



Arbitration CAS 2012/A/2982 Emirates Football Club Company L.L.C v. UAE Ajman Cultural and Sports Club, award of 8 May 2014

Panel: Mr Patrick Lafranchi (Switzerland), Sole Arbitrator

Football

Training compensation

Self-executing character of Art. 67 of the FIFA Statutes

It is only with the implementation by the individual confederations of the FIFA statutes into their individual statutes, that the CAS can be held to have jurisdiction. The FIFA rules do not constitute *per se* a basis for arbitration. Instead, they constitute an instruction to introduce a regulation providing for CAS arbitration. Furthermore, such provision of the FIFA Statutes does not by itself grant jurisdiction to CAS with respect to decisions passed by confederations, members or leagues. In a nutshell, today's Art. 67 para. 1 of the FIFA Statutes is not directly applicable as far as decisions passed by a confederation, member or league is concerned. In order that such a decision can be appealed with the CAS the Statutes or Regulations of the concerned FIFA member, respectively its sections, need to contain a clause transforming Art. 67 para. 1 of the FIFA Statutes into a "national" regulation.

1. BACKGROUND

1.1 The Parties

1. The Emirates Football Club Company L.L.C ("Emirates" or the "Appellant") is a United Arab football club with seat in the city of Ras al-Khaimah in the United Arab Emirates. It is a member of the United Arab Emirates Football Association.
2. The UAE Ajman Cultural and Sports Club (the "UAE Ajman" or the "Respondent") is also a United Arab football club, with seat in the city of Ajman in the United Arab Emirates. It is a member of the United Arab Emirates Football Association.
3. The United Arab Emirates Football Association (the "UAE FA") is a member of the Fédération Internationale de Football Association ("FIFA"). The FIFA is the world governing body of football and exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players. FIFA is an association under Swiss law and has its headquarters in Zurich, Switzerland.

1.2 The Dispute between the Parties

1.2.1 Factual Context of the Dispute

4. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written submissions.
5. The player Abdullah Sa'eed Tawash, born on the 20 October 1990, started playing for UAE Ajman Cultural and Sports Club at the age of twelve.
6. On 1 September 2008, at the age of 17, Abdullah Sa'eed Tawash signed his first professional contract with the UAE Ajman Cultural and Sports Club. The player himself and his father signed the contract.
7. Another contract between the same parties named "*contract for a professional football player (Emirati)*" was signed on 1 July 2009.
8. For the season 2009/2010 Abdullah Sa'eed Tawash was registered in the sports season's list of Ajman. The contract was terminated on 9 June 2010 by mutual consent.
9. Emirates contracted Abdullah Sa'eed Tawash on 5 August 2010.
10. In the present proceeding, it is in particular questionable if Emirates owes Ajman a training compensation for contracting the player Abdullah Sa'eed Tawash.

1.2.2. Decision of the Dispute Resolution Chamber of the UAE

11. On 1 May 2012 the Dispute Resolution Chamber of the United Arab Emirates Football Association (the "DRC") issued a decision (the "DRC Decision") holding amongst others that:
 1. *The player Abdullah Sa'eed Tawash signed his contract with Emirates on 5 August 2010. Emirates registered Abdullah Sa'eed Tawash in its sports season's list on 19 August 2010. At the moment of the conclusion of the contract Abdullah Sa'eed Tawash was at the age of nineteen.*
 2. *For the season 2009/2010 Abdullah Sa'eed Tawash was registered in the sports season's list of Ajman. Ajman terminated the contract with Abdullah Sa'eed Tawash on 9 June 2010 by mutual consent. In the season 2011/2012 Abdullah Sa'eed Tawash was (only) registered for Emirates.*
 3. *Therefore Ajman does not have the right to ask Emirates for a training compensation.*
 4. *Pursuant to Art. 32 of the Chamber's regulation the appeal committee is competent to review the appeals in the Chamber's resolutions till the formation of a committee for arbitration and the appeal should be submitted within 7 days from the date of the resolution notification.*
12. The DRC Decision was rendered on the basis of the circular no. 9608 dated 9 January 2010 concerning the resolution of the Association's Board of Directors in its 19th session dated 18 August 2010. This circular includes the resolution issued by the player's statutes and transitions regulation. The latter states the following (cited pursuant to the DRC Decision, p. 1):

"We have discussed the situation of the junior players after the end of the season 2009/2010, and decided the

possibility of the players transfer in case he is not registered in his club's list of season 2010/2011, and he has moved to a new club in the same season. In this case the former club/clubs has no right to receive a training compensation".

13. Ajman challenged the DRC Decision at the Appeals Committee of the United Arab Emirates Football Association (UAE FA) within the granted time-limit and in the prescribed manner before the Appeals Committee of the UAE FA.

1.2.3 Decision of the Appeals Committee of the UAE

14. On 9 September 2012 the Appeals Committee of the UAE FA issued a decision (the "AC Decision"), notified to the parties on 10 September 2012, holding that:

1. *Abdullah Sa'eed Tawash had been playing for Ajman since he was twelve years old until 9 June 2010. Whereas the Appellant has participated in training the player and developing his capabilities, according to the time period he has spent there as a player, Ajman deserves a compensation for training pursuant to article 28 of the player's status and transitions' regulation.*
2. *The circular resolution mentioned in the DRC Decision does not apply to this dispute as Abdullah Sa'eed Tawash has moved to Ajman before the issuance of the circular resolution. Further it is applicable for amateur players and junior players under the age of 19, but not for professionals.*
3. *A training compensation must be paid whether the transition was during the period of the contract or at the end of the contract period according to schedule (1) of the regulation. In this legislative text, the sports legislator gives the club that participates in training the player and developing him the right to take a compensation allowance to be paid every time the player signs a contract with a new club until he reaches the age of 21. So the appellant has the right to take the training compensation from Emirates because the player has signed a professional contract with Emirates on 19 August 2010.*
4. *Since then and since the expert delegated in the appeal has concluded in his report that the appellant deserves an amount of AED 455'000.00 as a training compensation, the committee annuls the appealed resolution. Emirates is compelled to pay Ajman an amount of AED 455'000.00, in addition to the fees.*

1.2.4 Decision of the Appeals Committee of the UAE

15. Emirates asked the Appeals Committee of the UAE FA on 18 September 2012 for a reconsideration of the decision issued on 9 September 2012.
16. On 17 October 2012 the Appeals Committee of the UAE FA decided what follows (p. 2):
 1. *Whereas it is stated in Art. 24 of the Appeals regulations – applicable on 31 August 2011 – a reconsideration petition can be submitted to the appeals committee in the final resolutions issued by it for punishment. This regulation text stated that the sports legislator did not approve for petitions except for the final resolutions issued by the appeals committee with punishment only.*
 2. *[...] it is obvious from the petition papers that the appealed resolution issued by the appeals committee in the hearing of 9 September 2012 decided to compel the claimant to pay money. So, a punishment was not issued which makes the petition not permissible, and it should be decided for the petition's inadmissibility.*

17. The Decision was notified to Emirates on 18 October 2012.

2. THE ARBITRAL PROCEEDINGS

2.1 The Appeal

18. On 6 November 2012, Emirates filed a statement of appeal against the decision rendered by the Appeals Committee of the UAE FA on 9 September 2012 with the CAS, pursuant to the Code of Sports-related Arbitration (the “Code”). Further, Emirates requested provisional measures in the sense that it requested a suspension of the impacts of the appealed decision. In the statement of appeal filed by Emirates the Appellant demanded that a single judge shall take the decision.
19. On 16 November 2012, the CAS Court Office transmitted the statement of appeal filed by Emirates to the Respondent. The CAS Court Office further invited the Respondent to inform the CAS whether it agrees with the Appellant’s request concerning the nomination of a Sole Arbitrator within 10 days, whereat no opinion would be considered as an agreement.
20. On 20 November 2012, the CAS Court Office acknowledged receipt of the Appellant’s appeal brief dated on 15 November 2012. It transmitted the appeal brief to the Respondent.
21. On 3 December 2012, Ajman filed its answer to the statement of appeal lodged by Emirates, seeking *inter alia* its inadmissibility. It argued that the CAS has no jurisdiction to rule the case and that the appeal was not submitted in time.
22. On 7 December 2012 the CAS Court Office acknowledged receipt of the Respondent’s answer dated 3 December 2012. It forwarded a copy of the answer to the Appellant.
23. On the same date, the CAS Court Office informed the parties that the Respondent did not submit its position regarding the number of arbitrators. Therefore, the CAS Court Office considered its silence as an agreement to the nomination of a Sole Arbitrator in this matter. The parties were informed that the President of the Division will nominate the Sole Arbitrator.
24. On 22 December 2012, Ajman filed its answer to the Appellant’s application for provisional measures, seeking its inadmissibility. Ajman further informed the CAS that they would like to renounce on a hearing.
25. On 22 December 2012, Emirates expressed its opinion to the CAS Court Office that the award should be rendered without holding a hearing.
26. On 12 February 2013, the Deputy President of the CAS Appeals Arbitration Division issued an order on the Appellant’s request for provisional and conservatory measures (the “Order on Provisional Measures”). It stated what follows:
- “1. *The application for provisional and conservatory measures requested by Emirates Football Club in its request for provisional measures dated 19 December 2012, in the matter CAS 2012/A/2982*

Emirates Football Club v. UAE Ajman Cultural & Sports Club is rejected.

2. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration”.*
27. On 12 March 2013, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division appointed Mr Patrick Lafranchi, attorney-at-law in Bern, Switzerland, as Sole Arbitrator.
28. On 18 March 2013, the CAS Court Office invited the Appellant to provide the CAS with the complete UAE FA Regulations on the Player’s Status and Transfer by Tuesday, 2 April 2013.
29. On 2 April 2013, the CAS Court Office acknowledged receipt of the Appellant’s letter dated 2 April 2013 including a translation of the entire UAE FA Regulations on the Players’ Status and Transfer. The CAS Court Office forwarded a copy of the regulations to the Respondent.
30. On 9 April 2013, also the Respondent provided the CAS Court Office with a translation of the UAE FA Regulations on the Players’ Status and Transfer.
31. On 18 April 2013, the CAS Court Office informed the parties that the Sole Arbitrator had considered itself sufficiently well informed and had decided to issue an award on the basis of the written submissions only.
32. On 2 May 2013, the CAS Court Office, on behalf of the Sole Arbitrator, issued an order of procedure (the “Order of Procedure”). While it was countersigned by the Appellant the Respondent did refuse to give its signature and did not return the Order of Procedure to the CAS Court Office.
33. In a letter dated 12 September 2013 the CAS Court Office invited the Appellant to file its observations with respect to the exception of CAS’s lack of jurisdiction raised by the Respondent and to file the most recent version of the UAE FA Statutes until 22 September 2013.
34. On 7 October 2013, the CAS Court Office informed the parties that the Appellant did neither file its observations with respect to the exception of CAS’s lack of jurisdiction nor submit the most recent version of the UAE FA Statutes.
35. On 10 October 2013, the Appellant filed a letter to the CAS Court Office. Therein, concerning the question of jurisdiction, it made reference to its letters issued on 18 March 2013 and on 2 April 2013. The Appellant further declared that it would not be possible to file an English translation of the UAE FA Statutes.
36. By letter of 4 February 2014, the Respondent asked the CAS to finally deliver its award. On 3 March 2014 the Respondent provided the CAS with a translation of the Art. 127 and 128 of the UAE FA Statutes.
37. By dated 11 March 2014, the Appellant informed the CAS about its opinion that the CAS would

hold jurisdiction in the present matter, making reference to Art. 63 of the FIFA Statutes and the Art. 127 of the UAE FA Statutes.

38. On 13 March 2014, the Respondent provided the CAS with the Art. 126 of the UAE FA Rules of the year 2013-2014.

2.2 The Position of the Parties

39. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Sole Arbitrator, indeed, has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

a. *The Position of the Appellant*

40. The Appellant's prayers for relief are the following (p. 4 of its Statement of Appeal):

- a) *[T]o annul the decision rendered by the appeal committee of UAE FA on 9 September 2012*
- b) *[T]o order the respondent to pay the appellant a lawyer fee incurred by the appellant at amount of \$ 20'000.00*
- c) *[T]o order the respondent to pay the proceeding cost and all other expenses incurred by the appellant.*

41. The Appellant argues:

- i. That the CAS inherits jurisdiction on the bases of the relevant FIFA regulations;
- ii. that the appeal to the CAS was submitted in time because the internal channels were only exhausted after the reconsideration decision issued on 18 October 2012;
- iii. that Abdullah Sa'eed Tawash signed his first professional contract on 1 September 2008 with Ajman;
- iv. that Art. 12 of the regulation of player statues and transfer (the "RPST") states that no training compensation is owed if the player concluded his first contract with his club;
- v. that therefore Ajman does not deserve a training compensation in the sense of Art. 28 RPST because Abdullah Sa'eed Tawash signed his first contract with Ajman.

b. *The Position of the Respondent*

42. In its answer dated 3 December 2012 Ajman submitted the following requests:

1. *[To] dismiss the appeal of the Emirates Football Club Company in form and subject.*
2. *[To] obligate the Emirates Football Club Company to pay USD 20'000 to Ajman Cultural & Sports Club as fees for the advocate appointed by the club for this case".*

43. In support of its request, the Respondent firstly submits that the CAS is not competent to rule

the present matter given that no text in the articles of the UAE FA allows the appeal of its final decisions in local cases to the CAS. Further, Ajman states that there is no agreement between the parties that would foresee the right to appeal the case to the CAS.

44. Secondly, the Respondent holds the point of view that the appeal was rendered too late because the decision appealed against was issued by the UAE FA Appeal Committee on 9 September 2012 and notified to Emirates on 10 September 2012. The Appellant however would have handed in its statement of appeal on 6 November 2012 only.
45. Thirdly, the Respondent argues that Art. 28 RPST obliges Emirates to pay Ajman a training compensation. The Appeal should therefore be rejected in any case.

3. JURISDICTION

3.1 Preliminary notes to the question of jurisdiction

46. In order to establish the jurisdiction of the CAS the Appellant referred to Art. 67 of the FIFA Statutes (cf. amongst other the Appellant's letter issued on 13 January 2013).
47. Art. 67 of the FIFA Statutes edition 2012 and 2013 state what follows:
 1. *Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.*
 2. *Recourse may only be made to CAS after all other internal channels have been exhausted.*
 3. *CAS, however, does not deal with appeals arising from:*
 - a) *violations of the Laws of the Game;*
 - b) *suspensions of up to four matches or up to three months (with the exception of doping decisions);*
 - c) *decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.*
48. However, up to June 2012, the edition 2011 of the FIFA Statutes was in force. It regulated the arbitration clause in Art. 63. The wording of Art. 63 Para. 1-3 of the 2011 edition however corresponds today's wording of the Art. 67 Para. 1-3 of the FIFA Statutes.
49. On the time the Appellant filed its Appeal the version 2012 of Art. 67 Para. 1-3 of the FIFA Statutes has already been in force. The Appellant, in some of its submissions, however refers to Art. 63 instead of Art. 67 of the FIFA Statutes (cf. for example letter issued on 18 March 2013). Due to the same wording of the Art. 63 Para. 1-3 of the edition 2011 and the Art. 67 Para. 1-3 of the edition 2012 and 2013 the Sole Arbitrator, in its subsequent considerations, uniquely refers to Art. 67 Para. 1-3 of the FIFA Statutes.

3.2 Jurisdiction of the CAS

50. The Appellant argues that CAS inherits jurisdiction on the bases of Art. 67 of the FIFA Statutes.
51. The Respondent in contrary disputes the jurisdiction of the CAS. Ajman in particular brings to bear that no text in the articles of the UAE FA regulations allows the appeal of its final decisions in local cases to the CAS and that the parties did also not agree bilaterally on a CAS-jurisdiction in the present case.
52. In arbitral proceeding, the Sole Arbitrator examines its jurisdiction only if a plea of incompetence is raised. The Appellant thereby bears the burden of proof (so called “*Beweislast*”) for the existence of an arbitration clause conferring jurisdiction to the CAS (cf. KELLERHALS/BERGER, *Internationale und interne Schiedsgerichtsbarkeit in der Schweiz*, Rz. 626 f).
53. As demonstrated above, the Respondent, in a substantiated manner, contests the existence of a presently applicable arbitration clause. The Appellant, on the other hand argues that Art. 67 Para. 1 of the FIFA Statutes would presently confer jurisdiction to the CAS.
54. The Sole Arbitrator thus has to examine if Art. 67 Para. 1 of the FIFA Statutes in the present case confers jurisdiction to the CAS, if the parties agreed otherwise on submitting the present case with the CAS or if the CAS lacks jurisdiction to hear the present case.

3.2.1 Jurisdiction based on Art. 67 Para. 1 of the FIFA Statutes

55. Primarily, the Sole Arbitrator thus has to determine if Art. 67 Para. 1 of the FIFA Statutes presently confers jurisdiction to the CAS.
56. Art. 67 Para. 1 of the FIFA Statutes formulates what follows:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.

Does Art. 67 Para. 1 FIFA Statutes in casu form a valid arbitration clause?

57. Consecutively, the main question to be answered is if Art. 67 Para. 1 of the FIFA Statutes presently forms a valid and directly applicable arbitration clause.
58. Pursuant to Article 176 Para. 1 of the Swiss Private International Law Act (the “PIL”) the Art. 176 to Art. 194 PIL apply if the seat of the arbitral tribunal is in Switzerland and if at least one of the parties at the time the arbitration agreement was concluded was neither domiciled nor habitually resident in Switzerland.
59. Presently, it is undisputed that this arbitration has its seat in Lausanne, Switzerland (Article R28 of the Code) and that it involves two non-Swiss entities (Emirates and Ajman). Therefore, the Art. 176 to Art. 194 PIL apply for the present case.

60. As stipulated in Art. 186 Para. 1 PIL, the arbitral tribunal shall decide itself on its jurisdiction. It may thereby only accept it if
- *an arbitration agreement exists, that is made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text* (Art. 178 Para. 1 PIL)
- and
- *if the arbitration agreement conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the main contract, or to Swiss law* (Art. 178 Para. 2 PIL).
61. Therefore, it has to be examined if the arbitration clause contained in Art. 67 Para. 1 of the FIFA Statutes complies with the exigencies of Art. 178 PIL.
- A. *Formal validity of the arbitration clause*
62. The Arbitration clause contained in Art. 67 Para. 1 of the FIFA Statutes obviously exists in written form. It hence satisfies with the formal requirement of Art. 178 Para. 1 PIL.
- B. *Material validity of the arbitration clause*
63. The question, if a statutory clause is covered by the parties' consensus is a material question (VOLKEN, in Zürcher Kommentar, N 38 to Art. 178 PIL) and will be treated hereafter.
64. According to Art. 178 Para. 2 PIL [...]
- [...] the arbitration agreement shall be valid as to substance if it complies with the requirements of the law chosen by the parties or the law governing the object of the dispute and, in particular, the law applicable to the principal contract, or with Swiss law.*
65. Primarily, one has to examine the meaning of the wording "*if it complies with the requirements of the law chosen by the parties*". "*Requirements of the law*" means particular dispositions concerning the principles of contract conclusion and defects of consent (VOLKEN, in Zürcher Kommentar, N 57 to Art. 178 PIL). The paraphrase "*law chosen by the parties*" again signifies a choice of law governing the arbitration clause (VOLKEN, in Zürcher Kommentar, N 50 to Art. 178 PIL). Presently the parties did not choose a law governing the arbitration clause.
66. Hence, in accordance with Art. 178 Para. 2 PIL, the arbitration clause of Art. 67 Para. 1 of the FIFA Statutes, in order to be materially valid, either has to withstand the law governing the object of the dispute or Swiss law.

aa) Law governing the object of the dispute

aaa) Legal basis

67. The law governing the object of the dispute is to be determined according to Art. 187 Para. 1 PIL (KELLERHALS/BERGER, *Internationale und interne Schiedsgerichtsbarkeit in der Schweiz*, Rz. 378). Thereafter, the arbitral tribunal shall decide the case according to the rules of law chosen by the parties or, in the absence thereof, according to the rules of law with which the case has the closest connection.

bbb) Missing Choice of law of the parties

68. In casu the parties did not make any choice of law governing their dispute. Art. R58 of the Code (*"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decisions"*) in turn fails to apply because presently it is especially disputed if the parties agreed on the jurisdiction of the CAS and therefore the application of the Code. The law governing the arbitration clause can therefore not be determined after the Code (cf. KELLERHALS/BERGER, *Internationale und interne Schiedsgerichtsbarkeit in der Schweiz*, Rz. 1289).

ccc) Rules of Law with the closest connection to the dispute

69. In consequence the Sole Arbitrator has to determine the rules of law with which the present case has the closest connection. In order to determine this closest connection the arbitral tribunal has to choose an objective connecting factor (*"Anknüpfungspunkt"*). It must not search for the hypothetical will of the parties, the so called *"hypothetischer Parteiville"* (KELLERHALS/BERGER, *Internationale und interne Schiedsgerichtsbarkeit in der Schweiz*, Rz. N 1291).
70. FIFA is constituted as a Swiss association (cf. Art. 1 Para. 1 of the FIFA Statutes) and organized as a so called *"Vereinsverband"* (a Federation). A Swiss Federation is an association that subordinates multiple sections. Sections again are entities that can be associations on their own (HANS MICHAEL RIEMER, *Berner Kommentar, Die Vereine, Systematischer Teil, Vereinsverbände (Vereine mit Sektionen)*, N 491).
71. A Federation can subordinate multiple levels of sections (HANS MICHAEL RIEMER, *Berner Kommentar, Die Vereine, Systematischer Teil, Vereinsverbände (Vereine mit Sektionen)*, N 491). FIFA obviously benefitted from this opportunity.
72. The statutes of a Federation build integral part of the Statutes of its subordinated sections. An explicit integration of the first into the latter is thereto not necessary. Statutes of sections that contradict stipulations of the Statutes of its Federation are automatically derogated by the corresponding articles of the Statutes of the Federation (HANS MICHAEL RIEMER, *Berner Kommentar, Die Vereine, Systematischer Teil, Vereinsverbände (Vereine mit Sektionen)*, N

504, 508, 515, 520, 528 f. with further references to doctrine and jurisprudence of the Swiss Federal Tribunal; Decision 4A_460/2008 of the Swiss Federal Tribunal, issued on 9th January 2009, consideration 6.2; HANS MICHAEL RIEMER, *Sportrechts-Weltmacht Schweiz Internationale Sportverbände und schweizerisches Recht*, CaS 2004, p. 106).

73. FIFA therefore controls - through its Statutes - the structure and the obligations of its sections and the members. FIFA, in other words, inherits the power of disposition over its sections and their members. The Sole Arbitrator in consequence considers that a dispute between two members of a section of the FIFA has the closest connection with the law FIFA is subject to.
74. FIFA, as an association incorporated under Swiss law is subject to Swiss law. Hence, the present case has the closest connection with Swiss law. In consequence, the law governing the object of the present dispute is Swiss law.
- bb) The reference to Swiss law in Art. 178 Para. 2 PIL
75. The reference to Swiss law in Art. 178 Para. 2 PIL covers the articles of the Swiss Code of Obligation concerning the conclusion and the validity of contracts (KELLERHALS/BERGER, *Internationale und interne Schiedsgerichtsbarkeit in der Schweiz*, Rz. 383).
- cc) Law governing the material validity of the present dispute
76. In conclusion, the material validity of the arbitration clause contained in Art. 67 Para. 1 of the FIFA Statutes is determined in all the cases mentioned in Art. 178 Para 2 PIL after Swiss law.
- dd) Material validity of the arbitration clause after Swiss law
77. Next, it has to be determined if the arbitration clause contained in Art. 67 Para. 1 of the FIFA Statutes is materially valid in the sense of Swiss law.
78. As it was demonstrated above, the Statutes of a Federation build integral part of the Statutes of its subordinated sections. In consequence, the Art. 66 to Art. 68 of the FIFA Statutes build integral part of the Statutes of the UAE FA and derogate its possible contradictory regulations. Therefore, the Art. 66 to Art. 68 of the FIFA Statutes directly bind the members of the UAE FA and thus the parties of the present proceeding.
79. It however has to be determined if the arbitration clause contained in Art. 67 Para. 1 of the FIFA Statutes – as far as a decision of member or league is concerned – is a directly applicable, that is self executing norm, or if it needs to be transcribed into an implementation rule of a FIFA-section in order to be applied.

aaa) CAS jurisprudence concerning the self-executing character of Art. 67 Para. 1

80. As it can be seen subsequently, this question has been widely discussed in CAS jurisprudence.
81. The landmark CAS decision in this topic area has been CAS 2005/A/952. In this award the Panel concluded the following (cipher 11 of the decision CAS 2005/A/952):

*It is only with the implementation by the individual confederations of the [...] FIFA statutes into their individual statutes, that the CAS can be held to have jurisdiction. **The FIFA rules [...] do not constitute per se a basis for arbitration. Instead, they constitute an instruction to introduce a regulation providing for CAS arbitration.***

82. In CAS 2009/A/1910, for instance, the Panel underlined that (cipher 11) [...]

“in accordance with consistent CAS jurisprudence on this issue, in the Panel’s view Article 63 Para. 1 of the current FIFA Statutes does not by itself grant jurisdiction to CAS with respect to decisions passed by confederations, members or leagues (see e.g., CAS 2008/A/1656, CAS 2005/A/952, CAS 2004/A/676, CAS 2002/O/422)”.

83. This jurisdiction was amongst others confirmed in CAS 2011/A/2472 and CAS 2012/A/2688.

bbb) Conclusion on CAS jurisprudence

84. In a nutshell, after constant CAS-jurisprudence, today’s Art. 67 Para. 1 of the FIFA Statutes is not directly applicable as far as decisions passed by a confederation, member or league is concerned. In order that such a decision can be appealed with the CAS the Statutes or Regulations of the concerned FIFA-member respectively its sections need to contain a clause transforming Art. 67 Para. 1 of the FIFA Statutes into a “national” Regulation.
85. In light of the above, it can be concluded that Art. 67 Para. 1 of the FIFA Statutes on its own does not confer the CAS jurisdiction to rule the present case. Rather, a jurisdiction clause contained in the UAE FA is necessary to confer jurisdiction to the CAS.

3.2.2 Jurisdiction based on the applicable Regulations of the UAE FA

86. It thus has to be examined if the applicable UAE FA regulation confer jurisdiction to the CAS.
87. The Appellant based the jurisdiction of the CAS on Art. 127 of the UAE FA Statutes. Art. 127 of the UAE FA Statutes states what follows:

“In accordance with Articles 60-61 of the FIFA Statutes, any appeal against a final and binding decision issued by FIFA shall be heard by the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland”.

88. In casu, Art. 127 of the UAE FA Statutes does not confer the CAS jurisdiction because presently there is no FIFA decision at stake.

89. As mentioned above, the Appellant bears the burden of proof for the existence of a valid arbitration clause between the parties. It however did not produce any UAE FA Regulations, any directly applicable FIFA Statute or any bilateral arbitration agreement that would constitute the jurisdiction of the CAS. The proof of the existence of a presently applicable arbitration clause has therefore failed. In consequence, the CAS has no jurisdiction to rule the present case.

3.2.3 Conclusion

90. The arbitration clause found in Art. 67 Para. 1 of the FIFA-Statutes lacks of material validity in terms of Art. 178 Para. 2 PIL because it was not transformed into a regulation of the UAE FA. The Appellant besides failed to prove the existence of another (contractual) basis that could confer jurisdiction to the CAS.
91. Consequently, the Sole Arbitrator has no jurisdiction to rule the present case.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Court of Arbitration for Sport has no jurisdiction to decide on the appeal filed by the Emirates Football Club Company L.L.C on 6 November 2013 against the decision issued on 9 September 2012 by the Appeals Committee of the United Arab Emirates Football Association respectively against the decision issued on 17 October 2012 of the Appeals Committee of the United Arab Emirates Football Association.
2. (...).
3. (...).
4. All other prayers for relief are dismissed.