authority of IAA Services.

Linkage between the two IAA entities

At each IAA Council meeting, a series of motions will be presented to provide direction to IAA Services. The IAA Services Board will then implement such directions. The control of the Board by the IAA ensures consistency between the two entities. Furthermore, the Board members will be the same as the Executive Committee (EC) members, ensuring governance alignment. Each year the rotating EC/Board members will be elected by the IAA Council. Council retains the authority to appoint and remove EC members, and accordingly this also applies to the Board members of IAA Services.

Oversight

EC members, as the Board of Directors of IAA Services, will oversee all the operations of the service entity, which is consistent with their current EC role under the direction of Council. The Audit and Finance Committee will continue to review all financial reporting of both the IAA and IAA Services and include the main variances between budget and actuals. The Executive Director (ED) and all staff will be employed by IAA Services and the ED will continue to report to the Officers who will be part of the Board of Directors (and the EC).

Service agreement

There will be a service agreement between the two entities, this will be in the form of a Memorandum of Understanding (MOU).

Transparency

IAA Services will report to the IAA Council at its semi-annual meetings, including financial reporting as per current practice. Furthermore, it will also report to SPC on a quarterly basis (or such other frequency as determined by Council).

Flow of funds

Various options have been assessed and based on feedback from some FMAs, the compromise option is what was referred to as Option 2 where IAA Services produces administrative invoices for membership fees to be paid in the name of IAA. Funds are asked to be deposited directly in IAA bank accounts with IAA as the beneficiary. IAA then remits funds to IAA Services via internal invoicing. Whilst this option is more complex, costlier and generates increased tax reporting and administrative work than Option 1 (details on p.14), the IAA understands that some FMAs have legal concerns with Option 1 and this compromise will allow the plan to move forward.

Once the fees are collected by IAA Swiss, the required amount of funds will be paid to IAA Services via invoicing, as per the Council approved expenditure amounts. The administration details of timing and frequency of invoicing will be determined by EC.

Budget

Each year, Council will see 2 budgets. One will be a concise budget for IAA Swiss as it will receive the revenues and have one main expenditure. The budget of IAA Services will be more extensive as it will include the expense budget as per the current format that is familiar to FMAs, and with only one source of revenues, this budget will be presented with a \$0 balance/no surplus or deficit. The financials of both entities will be presented, as well as a combined financial statement, and include the main variances between budget and actuals. Both entities will be subject to Canadian audit standards and will be audited by the Council approved audit firm.

Assets

There will be no transfer of invested assets. A small amount of Cash will be granted to IAA Services for its purchase of fixed assets (notably IT and hardware) and inventory from IAA. IAA Services will have a liquidity reserve/safety net to ensure cash-flow for operational expenses (notably IAA Section related) as well as unexpected events. This will vary from year to year and be included in the yearly budget package for Council approval. It is expected that this will be within a range of 20-35% of yearly expenditure. The use of this reserve will be presented to Council as part of the Audit and Finance Committee report to Council.

It is important to note that Canadian laws prohibit transferring assets from a NFP to its member. However, as the only revenue to IAA Services will be in the form of invoicing to IAA Swiss based on Council approved yearly budgets, the amount invoiced can be tailored on a yearly basis to account for any potential surplus from the prior year. Thus, this mechanism ensures that accumulation of assets will not take place unless approved by Council.

Documents to approve

Following an in-depth review of the IAA governance documents, the IAA's Canadian lawyers have listed the following elements requiring Council approval:

1. That on the recommendation of the Executive Committee, Council approve the proposed changes to the IAA Statutes [as presented](#) (marked up version [here](#)). *This motion requires four-fifths majority for approval.*
 - a. the change to Article 1 is recommended by the IAA's Swiss lawyers;
 - b. the change to Article 3, use of the term Impact, is a past omission; and
 - c. the change to Article 24 is the required legal change as drafted by the IAA's Canadian lawyers.
2. That on the recommendation of the Executive Committee, Council approve the proposed changes to the IAA's Internal Regulations [as presented](#) (marked up version [here](#)). *This motion requires two-thirds majority for approval.*
 - a. The changes to the Internal Regulations are in Section V (plus a typo in the preamble) include a new definition of the IAA Secretariat and the specific reference to the IAA Services entity.
3. That on the recommendation of the Executive Committee, Council approve the IAA Services By-Laws [as presented](#) as well as the IAA Services Articles of Incorporation [as presented](#). *This motion requires simple majority for approval.*
4. That on the recommendation of the Executive Committee, Council approve the IAA Memorandum of Understanding between IAA and IAA Services [as presented](#). *This motion requires simple majority for approval.*
5. That on the recommendation of the Strategic Planning Committee, Council approve the election of the IAA Services Board of Directors [as presented](#). *This motion requires simple majority for approval.*
6. That on the recommendation of the Executive Committee, Council approve the initial grant of assets to IAA Services [as presented](#). *This motion requires simple majority for approval.*
7. That on the recommendation of the Executive Committee, Council approve the revised 2024 budget for IAA and the 2024 budget for IAA Services [as presented](#). *This motion requires simple majority for approval.*
 - a. These 2 budgets go hand in hand and should always be presented and approved together.
8. That on the recommendation of the Executive Committee, Council approve the master document related to the incorporation of the IAA Secretariat as presented. *This motion requires simple majority for approval.*

Background

Historical information is presented in [Appendix 1](#)

How the IAA currently operates: legal structure

The IAA is Incorporated in Switzerland as a verein (German word for Association). As the IAA has no operations in Switzerland (or in Europe), it contracts a Swiss law firm serving as its representative in order to comply with Swiss requirements.

Positive attributes

Some of the positive attributes related to this legal structure are simplicity, ease of set-up and no requirements to operate in Switzerland to be considered as registered in that country.

As the IAA has no activities in Switzerland, it is not subject to any reporting requirements with the Swiss government, and it is also not subject to pay Swiss taxes.

Negative attributes

This format works very well for entities operating out of Switzerland. However, as the IAA is headquartered in Canada, it is already subject to Canadian laws and regulations. This creates a dual state structure that subjects the IAA to more jurisdictions that minimally required to operate. This generates a duplication of legal costs as well as additional risks from different legal systems that do not always match.

Furthermore, whilst vereine (German plural of the word verein) are not uncommon in Europe and in civil law systems, this format is quite a foreign concept in North American common law courts where vereine are largely unknown. Even the Swiss clubs in Canada are locally incorporated. Thus, the verein format represents a significant hurdle in any legal proceedings involving the IAA.

IAA Governance and current structure

Council

The IAA is controlled by the IAA Council, where all FMAs have voting rights linked to their size, and each IAA Section also has one vote. Council is the governing and ultimate decision-making body of the IAA. It sets out the IAA's Vision and Mission statements, it's Strategic Plan and the Strategic Objectives supporting the delivery of this plan.

Executive Committee (EC)

Council delegates the management and the representation of the IAA to the EC. Council directs the EC to ensure appropriate implementation of the Strategic Plan via a series of motions that are discussed and approved during its meetings. The EC oversees the yearly budget and is responsible for carrying out the operational aspects of the IAA. As such it also manages the IAA Secretariat. As a statutory committee, EC reports directly to Council and its members are directly elected by Council.

Audit and Finance Committee (A&F)

The oversight of the IAA finances falls to the A&F. As a statutory committee, A&F members are directly appointed by, and report to, the IAA Council. The A&F is responsible for monitoring, auditing and reviewing all IAA financial reporting and making recommendations to Council of related policy and operational guidelines in conjunction with the Secretariat. Furthermore, A&F is also responsible for the review of the financial outcomes of all budgets, investments and expenses, as well as the overall risk management of the IAA, amongst other duties as set out in the IAA Internal Regulations.

Strategic Planning Committee (SPC)

The purpose of the SPC is to support Council by creating a forum for discussions amongst Full Member Associations, devoted to the advancement of IAA strategic matters. The SPC aims to address the need to have discussions amongst Full Member Associations in order to resolve any potential disagreements effectively before business is presented to Council for decision making. The aim is to facilitate the effectiveness of Council meetings and to increase the level of engagement of Full Member Associations in setting the IAA strategy. The Strategic Planning Committee will concern itself with IAA strategic matters and not matters of operational detail.

The SPC has no independent decision-making authority and can only make recommendations to Council. As a Statutory Committee, it reports directly to Council, and SPC members are appointed by Council.

IAA Secretariat

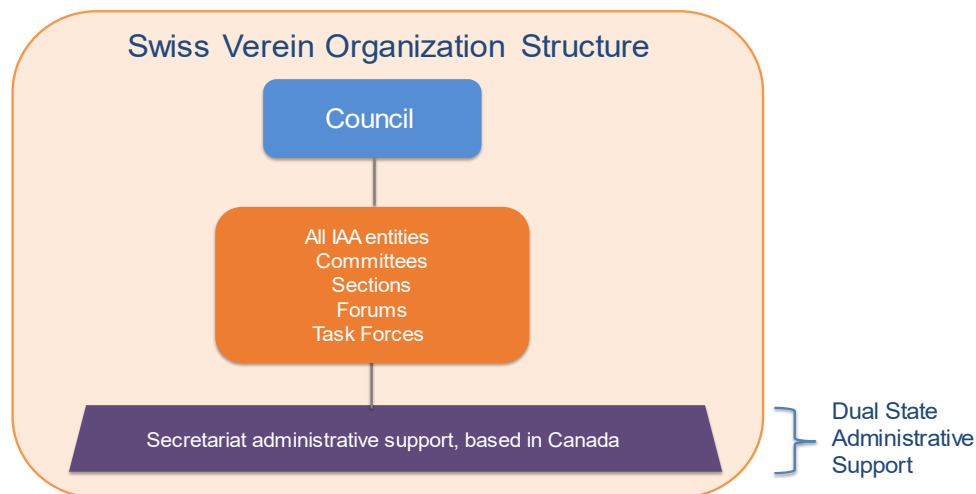
The IAA operations fall under the responsibility of the IAA Secretariat. It is headquartered in Ottawa, Canada. The *raison d'être* of the IAA Secretariat is to support the IAA Council in its work and delivering on the IAA mission and strategic objectives and as such, it is an integral part of the organization. The management of the IAA Secretariat is tasked to the Executive Director (ED) who ensures the effective delivery of services to the IAA. The ED is under the oversight of the IAA Officers.

The IAA Secretariat employs staff in Canada (the IAA also contracts various suppliers and has one staff sharing agreement in South Africa with the local FMA). Almost all operational contracts are under Canadian jurisdiction with the main exceptions being foreign meeting venues contracts.

The IAA operates in compliance with the Canadian requirements related to not-for-profit corporations (NFP), as such it benefits from the related advantageous treatment, notably a tax-exempt status as well as simplified financial reporting requirements. Accordingly, it must comply with Canadian laws and regulations, such as audit and financial requirements, compliance with HR laws, mandatory remittances etc.



Simplified IAA Organization Chart - Current



What are the risks to address?

The IAA is incorporated in Switzerland where it does not operate, yet it is not incorporated in Canada where it does operate.

Beyond the obvious mismatch of this format, this dual state approach subjects the IAA Secretariat and its operations to more jurisdictions than is minimally required, thus generating:

- duplicate legal costs;
- unnecessary complexity, and;
- subjects the IAA to various rules and regulations that do not always match in two very different law systems: Civil law in Switzerland versus Common law in Ontario, Canada.

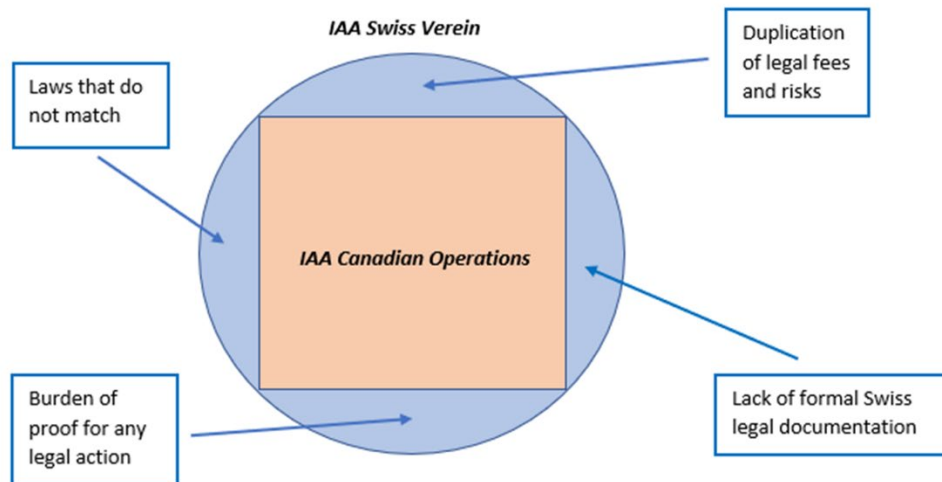
Modern-day international business operations are increasingly complex and emerging risks accentuate these difficulties. Subjecting the IAA Secretariat to more jurisdictions than minimally required for it to operate is not sound business practice.

The recommendation is thus to carve out the administration of the IAA and subject it to only Canadian jurisdiction in order to minimize legal risks and reduce duplication.

In its present form there is a risk that any legal dispute will be preceded by the need to determine the appropriate jurisdiction for the matter which will be associated with substantial additional costs.

Examples of risks we are trying to mitigate

Detailed examples of the type of legal risks we are trying to mitigate is presented in [Appendix 2](#). These risks have low frequency and high severity. Furthermore, recent legal concerns have stressed the importance to address this matter as a priority. Council has been made aware of these risks since 2021 and hence there is a need to take timely steps to manage these.



Objectives and requirements of the new structure

The simplest solution to address the legal risk concern is to move the seat of the IAA to Canada and subject the IAA to only one jurisdiction where most of its risks currently lie. Significant work was done on this proposal in 2021 and 2022. EC carefully assessed this format and determined that this was a reasonable approach to manage the IAA risk and recommended it to Council.

However, this was opposed by some FMAs who felt strongly that the IAA needed to keep its European roots, as it was housed in Belgium for its first 100 years. It was also mentioned that moving the seat to Canada would be perceived by some European members as a fundamental shift in the *“balance of power between North America and Europe”*. Whilst this terminology was not endorsed by the IAA, it is important to mention it in this document to illustrate the sensitivity of this matter to some FMAs.

To avoid the IAA pursuing a divisive solution, a compromise was sought based on SPC meetings and discussions at Council in 2022, notably the IAA meetings in Montreal (October 2022). Various options were also discussed with the IAA’s Swiss and Canadian lawyers, as well as the IAA’s auditors. Based on the work leading up to the approval of the IAA’s 5-year strategic plan in 2022, a list of essential criteria for future formats of the IAA Secretariat was created to measure solutions against the problem statement.

Such criteria were:

1. The new format needs to address IAA’s legal risks in Canada;
2. The new format needs to increase efficiency and not cost more on an after-tax basis;

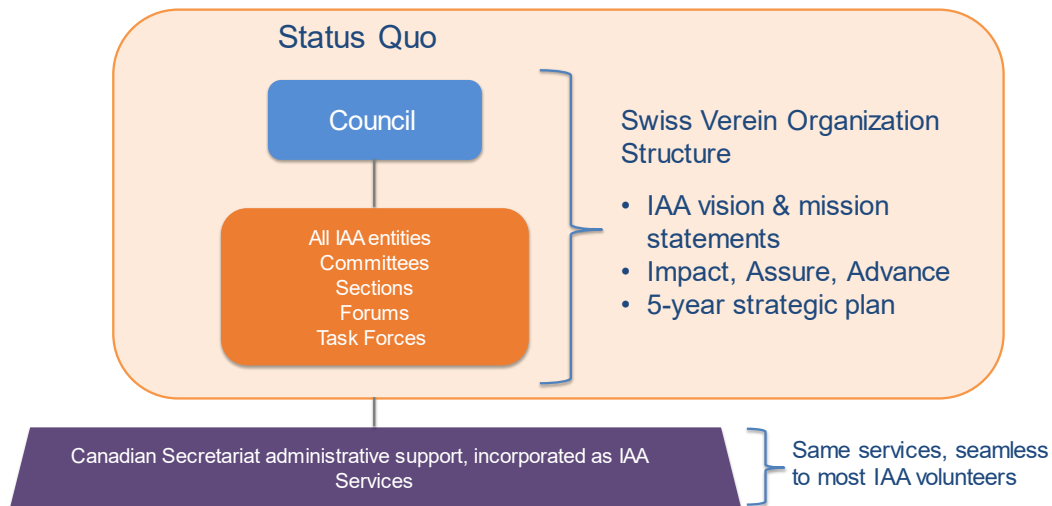
Intended proposal: Incorporate the IAA Secretariat as a Canadian Not-for-Profit (NFP)

Following a detailed assessment and based on the recommendation from the IAA's lawyers (see [appendix 3](#)), as well as the IAA's tax experts (see [appendix 4](#)), the retained compromise proposal intends to separate the administration function from under the IAA (Swiss) and incorporate it as a Canadian (NFP) entity that would be entirely controlled by the IAA. This corporation will be referred to as IAA Services in this document.

This new entity will serve the purpose of housing the IAA Secretariat and ensuring the administrative support to the IAA Council in delivering the IAA Strategic Plan and services to IAA entities and members. IAA Services will house most of the IAA's contractual liabilities, thus addressing most Canadian legal risks. Control and authority will remain with the IAA (Swiss) and Council will remain the ultimate authority of both entities.



Simplified IAA Organization Chart - Future



Advantages

Reduces IAA's legal risk

- IAA Services houses the main liabilities: Staff, lease, event contracts, IT & data, communications, etc.
- Litigation in Canadian courts would be much more efficient and cheaper with a Canadian incorporation, notably by avoiding duplicate legal fees and mismatching of laws across multiple jurisdictions.

Familiar format

- The IAA is already treated as a Canadian not-for-profit company and already complies with all rules and regulations, notably regarding HR and financial reporting. As such, it already has the knowledge and expertise about this format that would also apply to IAA Services.

- The Common law court system and business environment is already well known to IAA Executives.
- There will be no change in how member associations engage with the IAA Secretariat.
- There is also no intention to transfer IAA trademarks to IAA Services.

No new tax liabilities

- As a not-for-profit, the IAA currently benefits from corporate tax-exemption, as well as simplified reporting and audit requirements. These same benefits would apply to IAA Services.
- The tax-exempt status also applies to assets of Canadian not-for-profit corporations.

Low cost

- The yearly cost and initial set-up costs are quite low and a reduction in legal risks will contribute to the overall reduction of costs for the IAA.

This proposal addresses the lack of incorporation in the country where IAA is headquartered and where all permanent staff are located and employed as well as the legislation that most IAA contracts are subject to.

More efficient administration under one jurisdiction with formal legal recognition in Canada

Disadvantages

Incorporating an NFP will mean increased work and costs for the yearly audit and marginal yearly renewal costs. Although it is anticipated that legal savings will largely surpass the financial costs, these should nonetheless be listed.

- This does not completely limit multi-jurisdiction risk or residual risk. The only way to eliminate these risks is to move the seat of the IAA to Canada.
- There are various options to this proposed format in how membership fees will be collected, and assets transferred, each with different levels of efficiency and cost.
- The NFP format may not be familiar to many FMAs which may require detailed explanations to be understood.

Description of proposed structure

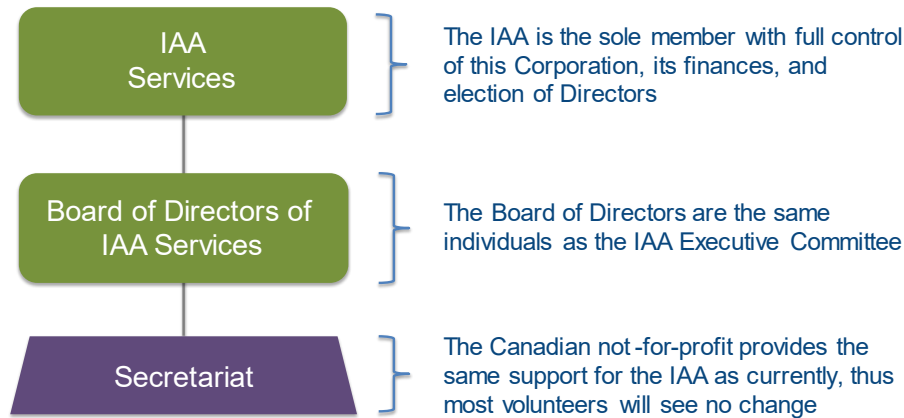
The NFP entity will have a single member, the IAA (Swiss), and will serve the purpose of providing the same services as currently provided by the IAA Secretariat to Council. Thus, this change would be seamless to most IAA volunteers.

Having the IAA as the only member of IAA Services ensures that Council remains in full control of IAA Services. Council will continue to approve the budget (there will be two budgets going forward), elect the Board members of IAA Services and approve all major items of direction setting.

The Board of IAA Services will be the same individuals that Council elects as the EC members, with terms matching their terms of office on the EC. This will ensure alignment between the 2 entities and preserve the governance framework of the IAA.



Illustration of IAA Services



The Board oversees the delivery of services to the IAA, including the hiring of an Executive Director who is charged with the day-to-day management of the IAA Secretariat/IAA Services, as is currently the case.

The operations and responsibilities that are currently addressed by the IAA Secretariat will continue to be undertaken in the same way by IAA Services, these notably include:

- Implement decisions of Council
- Support IAA Officers, EC and other IAA entities
- Management of HR/Staff & legal matters
- Communications, IT, publications
- Contracts, event management, record keeping
- Managing the financial affairs of the IAA, maintaining all appropriate records, as well as preparing all financial statements and draft budgets (Ref IAA Statutes Art. 25)

Governance

As presented above, Council will be the only member of IAA Services. Details of the governance of the IAA Services entity are presented in its by-laws, and a significant responsibility of the IAA Council will be to elect the Board members of IAA Services and mandate it to deliver required services as per the yearly budget and in support of the IAA Strategic Plan.

Swiss Verein keeps the governance, policymaking and volunteer led entities.

All other roles of Council, as per the IAA Statutes and Internal Regulations, remain unchanged. The Council meetings will remain in the current format that is familiar to most FMAs and will be supplemented by new motions to direct the IAA Services entity.

Council will not need to appoint a specific person to serve as its representative to the IAA Services' annual meeting of member as the directions given by Council to IAA Services will be detailed in

motions approved by the IAA Council. Thus, Council will have full control and transparency on the directions given to IAA Services.

What will be the role of EC?

EC members are already elected by Council to manage the operations of the IAA, hence having the Board members of IAA Services also be the same individuals as the EC will continue a format that is already familiar with FMAs. Having the full EC members as the Board of Directors of IAA Services ensures the presence of a large group of IAA leaders bringing in their expertise and diversity.

Introducing a new entity with volunteers that would not be EC members, or only a subset of EC members carries the risk of governance mismatch and misalignment, conflicts with roles and responsibilities, and increased complexity at a time when the IAA aims to keep this as simple as possible in an already complex situation.

All other roles of EC as listed in the IAA Statutes and Internal Regulations (Statutes Article 16, Internal Regulations 4.2.2) remain unchanged.

Be it noted that the current Directors and Officers insurance coverage of EC members will be extended to also cover IAA Services.

What will be the role of SPC?

The role of SPC is to continue to address matters of strategy for the IAA. Any operational issue that has a strategic impact on the IAA, such as its legal format, will continue to be discussed at the SPC, as is currently the case. Furthermore, it is also intended, for the initial years of the new format, to have the IAA Services Board reporting to SPC on a quarterly basis for additional transparency in the early stages.

Revenues and expenses of IAA Services

There are a few options for the IAA to ensure IAA Services is financed and can deliver services to the IAA. A key discussion point has been to ensure that the membership fees remain the ownership of the IAA. This can be done by providing written assurance in the legal agreement that the fees paid to IAA Services would remain the ownership of IAA Swiss and be reflected as such in the financial statements. However, as some FMAs are also concerned that they may face other country specific or internal governance limitations if fees would be paid directly to IAA Services, then the compromise for the membership fees is to continue to be deposited in IAA bank accounts, thus remaining as per the current practice, and to fund IAA Services via inter-company invoicing can be accepted to move this matter to a timely conclusion. This will be referred to as Option 2 in order to keep the nomenclature used in previous Council and SPC discussions earlier in 2023.

Option 1: IAA membership fees paid to IAA Services

IAA delegates the invoicing and collection of IAA membership fees and directs payments to be made into IAA Services bank accounts with IAA remaining the beneficiary and owner of these funds. This option avoids IAA services having to invoice IAA to access the operating funds already approved by Council in the yearly budget.

By directly delegating the collection of membership fees to IAA Services, IAA Services would not be charging Harmonized Sales Tax (HST is the Canadian sales and service tax) to foreign "customers" with addresses, activities, etc. outside of Canada, as they would qualify as exports;

in other words, these would not be subject to HST and IAA Services would not need to collect and remit HST to the Canadian Revenue Agency (CRA).

The expenses mirror the current process with EC overseeing the yearly budget, with Council being required to approve it. Expenses, financial reporting and audit all fall under the A&F Committee and would continue as per the current process for both entities.

As presented above, some European FMAs have objected to this approach based on various concerns notably that their local laws and/or regulations (internal in some cases) prohibit them from paying membership fees to an entity of which they are not directly a member.

Option 2: IAA membership fees paid to IAA Swiss

IAA Services produces administrative invoices for FMA membership fees to be paid in the name of IAA. Funds are asked to be deposited directly in IAA bank accounts with IAA as the beneficiary. IAA then provides operating funds to IAA Services via internal invoicing. This method, will require more administrative work and will generate HST implications:

- IAA Services will be required to charge HST to IAA (Swiss) since it will be providing services to a company headquartered in Canada (i.e. IAA, regardless of its foreign legal status).
- IAA Services will charge and collect HST from IAA (Swiss), receive it and remit it to the Canada Revenue Agency (resulting in an in/out);
- IAA (Swiss) will pay HST, but because it is a registrant itself, will then claim it back as an input tax credit (resulting in an in/out);
- Therefore, both entities, despite the cash flow timing differences and extra work and reporting requirements, would not remain “out of pocket” for HST.

It is important to note that Option 2 requires the IAA Services to open new bank accounts (up to 3, for the 3 main currencies used for IAA expenses) which will generate added costs as well as increased administrative work (and its associated cost), notably due to added banking reconciliations and financial reporting and the process to recover the HST.

However, in order to avoid the administrative collection of membership fees from becoming a divisive matter amongst FMAs, the compromise to use Option 2 and to assess costs and implications over the initial years is proposed.

Assets

Many questions related to the split of Assets between the IAA (Swiss) and IAA Services arose. The initial approach was to keep the long-term assets with the IAA (Swiss) (approximately 65% of total assets) and assign the short-term assets to IAA Services (approximately 35% of total assets). This would have provided the working capital for IAA Services to fund the operational activities for which it will be responsible.

Feedback received by some FMAs mentioned concerns about IAA assets coming from various sources, notably past accumulated IAA surpluses, being transferred to another legal entity. Whilst IAA Council remains in control of both entities and that such concerns would be mitigated by various methods, (formal agreement, financial reporting and so on), the intent is to avoid asset matters from

becoming divisive amongst FMAs. As such the compromise reached during the discussions at the Lisbon meetings is that there would be no transfer of invested assets to IAA Services.

A small amount of Cash will be granted to IAA Services for its purchase of fixed assets (notably IT and hardware) and inventory from IAA. IAA Services will also be granted a liquidity reserve serving as a safety net for unexpected expenses and to ensure cash-flow, notably for IAA Section expenses.

The level of required liquidity is expected to vary from year to year based notably on the timing of IAA meetings and Section events. As such the specific yearly amount will be determined by EC on a yearly basis and approved by Council as part of the yearly budget process. It is expected to be within a range of 20%-35% of yearly expenditure.

Conclusion

The Canadian incorporation of the IAA Secretariat has been at the center of numerous discussions and work since 2021. At the Lisbon meetings in November 2023, many FMAs expressed their desire for this matter to come to a conclusion, given the time and energy that has been spent on this matter since 2021, while other FMAs expressed the need for more detailed documentation. This document aims to address this requirement and facilitate reaching a consensus on this matter.

As such, the updated timeframe that was communicated to Council on Jan 5, 2024 is the following:

Deadline for SPC comments (as agreed at SPC)	24 Nov, 2023 - Complete
Target for circulation of advance documents to Council	04 Dec, 2023 - Complete
Deadline for Council questions and feedback to be considered in final documents	18 Dec, 2023 - Complete
Initial 30-Day Council agenda sent out	22 Dec, 2023 - Complete
NEW DATE and new 30-Day Council agenda sent out	5 Jan, 2024 - Complete
NEW DATE 15-Day Council agenda sent out	19 Jan, 2024
NEW DATE Special Council meeting to conclude this topic	6 Feb, 2024

This master document refers to the related documents required for Council's approval on Feb 6, 2024, and serves as the reference document for the Canadian incorporation of the IAA Secretariat as a Canadian NFP with the IAA (Swiss) as the sole member, which will have full control of the International Actuarial Association Services (IAA Services).

Appendix 1

Where does this situation come from?

The IAA Secretariat was formally created in 1997 by the Provisional Executive Committee of the “old IAA” (between 1968 and 1998), where the members were individual actuaries and where actuarial associations were part of a Section of the IAA called the IFAA: International Forum of Actuarial Associations.

The creation of the new IAA and its Secretariat stemmed from the Hans Bühlmann (Switzerland) report that drafted the Statutes and Internal Regulations of the “new” IAA as we know it today: an association of associations, where individual actuaries can contribute to the internal profession via IAA scientific Sections.

During the process of this report, a proposal to host the IAA Secretariat, including a requirement for the local FMA to oversee and support operational matters and specifically legal matters for an initial period of 5-years, was sent out to all member associations. Many bids were submitted to host the IAA Secretariat, notably from Belgium, Canada, France, the UK and the USA. The proposal that was selected was the one from the Canadian Institute of Actuaries (CIA).

When the Canadian Institute of Actuaries (CIA) was selected to host the IAA Secretariat in 1996, there were very few discussions about the legal format of the IAA. The initial intent was for the IAA to retain a legal format in Belgium. However, following initial assessments and discussions, the legal format that was agreed upon was: incorporating the IAA as a Swiss verein with a head office and Secretariat located in Canada, and supported by the Canadian Institute of Actuaries (CIA). Following the approval of the Hans Bühlmann report and related recommendations, the IAA Secretariat was created in 1997 and the first initial two staff members were hired to create this new support entity. Initially, the staff signed employment contracts directly with the CIA, the IAA was physically housed inside the CIA offices and most IT and software were shared services from the CIA.

- In 2007, all IAA staff (5 at the time) signed separate employment contracts directly with the IAA. The CIA at that time was concerned about having additional liabilities coming from the IAA Secretariat, notably legal responsibilities for staff that did not report to the CIA, but to the IAA Council, as well as liabilities from events and other IAA contracts. At this point in time, as the IAA was still largely dependent on the CIA for various matters; the legal format was not reassessed.
- In 2011, the growing IAA moved out of the CIA’s offices and into their own office space.
- Between 2011 and 2013, all shared service contracts with CIA were progressively replaced by standalone IAA contracts (server, IT systems, CRM, etc.)
- By 2013, the IAA was entirely self-sufficient and autonomous from the CIA.

Appendix 2: Examples of risks we are trying to mitigate

Example 1: The IAA tries to sue a contractor for breach of contract, for example an IT company for bad services for a contract of \$X. (the amount is irrelevant for the example).

1. The contract is under Canadian jurisdiction and subject to the Canadian court system.
2. The court case will be a Swiss verein operating in Canada suing a Canadian Company for breach of a contract under Canadian law.
3. With the Swiss verein format being unknown in Canadian courts, the burden of proof will play against the IAA: The IAA will need to convince a Canadian Court that it is a legitimate company. However, the IAA's operations are solely in Canada, yet it is not incorporated in Canada. It is incorporated in Switzerland where it does not have any activities. This is a highly unusual format for Canadian courts and will carry an important burden of proof.
4. The defence lawyers will easily dress the picture of a nebulous and mysterious Swiss Company treating a "pitiable" (poor little) Canadian company unfairly, emphasizing the prosecuting entity as not having a legitimate status in Canada, thus raise suspicion and doubt about the legitimacy of the IAA as a whole.
5. In Common law, the concept of reasonable doubt is a major hurdle for most lawsuits, especially where case laws are rare or simply nonexistent (no other vereine in Canada, so relevant cases that could be used to IAA advantage would be arguable at best).
6. The IAA would have little chances of winning such cases, plus incur all the legal costs.
7. Furthermore, losing a lawsuit could potentially lead to having to repay the reasonable legal costs of the winning defendant, thus the total cost in many cases would be prohibitive, versus the initial dollar amount of the contract.

Example 2: The IAA terminates the employment of a staff member and is sued for wrongful termination.

1. Same as above
2. The court case will be a Canadian worker suing a Swiss verein operating as a foreign corporation in Canada.
3. Same as above
4. The defence lawyers will easily dress the picture of a nebulous and mysterious Swiss Company treating a wretched Canadian worker unfairly, emphasizing the prosecuting entity as not having a legitimate status in Canada, thus raise suspicion and doubt about the legitimacy of the IAA as a whole.
5. Same as above
6. Same as above
7. Same as above, with the addition that for wrongful termination, the damages to be paid can amount to multiple years of salary, thus representing an important financial risk to the IAA.

Related considerations:

Costs

The duplicate time and cost to have both Canadian and Swiss lawyers for such case would be important, from the initial preparation work, coordination of representation and eventually in-court defense. Indirect costs would be the time and energy for the IAA President, Officers and EC as well as the direct and indirect impact on staff.

Reputational risk

The risk of having the IAA portrayed as an illegitimate dark/nebulous entity in courts could have even further ramifications for the reputation of the IAA as a whole, and have an important impact on its work with external entities, such as Supranational organizations, who can be very sensitive to such issues.

Risk classification

Whilst commercial differences do not happen frequently to an organization such as the IAA (low frequency), these can however carry high costs and have a significant impact on the organization (high severity).

Is this risk insurable?

No, the IAA's commercial general liability insurance, Directors and Officers insurance, Errors and Omissions insurance, or other insurance coverage do not cover such risks.

Are there remediation strategies available?

Yes, there are multiple listed in this document and the recommended option addresses most of this risk at a low implementation cost.

Conclusion

The IAA is simply not adequately set up to address issues that would lead to litigation in a Canadian court.

Appendix 3: Other legal options that were considered

Create a for-profit/shareholder company

The IAA has also considered the option of creating a for-profit/shareholder company.

Whilst this format is familiar with most actuaries, this format would subject the IAA to a new range of more complex financial and reporting requirements notably more stringent audit requirements and an important increase in Audit costs, as well as important initial costs to set up accounting and financial reporting with this new format.

This format also means that this new company would be subject to Canadian Corporate Taxes. The Combined corporate tax rate for a company operating in Ontario in 2023 is estimated at [26.5% according to EY](#).

Finally, this format also requires the IAA Services to include a minimum of 25% of Canadian board members. This would represent a notable change in the current IAA governance structure.

A detailed legal assessment was commissioned from the IAA's Canadian lawyers and is included below for completeness and transparency:

TO: M. Langelier, Executive Director, IAA

FROM: K. Pagé and D. Simard

RE: Key Differences between Not-For-Profit and For-Profit Corporations in Canada

FILE NO: IAAS-0003

DATE: November 1, 2023

ISSUE

You have requested clarification of the differences between a “for profit” corporation and a “not-for-profit” corporation in Canada, as the IAA considers what structure is most appropriate for the IAA Secretariat in Canada.

ANALYSIS

Basis for comparison	Not-For-Profit Corporation (“NFP”)	For Profit Corporation (“Corporations”)
Definition	A legal entity, which operates to serve the society.	A legal entity, which operates to earn profit for the owner.
Governing Legislation	<i>Canada Not-for-profit Corporations Act</i> (S.C. 2009, c. 23) (the “ CNCA ”)	<i>Canada Business Corporations Act</i> (R.S.C., 1985, c. C-44) (the “ CBCA ”)
Governance	Members	Shareholders

Duties of Members/Shareholders	They are the same (elect the directors, make fundamental changes to the articles of incorporation, etc.).	They are the same (elect the directors, make fundamental changes to the articles of incorporation, etc.).
Ownership	Members do not have an ownership stake in the NFP.	Shareholders hold ownership in the Corporation (shares, stocks, etc.).
Distribution of Profits	Any surplus is reinvested in the NFP's mission or used for operational expenses. This may be accomplished by way of a IAA Secretariat reserve fund, where any surplus may be deposited and which may then be used for such activities as may be directed by the Board from time to time.	Any surplus can be distributed to shareholders in the form of dividends.
Share Capital	No	Yes
Raising Capital	Donations, grants, and fees. Note: The NFP may accept donations and/or grants from IAA, the "parent corporation". The NFP may also charge fees for the services it provides though such would likely be subject to GST/HST.	Selling shares
Form of Organization	The operations of an NFP must be carried on without monetary gain to its participants.	Carries on business for monetary gain.
<i>Income Tax Act (ITA)</i>	NFPs can apply for tax-exempt status, which can provide them with exemptions from certain taxes, such as income tax. Donations made to NFPs may also be tax-deductible for donors.	Corporations are subject to corporate income tax on their profits. Shareholders may also be subject to individual income tax on dividends received.
Filing Information Returns under the <i>ITA</i>	All incorporated NFP organizations must file information returns (<i>ITA</i> , s. 149(12)).	Corporations are required to file income tax returns within six months of their year-end (<i>ITA</i> , s. 150(1)(a)).
Source Deductions and Other Tax Remittances	Directors may be potentially liable for failing to remit amounts to the CRA, such as source deductions pursuant to s. 227.1 of the <i>ITA</i> and GST pursuant to s. 323 of the <i>Excise Tax Act (ETA)</i> .	Directors may be potentially liable for failing to remit amounts to the CRA, such as source deductions pursuant to s. 227.1 of the <i>ITA</i> and GST pursuant to s. 323 of the <i>ETA</i> .
Liability for Unpaid Wages	Directors of NFPs are not liable for unpaid wages (<i>Employment Standards Act (ESA)</i> , s. 80(4)).	Directors of Corporations are jointly and severally liable with the Corporation for up to 6 months wages (including vacation pay up to

		12 months, holiday pay and overtime), but not termination pay and severance pay (ESA, s. 80-81).
Incorporation	NFPs are entitled to be incorporated upon the submission of articles of incorporation, any documents that may be required by the regulations under the applicable statute, and the requisite fee. Such NFPs are given the capacity rights, powers, and privileges of a natural person, subject to any limitation in the governing legislation. An NFP comes into existence on the date shown in the certificate of incorporation (CNCA, s. 10).	Incorporation under the CBCA is available as a matter of right and is accomplished by filing articles of incorporation in the form prescribed by the regulations with the appropriate government department, together with the required supporting material and fees. On receipt, a certificate of incorporation shall be issued (CBCA, s. 8). The Corporation comes into existence on the date shown in the certificate of incorporation (CBCA, s. 9).
Disclosure of Purpose on Incorporation	The questions to answer during the incorporation process are slightly different, because of the different statutes. NFPs must state what their purpose is.	Corporations do not have to indicate their business activity when they incorporate.
Board of Directors	There is a minimum of three (3) directors for soliciting NFPs* and one (1) director for non-soliciting NFPs. *An NFP is considered "soliciting" when it has received more than \$10,000 in income from public sources in a single financial year. Public sources include gifts or donations from non-members, grants from government and funds from another corporation that also received income from public sources.	The CBCA permits one (1) director to manage and supervise the affairs of the Corporation, unless the Corporation is an offering corporation* in which case it must have at least three (3) directors (CBCA, s. 102 hi(2)). *An offering corporation is a reporting issuer, meaning it is offering its securities to the public. A reporting issuer must follow the prospectus requirements.
Duties of Directors	Act in the best interest of the NFP by acting honestly and in good faith and by exercising the care, diligence, and skill that a reasonable prudent person would exercise (s.148(1)(a) and 148(1)(b) of the CNCA).	Act in the best interest of the Corporation by acting honestly and in good faith and by exercising the care, diligence, and skill that a reasonable prudent person would exercise (s. 122(1)(a) and 122(1)(b) of the CBCA).

Fiduciary Duty	Directors and officers owe a fiduciary duty to the NFP and its members and must act in good faith and with honesty in the best interests of the NFP above all else.	Directors and officers owe a fiduciary duty to the Corporation and to its shareholders and must place the interests of the Corporation above their own, avoid conflicts of interests between them and the Corporation, avoid exploiting their powers for personal gain if doing so does not coincide with the interests of the Corporation, and remain loyal, selfless, and honest in favour of the Corporation.
Shareholders/Members	Members are generally admitted into the NFP by a resolution passed by the directors. If the articles or by-laws so provide, membership may be divided into different classes such as honorary members, life members, and ordinary members. Different voting rights may attach to different classes of membership.	A person becomes a shareholder when shares are issued to him, her, or it (in the case of a corporation) in exchange for money paid, property transferred, or past services rendered to the Corporation.
Judicial Intervention	The courts have increasingly afforded judicial deference to directors in the context of NFPs.	There is more judicial intervention by the courts.
Reporting and Transparency	NFPs must file an annual return every year. Soliciting NFPs must also file financial statements and the public accountant's report every year.	Must comply with financial reporting requirements, but private corporations have fewer reporting obligations than NFPs regarding their use of funds for social or charitable purposes.
Bylaw Requirements	The requirements for what must be included in the bylaws are similar since the new CNCA. However, there are slight differences (ex: does not refer to shares or dividends).	The requirements for what must be included in the bylaws are similar since the new CNCA. However, there are slight differences (ex: mentions the obligation regarding the register of individuals with significant control).
Director Residency Requirements	There are no specific residency requirements.	Under the CBCA, at least twenty-five per cent (25%) of the directors of the Corporation shall be resident Canadians. If the Corporation has less than four directors, at least one director shall be a resident Canadian.

Appointing an auditor/ public accountant	<p>Designated corporations shall appoint a <u>public accountant</u> at each annual meeting (CNCA, s.181(1)). Members of a designated corporation* may resolve to appoint a public accountant if all members entitled to vote consent to the resolution (CNCA, s.182(1)).</p> <p>*A designated corporation is a) a soliciting corporation that has gross annual revenues for its last completed financial year that are equal to or less than \$50,000; and b) a non-soliciting corporation that has gross annual revenues for its last completed financial year that are equal to or less than \$1,000,000 (CNCA, s. 179).</p>	Corporations shall appoint an <u>auditor</u> at each annual meeting of shareholders. Only a Corporation that is a non-distributing corporation may resolve not to appoint an auditor (CBCA, s.162 and 163).
Dissolution	On dissolution, after the debts are paid, if the articles do not provide for the distribution of the property, the liquidator shall divide the remaining property into as many equal shares as there are memberships in the NFP and distribute one share to each member (CNCA, s. 236(2)).	On dissolution, after the debts are paid, the property of the Corporation is distributed to the shareholders, according to their share rights and the articles of the Corporation (CBCA, s. 221).
Naming of Corporation	NFPs do not have a legal ending, such as "Limited", "Limitée", or "Incorporated".	Corporations must have a legal ending such as "Limited", "Limitée", or "Incorporated".
Register of Individuals with Significant Control	NFPs do not have to keep such a register.	Under the CBCA, Corporations must have a register of individuals with significant control.

CONCLUSION

As previously mentioned, and as highlighted in the chart above, the not-for-profit corporation remains the preferable choice for IAA’s Canadian subsidiary. There are no substantial key differences between either type of corporation when looking at incorporating, filing, and reporting requirements. However, given the residency requirements, and for tax reasons (which should be further explored with an accountant/tax specialist), we believe it would be more beneficial to incorporate IAA’s Canadian subsidiary as a not-for-profit corporation.

Appendix 4: IAA tax expert review of NFP format



PARKER PRINS LEBANO
Chartered Professional Accountants
 Professional Corporation

MEMORANDUM

TO: Mathieu Langelier Executive Director, International Actuarial Association

FROM: Christine Prins

RE: Tax status of a for-profit and not-for-profit corporation

DATE: November 6, 2023

I am writing in response to the Perley-Robertson analysis of your proposed structure for the IAA Secretariat in Canada.

While your legal counsel has already effectively outlined the differences from many angles, you would like us to comment and expand specifically on the "Income tax Act" section of their analysis; I will also comment on the section following regarding the necessary filings.

Basis for comparison	NFP	Corporations
<i>As already noted: Income Tax Act (/TA)</i>	<i>NFP's can apply for tax-exempt status, which can provide them with exemptions from certain taxes, such as income tax.</i>	<i>Corporations are subject to corporate income tax on their profits.</i>
	<i>Donation.,; made to NFP's may also be tax-deductible for donors.</i>	<i>Shareholders may also be subject to individual income tax on dividends received.</i>
Tax-exempt status	In addition to meeting the "definition", the organization must ensure that NO part of its income is payable to, or available for, the personal benefit of a member or shareholder; assuming these criteria are met, the NFP would be Exempt for Canadian tax under ITA 149(1)(1).	For-profit corporations are fully taxable on their income based on corporate tax rates applicable to the activity (passive vs. active) and based on the jurisdiction in which it operates/is incorporated. De jure (% ownership) or de facto (circumstantial) control by non-residents of Canada could cause a higher tax rate and other tax implications when compared to a Canadian-Controlled Private Corporation (CCPC).

Treatment of donations	If revenue received is used for the goals set out for the social purposes, it would be treated as revenue by the NFP	Any revenue received is taxable to the company net of its expenses and would be deductible to the payor
	Membership fees/payments to the organization would be deductible to the payor.	Membership fees/payments to the organization would be deductible to the payor.
Filing requirements	If incorporated without share capital, would file an annual NIL T2 tax return as well as a T1044 Not For Profit Information return.	Annual T2 tax return would be filed and tax would be assessed accordingly.
Audit requirements	If incorporated under the federal Act, required only if gross annual revenue is greater than \$1million or as required through the by-laws if under threshold. If under Ontario's Act, required only if gross annual revenue is greater than \$500K; can elect to perform a review engagement instead if outlined in by-laws or as required by by-laws if under Threshold.	Not required for private companies - based on corporate by-laws
	(Note - aforementioned rules are different if organization receives government or public funding.)	

Please do not hesitate to let me know if you require further information or clarification on any of the aforementioned points.

Most certainly, if the criteria per the definition (i.e. to "serve society") are met AND there will not be any profit distribution to members or shareholders per above, the NFP designation would most certainly be preferable from a tax perspective.

Appendix 5: Other Countries and other options

Shut down the IAA Secretariat and start over “somewhere cheaper”

At least one FMA has asked if the option to shut down the IAA Secretariat and start over in another country has been assessed. Such assessment has been performed.

It has been assessed that:

- the risk of losing historical knowledge and established expertise with an organisation as complex as the IAA is significant and to proceed in this way would be detrimental to the organization, and
- the cost to sever IAA staff contracts would be significant: under Canadian labor laws, the IAA would need to offer lengthy employment severance notices or important payouts to staff before it would be allowed to close. Firing Canadian employees to source cheaper labor in other countries has brought forth important litigation proceedings and generated severe penalties in established court cases. This would be detrimental to the IAA and its reputation while creating significant financial risk to the IAA.

Finally, the option to relocate employees would also generate significant costs.

Incorporate the Secretariat in another country than Canada

The IAA has assessed the possibility of registering a new legal entity in another country while keeping its head office in Canada, see table further below.

The IAA has considered three other countries in which to incorporate its future subsidiary company: USA, South Africa and Singapore. The scope of the assessment was to determine if creating a new legal entity located in a country other than Canada, with the role of housing the incorporation of the IAA Secretariat, would yield benefits to the IAA.

All countries assessed have various advantages and disadvantages, yet some of the underlying fundamentals remain incorporating the IAA Secretariat in a country other than Canada would subject the IAA's operations to one additional jurisdiction, thus increasing the overall complexity of the IAA as well as its legal exposure.

This in turn would also lead to an increase in costs for any future litigation, as well as extra regulatory reporting requirements in a new country whereas these requirements would require the IAA to adopt and implements new reporting formats, new requiring yearly filings and extra time and costs.

As such, none of the three other countries have been retained as a better option than to create a Canadian not-for-profit entity to house the IAA Secretariat. This does not preclude the option of setting up other NFP (or similar as per local laws) in other countries that are under the control of the IAA Swiss and provide specific services as defined by Council.

Creating a new legal entity for the IAA Secretariat, multi-country comparison				
Characteristics/Country	USA	South Africa	Singapore	Canada
Reduces IAA's legal risk	No, exposes IAA to a 3rd jurisdiction			Yes, focusses legal risk in Canada
Increase efficiency	No, new exposure will require additional lawyers			Yes, as per above
Familiar legal format	Yes, common law albeit with a very different legal culture	No, mixed legal system of Roman Dutch civilian law, English common law, customary law and religious personal law	Yes, largely based on English common law	Yes, most IAA legal and employment contracts are already under Canadian law
Absence of new tax liabilities	Not for profits are not required to pay corporate taxes, however this would require additional tax fillings and compliance returns			Yes, IAA is considered a not-for-profit in Canada and as such is not subject to corporate taxation
Low cost to operate (outside of initial legal set-up costs)	Yes, low cost to incorporate a not-for-profit (generally less than \$2,000)			
Other elements to consider	Legal culture is not aligned with IAA's culture	Various economic and political challenges	Voluntary Welfare Organisations require a physical address (excludes P.O. Box)	Simplest and most efficient solution for IAA for the time being.

Appendix 6: Q&A from FMAs up to Nov 25, 2023

IAA response document to the questionnaire from FMAs received by Nov 25, 2023. The text from that document is in black, IAA responses are in blue.

Stance on “Canadian Incorporation of the IAA Secretariat”

We greatly appreciate the work done by some associations on compiling these questions and concerns as this is a constructive approach to take this project forward. We have included comments and responses per point in blue below and also incorporated additional information in the document to be circulated to Members as a result of some of these questions. Responses to the additional comment received is included implicitly in the attached.

1) Requests which have been confirmed by IAA Officers

- Membership fees will be paid to and owned by IAA Swiss (no change). IAA Services can facilitate the payment, but payment of fees must go to an IAA account.

The IAA Officers have agreed to this compromise of continuing fee payments to IAA Swiss. In our assessment, providing written assurance in the legal agreement (which will be called a Memorandum of Understanding) that the fees paid to IAA Services would remain the ownership of IAA Swiss, and be reflected as such in the financial statements, should suffice to address any Swiss legal requirements. However, as some FMAs are concerned that they may face other country specific or internal governance limitations in this regard, this compromise can be accepted to move this matter to a timely conclusion. We shall track and monitor the costs associated with this compromise and report on these to Council.

- No asset accrual in IAA Services

As discussed, it is not the intention to build up assets beyond an agreed buffer to ensure that operational expenses can be met. The Memorandum of Understanding will reflect this intention.

- There will be separate budgets for the two legal entities.

This is agreed.

No additional financial resources to IAA Services after budget approval, unless approved by Council.

Any additional expenditure requiring unbudgeted transfer of assets from IAA Swiss to IAA Services, will require Council approval.

- It has to be assured in the statutes of the IAA Services that adding any other members to the IAA Services has to be approved by IAA Swiss, i.e., a Council vote requiring an 80 % or more majority.

The intention is for the IAA Swiss to be the only member of IAA Services, and this is already present in the wording of the By-Laws of IAA Services that state:

“MEMBERSHIP IN THE CORPORATION

Membership Conditions. Subject to the Articles, there shall be one class of Member in the Corporation. The sole Member of the Corporation shall be the IAA. No other members shall be admitted to the Corporation without the consent of the IAA.”

- Service agreement contains financing of IAA Services, and budgeting process determined by Council.

This is agreed and that agreement will be called a Memorandum of Understanding

- FMAs expect a full package of documents for a Council decision (including all legal / tax aspects and contractual matters) no later than 10 working days before Council date (documents, not slides).

This is agreed. Documentation for Council decisions needs to be sent at least 15 days prior to the meeting per the IAA Statutes and we note and agree to the request that this is in the form of documentation rather than slides.

2) Additional requests

In the sequel, we are listing, on request of the IAA senior officers, the additional requests, we deem necessary for decent due diligence of members before a Council decision.

2a) Additional requests on documentation

Provide the "Master document" announced at 11:06 am during the SPC meeting. It should contain an outline of corporate structure (form, relations, flexibility in the event of changes in size, relocations and liquidation), cash flows between IAA Swiss and IAA Services and tax implications, governance, finances, service agreement, transparency agreement, cost implications and alternatives considered (and why the alternatives have not been pursued).

Our aim is to ensure that these points are covered. We will send the master document to FMAs by 04 December 2023, as per the communications sent on Friday 24 November.

2b) Additional requests on contracts/documents

- Formal service agreement regulating the planned transfer of services between IAA Swiss and IAA Services (e.g. service fee, limitation of liability, regulations in case of poor or non-fulfilment, ownership of the IAA trademarks, provision on the return of documents in the event of termination of the agreement)

The Memorandum of Understanding will cover most of these items.

Regulations in case of poor performance or non-fulfilment, are already listed in the IAA Internal Regulations under the new wording of “5.2 Management of the Secretariat”.

There is no intention to transfer IAA trademarks to IAA Services. The ownership of these trademarks will remain under the Swiss verein. The administrative matters related to trademarks will continue to be performed by the IAA Secretariat as part of its services to the IAA.

Under Canadian law in case of dissolution of IAA Services, the disposal of any documents, works and archives belonging to the IAA Services shall be determined by the “member”, that is, the IAA Swiss.

- Contractual document regulating the funding of IAA Services or the transfer of assets (e.g. compensation, ability of IAA Swiss to withdraw the assets from IAA Services, return of assets in the event of dissolution of IAA Services)

The master document will cover the budget and flow of funds including the buffer amount. All budgets will be subject to Council approval, as is currently the case.

Under Canadian law, in case of dissolution of IAA Services, the disposal of the available funds belonging to the IAA Services shall be determined by the “member”, that is, the IAA Swiss.

- Founding documents of IAA Services

The IAA Services By-laws and Articles of Incorporation (‘founding documents’) were provided to the SPC in October and will be included in the documents to be provided to Council.

- All those documents need to be included into the documents transferred to FMAs no later than 10 days before Council date.

This is agreed.

2c) Additional requests on governance

Conflicts of interests: To date, it is intended that the board of IAA Services shall include the same people as the Executive Committee of the IAA

- Please explain how conflicts between IAA Swiss and IAA Services are resolved if there are no EC members in IAA Swiss, that are not conflicted, and how the board of the IAA Services maintains the necessary knowledge on legal requirement in Canada.

It is not clear as to what conflicts are envisaged. Oversight of the Secretariat of the IAA is currently the responsibility of the EC. This will be preserved by making EC members the Board members of IAA Services. The EC reports to Council and this will remain the case. The updated IAA governance documents and the IAA Services by-laws will reflect that the EC members are accountable to IAA Council, in both their capacity as members of EC and as members of the IAA Services Board. Council retains the authority to appoint and remove EC members, and accordingly this also applies to the Board members of IAA Services.

The EC is currently responsible for the Secretariat headquartered in Canada. The Secretariat is subject to Canadian legal requirements. Legal input is sought when required.

- Has an alternative structure of e.g. 3 EC member of the IAA Swiss and one external board member providing the board with the necessary expertise in Canadian legal requirements, been considered? Such a structure might be more robust in case of conflicts of interest.

Yes, alternative structures have been assessed and such alternative have been rejected in order to ensure governance alignment between the 2 entities and to avoid having 2 classes of EC members with varying responsibilities. The clear intention of the proposed structure is to preserve the IAA governance framework and set up an operational structure that will manage legal risk. Introducing an external party, with authority over IAA assets and operations, raises the risk of conflicts of interest since that party would not be accountable to Council and the IAA FMAs.

- EC of IAA Swiss should be at least a 70% majority in directors of the IAA Services.

The EC of IAA Swiss will be 100% of the Directors of the IAA Services.

- Governance proposals:

- The effective management of IAA Swiss and IAA Services must not be performed by the same person.

The new structure will not change the effective management function of the IAA. The IAA is managed by the EC as per IAA Statutes Article 16. The IAA Secretariat is managed by an Executive Director as per the IAA Internal regulations section V. There are no proposed changes to any EC related articles in the IAA Statues or sections in Internal Regulations. The proposed changes focus only on incorporating the IAA Secretariat as IAA Services. Thus, both entities will continue to be managed by different persons as is presently the case.

The President assisted by the Officers will continue to be responsible for the strategic mission of the IAA Swiss as agreed upon by Council, as well as Governance, membership and stakeholder matters.

- The role of SPC in relation to the IAA Services must be defined.

There is no change in the role of SPC. The role of the SPC is as an advisor to Council, as per the IAA Internal regulations section 4.2.

- The IAA Audit and Risk Committee has to serve as member of the same committee in the IAA Services.

The role of the Audit and Finance Committee of the IAA remains unchanged, as per the IAA Internal regulations Section 4.3. The Audit and Finance Committee's purpose, as defined under IAA Statutes Article 18, also remains unchanged. The IAA Audit and Finance Committee will oversee *all* IAA assets and activities, including those of IAA Services.

- The auditor, who has been consulting on the establishment of the IAA Services should not be auditing IAA Services in the first periods of audit. Moreover, the audit of IAA Swiss and IAA Services should be performed out of the Swiss and Canadian representations of the same audit firm.

The IAA (Swiss Verein) is currently audited under Canadian standards and rules as it is headquartered in Canada. The Swiss Verein has no operations in Switzerland, hence it does not need to be audited in Switzerland. The addition of IAA Services intends for this process to remain unchanged with both entities to be audited by the Council approved audit firm, under Canadian standards and regulations. There is no intention, nor any requirement to incur additional cost and complexity by using two auditors. When entities are part of the same group, it is customary to use one single firm to ensure an effective audit.

2d) Additional requests on finance

• Assets/liabilities:

- Only 3 months of expenses need to be transferred in advance in net assets to meet unexpected events. No need to transfer more financial assets beyond.

The yearly level of assets required to meet unexpected events is expected to change annually based on the varied timing of IAA meetings as well as Section expenses. Thus, the yearly expenses and required buffer will be included in the yearly budget recommendation from EC to Council. This is expected to be within a range of 20-35% of annual expenditures.

- Real, nonfinancial assets transferred from IAA Swiss to IAA Services, (e.g. IT equipment) is matched by a claim of IAA Swiss on IAA Services

Yes, and the specific terminology will be provided by the lawyers.

- Review of the liabilities of IAA Swiss to check which remain with IAA Swiss and which go to IAA Services

IAA Services will carry all administrative and operational responsibility. Governance, strategy, membership and stakeholder matters remain with IAA Swiss.

- **Service fee:**

- Payment of a quarterly fee from IAA Swiss to IAA Services, in line with the budget but adapted to the reality of expenses. All payment must be structured in a tax-efficient, i.e., not taxable manner.

The administrative details of the fee transfers (timing, number of invoices, the bank accounts, currency and so on) will be determined by the EC subject to the budget that has been approved by Council.

As previously presented to Council and the SPC, the approach to have membership fees deposited to IAA Swiss accounts requires that the invoices from IAA Services to IAA Swiss be subject to HST (Canadian Services and sales tax). The HST will then need to be recuperated via additional tax fillings, claims and reconciliations as part of the administrative work done under IAA Services. It is expected the net tax will be zero, but additional operational costs will be incurred.

- In case of net profit, the service fee of the next year will be reduced accordingly.

The determination of the yearly service fee will be aligned with yearly budgets and include any required adjustments to meet Council approved expenses and the required annual buffer. All of this will be subject to Council approval.

2f) Additional requests on transparency

Ensuring transparency through appropriate reporting obligations of IAA Services to IAA Swiss

- What is exactly the problem to be resolved? Why does the proposal resolve this?

The problem statement is mainly associated with legal risks related to the lack of incorporation of the IAA in Canada, where the IAA has its operations and most of its legal risk. Under the current structure, any legal matters would need to be dealt with under two jurisdictions. This jurisdictional uncertainty adds additional legal cost and risk. This will be addressed by the master document currently under preparation.

- The existence of the Swiss association could undoubtedly be proven with an entry in the commercial register. Has such an entry of the IAA Swiss in the Swiss commercial register been considered?

This approach has been considered. It has been determined that this approach would not address the IAA legal risk related to its Canadian operations (and would create additional reporting costs for no added benefit). Thus, it is not a solution to the problem at hand.

- How can a Canadian NFP prove that it is “serving the society”?

As long as IAA Services operates with a purpose apart from generating profit, which is the ethos of the IAA, it meets the definition of a non-profit organisation as per Canadian law.

Quote from IAA’s Canadian lawyers:

“NFP Corporations are organizations that are formed for purposes other than to make profits and that provide services to improve or benefit a community. The status of a NFP is inherent to the corporation and not a status that can be lost. As a corporation governed under the Canada Not-for-Profit Corporations Act, a corporation shall not carry on any activities or exercise any power in a manner contrary to its Articles of Incorporation. It must also comply with the statutory requirements as set out in the Canada Not-for-Profit Corporations Act.”

- What happens if this status will be lost in the future?

See lawyer’s answer above.

- Is there a legal or tax risk based on IAA Swiss being the sole member of IAA Services by “not serving the society” as a NFP organisation?

No, as described above.

- Do you have example of such a NFP servicing entity in Canada?

Such information is not public. The IAA’s Canadian lawyers recommended this approach as a proven approach that complies with Canadian laws.

- How is the Secretariat treated by the Canadian tax authority to-date?

The IAA is currently treated as a Canadian not-for-profit for tax purposes, as its ethos follows that of the non-profit organization definition.

- Which are the costs of restructuring? What recurring costs will arise in future?

Legal and restructuring costs for the incorporation will be around \$50,000. This cost will not recur. The associated benefit is the reduction in future legal costs for possible litigation matters that could largely exceed this amount for even a single event. Legal costs for a trial could amount to tens of thousands of dollars and the mere pre-court analysis for legal matters can easily surpass \$20,000.

The cost associated with extra administrative work and bank accounts due to fees being paid to the IAA Swiss will be compiled over year 1 of operation and communicated to Council in all transparency. It is further expected that the yearly additional audit costs for this fee payment format will be between \$5,000-\$10,000

Notwithstanding of the fee payment format, the yearly incorporation filing and legal costs for standard reporting are estimated between \$1,000-\$2,000.

- What are the core implications of the new plans for the Sections?

The new structure will have no change in services to IAA Sections. IAA Sections are internal divisions of the IAA as per article 22 of the IAA statutes. As such, Sections are supported by the IAA Secretariat. This will not change under the new structure. This has been discussed with Section leaders during the October 2023 Sections leaders meeting.

- In which document is the planned corporate structure of legal bodies in Switzerland and Canada described (with respect to e.g.: old-age provision in IAA Swiss and IAA Services, recall conditions of Directors at Large and CEO of IAA Services, Liabilities D&O in IAA Services, salary structure)?

- The master document provides the details of the proposed corporate structure and relationship between IAA Swiss and IAA Services. The IAA has no current operations in Switzerland. The proposed new structure will not change the IAA's legal incorporation as a Swiss Verein.
- There are no old-age provisions in IAA Swiss.
- Regarding pension benefits, the IAA remits employer contributions to staff's self-administered individual pension plans via the IAA's benefits provider, as per employment contracts and under Canadian Employment Standards Act.
- Recall conditions of Directors at large are defined in the IAA Services by-laws.
- There is no CEO of IAA Services.
- The management function and duties of IAA's Executive Director is not intended to change with the new structure.
- D&O insurance will be extended from the current coverage in order to also cover IAA Services.
- The IAA staff salary structure remains unchanged and the process for salary reviews also remains unchanged.

- What is the planned decision tree (EC first, then SPC and Council)?

The decision tree will remain unchanged from current established processes and the roles of EC and SPC which are defined in the IAA Internal Regulations. Council remains the ultimate decision body of the IAA and as the sole 'member' of IAA Services, Council will have full control over it.

- Which motions on the topic should be approved by simple majority and which ones require absolute or rather four-fifth majority?

The list of detailed motions and each required majority will be presented in the 30-day Council agenda.

- Council will in the future only have an indirect competency to steer and control the secretariat - as the governing entity of a member of the IAA Services instead as the governing entity of the Secretariat. How do we address this?

The IAA will be the sole "member" of IAA Services. As such, the Council will directly elect the Board of Directors and give direction to IAA Services. This exactly mirrors the current format of Council electing EC members and EC having oversight of the Secretariat, meaning that the current practice effectively remains unchanged. Thus, Council will continue to have the same ultimate authority with regards to the IAA Secretariat as it has currently. The direct management will

remain under EC. As the EC will be the same people as for the Board of Directors of IAA Services, this will ensure governance and direction alignment.

4) Decision process and establishment process requirements

Once a 30-day or 15-day Council Agenda has been circulated, no changes should be done after this to provide time for FMAs to review the IAA proposal against domestic law and association requirements, get approval from their Boards and potentially consent from their membership too. Given this, meeting a decision this year deems very challenging.

Moreover, a good governance and compliance standards demands that a decision should be carefully prepared and ideally met only next year.

A detailed schedule has been sent to Council in alignment with this concern. The Officers are of the view that this matter needs to reach a timely resolution to ensure that the IAA can move forward with an operational structure that has been regularised to manage potential legal and other risks.

Appendix 7: Response letter to letter from CAA on Dec 18, 2023

Response letter to Caribbean Actuarial Association (CAA) letter from December 18, 2023: [CAA Comments on Master document regarding the Canadian Incorporation of the IAA Secretariat](#)

Dear CAA, thank you for your continued engagement on this important topic and for your clear support as presented in the preamble to your letter, this is very positive.

For the purpose of this letter our responses will focus on substantive elements only and not cover comments on grammar, typos and other elements of detail although those were received with thanks.

The questions from the CAA's letter are italicized and the IAA Officer's answers are immediately below each question/comment.

1) *Services By-Law*

c. i. You mention *"it would be useful to observe the meeting"* of the IAA Services annual meeting of member. The decisions regarding the IAA Services will be done during the IAA Council via a series of motions, thus anyone sitting at the IAA Council will in fact participate in the decisions regarding the IAA Services.

c. ii. *"confirm there is no additional Directors & officers cost for the proposed new arrangements"*

Both IAA Swiss and IAA Services will have their own D&O (Directors and Officers) and E&O (Error and Omission) insurances as they are two separate legal entities. Our current cost for these two insurances are roughly \$20,000/year. As both entities will be under one group/family of business we expect to be able to get a bit of savings for the joint products, but the current estimate is this will cost roughly the same amount of roughly \$20,000/year for this insurance coverage. This additional cost has been considered in the cost-benefit analysis of establishing the entity to address risks.

d. *Form 4001, Articles*

i. *Are the numbers 5-11 to be fixed?*

Yes, it will mirror the EC composition.

ii. *Who will the Incorporators be?*

The incorporators will be the 3 IAA Officers and one EC member.

2) *IAA Services MOU*

3.2 Are there Pro Forma 2024 Budgets for review by Council prior to approval?

The 2024 budget has already been approved by Council, the new format will split the same numbers between the 2 entities and this document will be presented as part of the 15-day Council agenda related to this matter.

3.2 How much will HST be?

HST in Ontario is 13% and applies to services rendered and Not-for-profit organizations can claim these taxes back as part of their normal input tax credit for services incurred.

5.1, What Intellectual Property Rights (IPRs) currently exist?

The IAA has numerous IP rights (sometimes exclusive/restricted, sometimes non-exclusive/non-restricted) to all documents, research and presentations under the IAA brand, plus the IAA brand itself which includes all such Section content as IAA Sections are internal divisions of the IAA.

7: What situations could lead to Dispute between Services and IAA?

We do not have a list of potential disputes and in the EC's perspective there would be no such problems based on the proposed governance structure, however this was specifically requested by at least one FMA, thus its inclusion in this document.

g. Schedule A

These are elements that are already present in other IAA governance documents.

i. The IAA is bilingual. Should documents be prepared in French as well as English prior to approval?

Governance documents are always translated once the formal English ones have been approved to avoid having to make changes to multiple language documents if changes are required and avoid the related duplicate costs. As such these documents always include a note mentioning that in case of terminology/language discrepancies, the English version takes precedent.

ii. B5a Records: what about Section Records?

IAA Sections are internal divisions of the IAA and as such all Section records are a subset of the IAA records.

iii. B5a ii: how do Sections communicate directly with Members? All IAA Communications are done via the IAA Secretariat. There is no change as to the current wording which is included in the IAA Internal Regulations.

iv. B6b: Is the omissions of Sections intentional and agreeable to Section Leaders?

See previous answer.

3) P6. Background

A. The Description in Appendix 1 stops at 2013. What happened from 2013 until now?

This specific note is about the history of how the IAA was created. Post 2013 the IAA has been operating independently from the CIA, thus operational matters are IAA proper.

b. Which Swiss law firm does the IAA use?

The IAA uses mainly Wenger Vieli but has used other firms as well in the past.

4) P.7 a. SPC 2nd paragraph ii. Are SPC members appointed by Council or by lottery?

Council delegates the appointment of SPC members via the SPC protocol. The self-nomination lottery is the tool used to implement the SPC protocol as approved by Council.

- 5) *P.9 the proposed structure does not change the "lack of formal Swiss Legal documentation"*
The lack of formal Swiss documentation has very limited impact to the IAA's legal risk in Canada. Vereins are unknown in Canadian courts, thus having an unknown undocumented entity or an unknown entity printed on a paper with the logo of a foreign country using a different legal system doesn't address the legal risk and risk mitigation strategy for the IAA.
- 6) *P.9 Graphic: "seamless to most (emphasis added) IAA volunteers" Question: for which IAA volunteers is this not seamless?*
Outside of the Council delegates and statutory committee members, it is our experience that most IAA volunteers have at best a vague idea of the legal structure of the IAA. Thus, this change is not expected to have a significant impact on most IAA volunteers.
- 7) *P.12 Graphic: which volunteers will see a change, and what change(s) will they see?*
As per the answers above, Council members will have a new set of motions to account for IAA Services and also see a new format for the yearly budget. EC and Audit and Finance Committee members will also see some limited impacts, notably duplication of motions and new documents splitting elements like financials between the 2 entities. It is expected this change will be seamless to most IAA volunteers.
- 8) *P 13 What will be the role of the EC?*
a. Is it possible for EC members to have real or perceived Conflicts of interest (particularly members from Canada or Switzerland)?
The EC has discussed this and does not see conflicts of interest as the ultimate decision-making entity remains Council and both IAA entities take direction from the IAA Council and are part of the same family of entities and hence interests are aligned.
b. What will the additional D&O cost be?
As presented earlier in this document this is expected to be roughly the same as the current fee of \$20,000 per year, this includes both the D&O (Directors and Officers) and E&O (Error and Omission) insurances.
- 9) *p 14 For completeness, it would be useful to summarize the concerns.*
Our understanding of the concerns raised by a limited number of European FMAs is that their local laws and/or regulations (internal in some cases) prohibit them from paying membership fees to an entity of which they are not directly a member.
- 10) *p 15 a. Pro Forma financials will be helpful information to help Council make a good decision.* Financials forecast and the new budget format will be included in the 15-day Council agenda.

Appendix 8: Lawyer's note on Memorandum of Understanding vs. agreement



PERLEY-ROBERTSON, HILL & McDOUGALL LLP/s.r.l.

Lawyers / Patent & Trade-Mark Agents **MEMORANDUM**
Avocats / Agents de brevets et de marques de commerce

TO: The International Actuarial Association

FROM: Perley-Robertson, Hill & McDougall

RE: Memorandum of Understanding vs. Agreements

FILE NO: IAAS-0003

DATE: December 22, 2023

ISSUE

You have asked us to review Canadian law and jurisprudence to highlight the differences between a memorandum of understanding (an “**MOU**”) and a regular agreement or contract between parties. More specifically, whether MOUs are binding to the same extent as a regular contract. This memorandum will first explain how to form a binding contract in Canada, followed by an overview of the formation of MOUs.

ANALYSIS

a) Contracts / Agreements

Contract law clearly states that, generally, for a contract to be binding, there must be an offer, an acceptance, a consideration, and an intention to create legal relations. Without one of these items, an agreement between parties will not be binding nor enforceable.

In bilateral contracts, an acceptance of an offer usually occurs when the offeree communicates a counter-promise to the offeror¹. In contrast, in a unilateral contract, one party makes a promise in return for the performance or non-performance of an act². The acceptance must be made according to the deadline provided by the offeror. If there is no specified deadline, the offer will expire in a reasonable time, depending on the subject-matter of the contract³.

Furthermore, for there to be consideration, there must be “some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other”⁴. More specifically, other forms of benefits to the promisor may constitute consideration, and any liability, financial detriment, risk assumed, disadvantage experienced or change of legal status by the promisee will constitute consideration⁵. There is no requirement that an exchange of money be present for there to be consideration.

Finally, a contract can only come into existence if there is an intention to make a legally binding agreement. Consequently, if the parties do not intend that their agreement give rise to a legal relation and prefer to rely on mutual good faith, no enforceable contract will result⁶. When determining whether an agreement is binding, the courts would examine the conduct of the parties to see if they intended their arrangement to have legal consequences⁷.

b) MOUs

¹ Warren H.O. Mueller and D. Morgan, “Necessity for Offer and Acceptance” (January 2023), online: *Thomson Reuters Westlaw Edge Canada* <[nextcanada.westlaw.com/Document/I7609a03ef21511ec8adc8812d170e011/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)>](https://nextcanada.westlaw.com/Document/I7609a03ef21511ec8adc8812d170e011/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)>).

² *Ibid.*

³ Practical Law Canada Law Department, “Contract Basics: Contract Formation and Enforcement: Presentation Materials” (2023), online: *Thomson Reuters Practical Law* <[ca.practicallaw.thomsonreuters.com/Document/Ica836c35d02811e9adfea82903531a62/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)>](https://ca.practicallaw.thomsonreuters.com/Document/Ica836c35d02811e9adfea82903531a62/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)>).

⁴ Warren H.O. Mueller and D. Morgan, “Nature of Consideration” (January 2023), online: *Thomson Reuters Westlaw Edge Canada* <[nextcanada.westlaw.com/Document/I7609a068f21511ec8adc8812d170e011/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)>](https://nextcanada.westlaw.com/Document/I7609a068f21511ec8adc8812d170e011/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)>).

⁵ *Ibid.*

⁶ Warren H.O. Mueller and D. Morgan, “Intention to Create Legal Obligations” (January 2023), online: *Thomson Reuters Westlaw Edge Canada* <[nextcanada.westlaw.com/Document/I7609a038f21511ec8adc8812d170e011/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)>](https://nextcanada.westlaw.com/Document/I7609a038f21511ec8adc8812d170e011/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)>).

⁷ *Ibid.*

There are different types of preliminary agreements, such as a term sheet, a letter of intent and an MOU. MOUs are more definitive when compared to a letter of intent and they have a contract-style format, which makes them more similar to a binding contract⁸.

An MOU can be completely binding, by not having non-binding provisions⁹. This is often the case where deal certainty is considered extremely important and in more simple commercial transactions where the parties do not want to formalize their deal with a detailed contract¹⁰.

In order for an MOU to be binding, it is crucial for the parties to manifest their intent to be bound by the MOU. The most significant factor that the courts will consider when determining whether an MOU is binding or not binding is the language used by the parties¹¹. Therefore, the MOU will be binding as long as the parties clearly state their intention to be bound by the provisions of the MOU. As best practice, language such as “shall be” should be used in the MOU to create the intended obligations¹².

For instance, the MOU between International Actuarial Association (“**IAA**”) and International Actuarial Association Services (“**IAA Services**”) clearly states the intention of the parties to create a binding agreement, notably by adding wording such as “8.1 this MoU shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein”. Since the intention of the parties is for their agreement to be governed by laws, and since the MOU does not include any non-binding provisions, the MOU is as binding as any other agreement.

c) Recommendation

The management and operations of IAA Services will be governed by the Board of Directors, all of whom will be elected by IAA in accordance with the By-Laws of IAA Services. More importantly, IAA Services will have the roles assigned to it by its sole member, the IAA. As the Board of Directors and the sole member will be responsible for governing the role and responsibilities of IAA Services, it is our view that the MOU provides flexibility and allows the parties to efficiently define the terms and conditions of their transactions.

⁸ Practical Law Canada Law Department, “Contract Basics: Term Sheets, Letters of Intent and Memorandums of Understanding: Presentation Materials” (2023), online: *Thomson Reuters Practical Law* <[ca.practicallaw.thomsonreuters.com/Document/I40832cb920c311eaadfea82903531a62/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Search\)>](https://ca.practicallaw.thomsonreuters.com/Document/I40832cb920c311eaadfea82903531a62/View/FullText.html?transitionType=SearchItem&contextData=(sc.Search)>) [*Term Sheets*].

⁹ *Term Sheets*, *supra* note 9.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

In our view, the key benefit in moving forward with a MOU is that it provides the flexibility to efficiently define the contractual terms among the two related entities.

CONCLUSION

In brief, an MOU could be as binding as any other contract or agreement, providing that this is the intention of the parties to the agreement. Thus, if the parties prefer to use an MOU to structure their arrangement, it is crucial to specify whether all of the MOU or only specific provisions of the MOU are binding to both parties. This will ensure that there are no ambiguities in the case where a third party would have to interpret the agreement.

As noted above, IAA Services will have only the role assigned to it by IAA. Given this, the role and the responsibilities of IAA Services are set out in a document contractual in nature between the two entities. We recommend that the relationship be subject to a MOU that contains binding provisions, so the parameters are clear among the two entities.

Appendix 9: Clarification letter from IAA Auditors on HST & Audit



PARKER PRINS LEBANO
Chartered Professional Accountants
Professional Corporation

December 19, 2023
International Actuarial
Association 1203 - 99 Metcalfe
Ottawa, Ontario
K1P L7
Attention: Carol Ann Banks, Director-Operations and Finance

Re: IAA Services and IAA Swiss HST relations and audit reports and fees

Dear Ms. Banks and Members,

As requested, please find below some information pertaining to the HST relations between IAA Services and IAA Swiss, as well as expectations of audit report presentations and change in audit fees.

HST ISSUES

We have been informed that the intent is for IAA Swiss to pursue carrying on business in Canada based on certain case facts including the location of its books and records, location of its headquarter and location of its capital assets. As such, it can be registered for HST providing zero-rated services (exports). This would then allow IAA Swiss to continue claiming input tax credits - in this case the HST paid on the IAA Service invoice. While IAA Services would employ the staff, maintain the business records and effectively "run" the operations, IAA Swiss would maintain the assets and Canadian business address which should be a sufficient link to Canada. As the intent is for IAA Swiss to continue to operate as a Not-for-profit from a Canadian tax perspective, IAA Swiss would also be able to claim an input tax credit on this service expense.

Based on the document previously provided, it appears as though the IAA Board has settled on Option 2 whereby IAA Services acts as an agent only on behalf of IAA Swiss. In this particular case, the invoices to the FMA's are from IAA Swiss and the funds are collected by IAA Swiss with IAA Services simply acting as the administrative entity issuing them. As the intent is for IAA Swiss to continue to be registered and carry on a business in Canada for tax purposes, this activity would be considered an "exported service" which is zero-rated for HST purposes meaning no HST would be charged to FMA members. As IAA Swiss is a member of IAA Services (the only member), I am assuming that the invoicing between IAA Services and IAA Swiss is solely for services rendered, which would be subject to HST as a registrant carrying on business in Canada. Based on this understanding and scenario, HST would apply to the fee charged between the two entities resulting in IAA Services charging HST to IAA Swiss. Clearly in this scenario, IAA Services should be registered for HST and able to claim an input tax credit on all expenses incurred net of the HST charged to IAA Swiss.

Fortunately, the risk of IAA Swiss not carrying on a business in Canada is opposingly twofold; either it is charged HST and can claim it back OR it is considered a foreign entity and not charged HST in the first place.

AUDIT ISSUES

For audit purposes, IAA Services would be considered a subsidiary of IAA Swiss, as IAA Swiss would exercise control over IAA Services via common Board control. Following this, we would have to consolidate the two organizations in IAA Swiss' financials. Often, to look at the two organizations separately, we also issue separate audited financials for each independent organization. If IAA Services is only a consolidated entity, we need not issue a separate audit report - only audit to the extent it affects IAA Swiss' books via consolidation. IAA Swiss financials would indicate 'consolidated' or 'unconsolidated' throughout the report and financials, as applicable; IAA Services financials would be presented as 'unconsolidated'. The audit reports would be similar to that of IAA issued previously; however, consolidated/unconsolidated terminology would be incorporated, along with various disclosure requirements. I am assuming both entities will require both consolidated and non-consolidated financial statements.

It appears the first audit required for IAA Services and IAA Swiss will be December 31, 2024. When comparing to the previous audit quotes, essentially IAA Swiss would carry the revenue items and IAA Services the expenses, with some exceptions.

For the 2024 year end, our base fee is expected to be approximately \$20,000 plus HST (with any necessary write-ups for additional time/transactions not included in this analysis). Due to some economies of scale and assuming we can audit the two entities simultaneously, I would anticipate a one-time additional fee of \$3,000 plus HST to set up the various financial statements and accounting templates and an incremental on-going fee of approximately \$10,000 for duplication of the various file documentation necessary and additional inter-entity transactions. In other words, assuming no unanticipated issues, the fees to provide both audits on an annual basis would be approximately \$30,000 plus HST with an additional \$3,000 plus HST in year one; of course, this fee would be adjusted annually for inflation. Because these audits would occur in our busy season, we would not be able to offer any discounted work and any additional time for unanticipated work (i.e. new programs, change of investment advisor, bookkeeping work necessary to get to audit stage, etc.) would be billed separately.

I would most certainly suggest aligning both year ends at December 31st to ease with reporting.

I appreciate the opportunity to be of service to you and during this venture. Please do not hesitate to contact me should you require clarification or have any further questions.

Sincerely,

Christine Prins, CPA, CA, TEP

Licensed Public Accountant
Partner

Appendix 10: feedback from FMA engagements post Jan 5, 2024

Elements related to the annual budget

The annual budget of IAA Services shall be presented with a \$0 surplus or deficit.

The Chair of the Audit and Finance Committee will be asked to report to Council on the following elements:

- the main variances to budget of the previous year for IAA Services &
- the uses of the 25% buffer for unexpected events

Clarifications regarding the asset transfer on April 1, 2024

IAA Services will be transferred cash in order for it to purchase assets from IAA including Inventories which are actual physical IAA books that are stored with the publisher (roughly \$46,000) as well as capital assets notably computer equipment, software as well as office furniture (roughly \$23,000).

Clarifications regarding assets within IAA Services in case Council opts to close it down

In the case where Council wishes to close IAA Services, this would happen over a certain period of time during which a transition plan would be created to ensure services to Council under a different format. This plan would also include a phased draw down of assets within IAA Services until there would be no more financial assets left. Whatever capital assets such as IT hardware/software and inventories would also be included in such plan. The transition towards another service model would be a carefully planned process approved by Council and implemented by EC.

Clarifications regarding the required majority for each motion

The list of motions presented follows established IAA governance hierarchy. Although different majorities are required notably to the MOU, the intent is for the entire package of motions to be approved by majority exceeding 80%.

Specific concern about the 50% for the MOU

As most of the elements of governance in this document relate to the IAA Internal Regulations, notably the new articles 5.2, 5.4, 5.4, 5.6 & 5.7, any changes to these elements would require changes to the Internal Regulations itself, which required two thirds majority Council approval.

Changes to the Master Document

Changes on the Dec 22 version:

- Changed date on cover to Dec 22 (not highlighted)
- Corrected typos on p. 4 & p.7
- Added summary of concern on p.14 as requested in the letter in the new Appendix 7
- Added new Appendix 7
- Updated table of contents

Changes on the Jan 5, 2024 version:

- Added Appendix 8 & 9
- Updated table of contents
- Updated list of documents to approve to match Council agenda and new date

Changes on the Jan 19 version:

- New date on the document's cover
- Updated table of contents
- P.4 Added this clarification on the budget of IAA Services: "this budget will be presented with a \$0 balance/no surplus or deficit" and "and include the main variances between budget and actuals"
- P.4 Added this clarification under Assets: "The use of this reserve will be presented to Council as part of the Audit and Finance Committee report to Council."
- P.4 & p.15 Clarified under Assets: "A small amount of Cash will be granted to IAA Services for its purchase of fixed assets (notably IT and hardware) and inventory from IAA."
- P.5 links in the documents to approve were updated with the latest documents.
- P. 15 Conclusion: The timing and schedule of next steps in the conclusion was updated with the Feb 6, 2024 date and updated table.
- Added Appendix 10