



Arbitration CAS 2016/A/4379 Al Ain FC v. Sunderland AFC, award of 20 October 2016

Panel: Mr Ivaylo Dermendjiev (Bulgaria), Sole Arbitrator

Football

Transfer

Counterclaim and scope of review of a CAS panel

Interpretation of a sell-on clause

Determination of the amount of a sell-on fee

1. The CAS Code does not provide for the possibility of the respondent to file in appeals arbitration proceedings a counterclaim against the decision challenged by the appellant. Any party wishing to have the disputed decision set aside or modified has to file an independent appeal. Moreover, a CAS panel is not in a position to decide on a claim that has not been previously reviewed within FIFA and for which the internal remedies are not exhausted. CAS jurisprudence shows that, in reviewing a case in full, a panel cannot go beyond the scope of the previous litigation and is limited to the issues arising from the challenged decision.
2. The interpretation of a sell-on clause must be carried out according to the general rules of contract interpretation. According to the principles established in the applicable Swiss law, the court shall first seek to bring to light the real and common intent of the parties. Under the circumstances and in light of a particular sell-on clause, the contracting parties may have agreed to ensure that the old club will receive additional payment in the event that the player is transferred by the new club to a third club regardless of the amount of the transfer fee under the subsequent transfer, whether it was higher or lower than the amount of the initial transfer.
3. Where the clear wording of a sell-on clause speaks of “*any transfer fee received*”, not of a net transfer fee, i.e. a sum received after deduction of the costs in direct connection with the transfer of the player, including the agent’s costs or intermediary remuneration, no deduction should be made from the transfer fee received by the club selling the player to a third club regarding the payment of the sell-on fee to “old club” of the player transferred. Likewise, the amount of the transfer fee shall not be affected by any solidarity payments.

I. THE PARTIES

1. Al Ain Football Club (“Al Ain” or the “Appellant”) is an Emirati football club having its office at Sheikh Khalifa International Stadium in Al Ain, Abu Dhabi, United Arab Emirates. The Appellant is affiliated to the United Arab Emirates Football Association (the “UAEFA”). The UAEFA, in turn, is affiliated to the Fédération Internationale de Football Association (the “FIFA”), the world governing body of football.
2. Sunderland Association Football Club (“Sunderland” or the “Respondent”) is an English football club having its seat, in Sunderland, United Kingdom. The Respondent is affiliated to the English Football Association (the “FA”). The FA is also a member of FIFA.
3. The Appellant and the Respondent will be jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. This appeal was filed by Al Ain against the Decision of the Single Judge of the FIFA Players’ Status Committee passed on 10 November 2015 (the “Decision”). The grounds of the Decision were notified to the Appellant and to the Respondent on 10 December 2015.
5. The circumstances stated below are a summary of the main relevant facts, as submitted by the Parties in their written pleadings or in the evidence offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. While the Sole Arbitrator took duly note of all the evidence and legal arguments raised, in this award the Sole Arbitrator only refers to the submissions and evidence considered necessary to explain his reasoning.
6. The present contractual dispute is related to the right of the Respondent to receive payment of an amount equal to 20% of the transfer fee received by the Appellant from a Chinese club, Shanghai SIPG Football Club (“SIPG”) as a consideration for the transfer of the player A. (the “Player”).
7. On 9 September 2011, Sunderland and Al Ain concluded a loan agreement for the temporary transfer of the Player from the Respondent to the Appellant for the period from 9 September 2011 until 30 June 2012 (the “Loan Agreement”). In consideration of the loan of the Player to Al Ain, the Appellant agreed to pay to the Respondent a guaranteed net fee in the amount of EUR 6,000,000 (six million Euros) payable in two equal installments (“Guaranteed Loan Fee”, Clause 2.1 of the Loan Agreement).
8. The Loan Agreement contained a permanent transfer option (the “Option”, Clause 3.1 of the Loan Agreement). Should Al Ain decide to exercise the Option it would pay to Sunderland a guaranteed net fee of EUR 2,000,000 (two million Euros) payable in three installments (the “Guaranteed Option Fee”, Clause 3.3 of the Loan Agreement). In addition to the Guaranteed Option Fee, Al Ain consented to pay to Sunderland contingent fees further to Al Ain utilizing

the Option (the “Contingent Fees”). The Contingent Fees were conditional depending upon: (i) the number of appearances of the Player on the field in Al Ain’s games during the season (Clause 4.1.1 of the Loan Agreement); (ii) winning the UAE’s President Cup during the term of the Player’s contract with Al Ain (Clause 4.1.2 of the Loan Agreement) and (iii) reaching a threshold of 20 goals scored by the Player per season (Clause 4.1.3 of the Loan Agreement).

9. Clause 4.2 of the Loan Agreement in its pertinent part provides as follows:

“Further to utilising the Option, should the Player be sold by Al Ain to another club then Sunderland shall receive 20% of any transfer fee received (including guaranteed sums and contingent payments)...”

10. Clause 6.1 of the Loan Agreement further provided that all guaranteed or contingent fees payable to Sunderland by Al Ain included both the FIFA training compensation and FIFA solidarity mechanism quota due to Sunderland. To the extent that any other amount was due to any other third club whatsoever as solidarity mechanism it should have been paid exclusively by Al Ain and Al Ain would not have the right to deduct and/or retain any amount from the sums paid to Sunderland pursuant to the Loan Agreement.

11. The Appellant decided to exercise the Option and on 20 June 2012 Sunderland and Al Ain entered into a transfer agreement for permanent transfer of the Player from the Respondent to the Appellant (the “Transfer Agreement”). The Transfer Agreement in Clause 2.1 referred to the Option contemplated in Clause 3.1 of the Loan Agreement.

12. With reference to Clause 3.3 of the Loan Agreement the Parties agreed that Al Ain would pay to Sunderland a guaranteed net fee of EUR 2,000,000 (two million Euros) payable in three installments (the “Transfer Fee”, Clause 2.2 of the Transfer Agreement).

13. In accordance with the terms of the Loan Agreement, the parties to the Transfer Agreement further agreed to the Contingent Fees which were payable by Al Ain to Sunderland under the same conditions as stipulated in the Loan Agreement (see § 8 and § 9 above).

14. For the services of the Player Al Ain paid to Sunderland a total amount of EUR 9,600,000 (nine million six hundred thousand Euros) including the Guaranteed Loan Fee of EUR 6,000,000 (six million Euros), the Transfer Fee in the amount of EUR 2,000,000 (two million Euros) and the Contingent Fees in the amount of 1,600,000 (one million six hundred thousand Euros).

15. On 6 July 2015¹, the Appellant entered into an Intermediation Agreement with an intermediary for the purpose of transferring the Player to SIPG. The remuneration of the intermediary was fixed at EUR 270,000 (two hundred and seventy thousand Euros) being 3% of the transfer fee.

16. Pursuant to a permanent transfer agreement dated 7 July 2015 (the “SIPG Transfer Agreement”), the Player was transferred from Al Ain to SIPG, for a transfer fee of EUR

¹ This date is printed in the introductory part on the first page of the Intermediation Agreement. However, under the signature of the intermediary appears the hand written date “14-7-2015”. Although it is of no significant relevance for the outcome of the case, it may turn out that the Intermediation Agreement was formally concluded after the SIPG Transfer Agreement dated 7 July 2015.

9,000,000 (nine million Euros) payable in one instalment within seven days following receipt of an the invoice issued by Al Ain. According to the terms of the SIPG Transfer Agreement, the agreed transfer fee was net of any taxes, VAT or any other expenses. If such withholding was required under Chinese law, SIPG would gross up the required amount to the transfer fee in order to ensure that Al Ain would receive EUR 9,000,000 (nine million Euros) net amount after withholdings (Clause 2 of SIPG Transfer Agreement).

17. The SIPG Transfer Agreement explicitly provides that the transfer fee set out in Clause 2 thereof *“includes FIFA solidarity contribution, such compensation shall be distributed by Al Ain club and will not be withhold from the transfer fee”*. Further, the parties to the SIPG Transfer Agreement agreed that Al Ain would receive the total amount of the transfer fee without any withholdings or deductions from such kind (Clause 4 of SIPG Transfer Agreement).
18. It is not in dispute between the Parties that Al Ain received by SIPG the transfer fee of EUR 9,000,000 (nine million Euros) due under the SIPG Transfer Agreement.
19. The SIPG Transfer Agreement also provided for various contingent payments specified in Clause 3 payable upon occurring of certain events.

III. THE FIFA PROCEEDINGS

20. Having explained that despite several reminders, Al Ain failed to reply to their communications and failed to make the relevant payment, on 17 July 2015 Sunderland lodged a complaint before FIFA against Al Ain requesting payment of the amount of EUR 1,800,000 equal to 20% of the transfer fee received by the Appellant from SIPG under the SIPG Transfer Agreement.
21. In reply to the claim, Al Ain confirmed the conclusion of the SIPG Transfer Agreement regarding the transfer of the Player against a transfer compensation of EUR 9,000,000. However, Al Ain indicated that the transfer compensation of EUR 9,000,000 included the solidarity contribution in the amount of 5% of the transfer fee (i.e. EUR 450,000), which would be distributed by the Appellant. In addition, Al Ain argued that the transfer was concluded through an intermediary acting for a remuneration of EUR 270,000 (3% of the transfer fee).
22. In its pleadings before the Single Judge of the Players' Status Committee (the “Single Judge”) Al Ain maintained that the following amounts should be deducted from the net transfer compensation of EUR 9,000,000 received under the SIPG Transfer Agreement: (i) EUR 450,000 pertaining to the 5% solidarity contribution and (ii) EUR 270,000 concerning the intermediary's remuneration. On that account Al Ain argued that Sunderland was only entitled to 20% of EUR 8,280,000 (EUR 9,000,000 - EUR 720,000 (450,000 +270,000)), which equals the amount of EUR 1,656,000. Al Ain did not dispute that in accordance with art. 3.3 of the Transfer Agreement, a sum of money is due to the Sunderland. In fact, the Al Ain solely disputed the amount that should be considered as the basis on which the sell-on fee is calculated.

23. Al Ain further stated that Sunderland had not given it the opportunity to provide the above-mentioned calculation and, in addition, requested to pay the relevant amount in 4 instalments.
24. Sunderland denied that it had never given Al Ain the possibility to discuss a settlement as it had contacted Al Ain on numerous occasions but to no avail. As to the method of calculation of the sell-on fee, Sunderland argued that the payments made by Al Ain following receipt of the transfer compensation under the SIPG Transfer Agreement were of no relevance. Sunderland further objected to Al Ain's proposal to make the payment in 4 instalments as the latter had clearly received the EUR 9,000,000 from SIPG in one instalment.

25. On 10 November 2015, the Single judge issued the Decision on the claim brought by Sunderland, upholding it in its entirety. The operative part of the Decision is as follows:

"1. The claim of the Claimant, Sunderland AFC, is accepted.

*2. The Respondent, Al Ain FC, has to pay to the Claimant the amount of EUR 1,800,000 **within 30 days** as from the date of notification of the present decision.*

3. In the event that the amount due to the Claimant in accordance with the above-mentioned number 2. is not paid by the Respondent within the stated time limit, interest at the rate of 5% p.a. will apply as of the expiry of the stipulated time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

*4. The final costs of the proceedings in the amount of CHF 15,000 are to be paid by the Respondent **within 30 days** as from the date of notification of the present decision as follows:*

4.1. The amount of CHF 10,000 has to be paid to FIFA to the following bank account...

4.2. The amount of CHF 5,000 has to be paid directly to the Claimant.

5. The Claimant is directed to inform the Respondent directly and immediately of the account number to which the remittances are to be made in accordance with the above points 2. and 4.2. and to notify the Single Judge of the Players' Status Committee of every payment received" [emphasis as in the original text].

26. In support of its Decision as to the substance of the dispute, the Single Judge made the following considerations:

"5. First of all, the Single Judge took note that the Claimant maintained that it is entitled to receive a sell-on fee in the amount of EUR 1,800,000, which corresponds to 20% of the transfer fee paid by Shanghai SIPG to the Respondent for the transfer of the player.

6. Equally, the Single Judge observed that, in its reply, the Respondent did not dispute that in accordance with art. 3.3 of the transfer agreement, a sum of money is due to the Claimant. In fact, the Single Judge noted that the Respondent solely disputed the amount that should be considered as the basis on which the sell-on fee is calculated. In particular, the Respondent deemed that prior to calculating the sell-on fee, one should deduct the total amount of EUR 720,000 from the transfer compensation of EUR 9,000,000, namely: i) EUR 270,000 in relation to a payment made to an intermediary, and ii) EUR 450,000 in relation to the distribution of the solidarity contribution.

7. Having recalled the aforementioned, the Single Judge first wished to emphasise that it remained undisputed by the Respondent that it received the full amount of EUR 9,000,000 from Shanghai SIPG.

8. In this context, the Single Judge referred to the wording of art. 3.3 of the transfer agreement which stipulates: “Should the player be sold by Al Ain to another club then Sunderland shall receive 20% of any transfer fee received (including guaranteed sums and contingent fees). Al Ain agrees to disclose full details of any sale to Sunderland upon such occurring” (emphasis added).

9. The Single Judge finds that the content of art. 3.3 of the transfer agreement is clear; it states that the Claimant shall receive 20% of “any transfer fee received”. Said article does not contain any references to possible deductions prior to the calculation of the sell-on fee. The Single Judge observes that the Respondent received EUR 9,000,000 for the transfer of the player and does not see any reason why an alleged payment made by the Respondent to an intermediary should be deducted from the transfer compensation, prior to making the calculation regarding the sell-on fee. What is more, the Single Judge fails to understand why the Respondent, as the player's former club in the transfer of the player to Shanghai SIGP, is claiming that it has to distribute any amounts relating to the solidarity mechanism.

10. On account of the above, and referring once more to the clear content of art. 3.3 of the transfer agreement, the Single Judge is of the opinion that the sell-on fee shall be calculated on the basis of a transfer compensation of EUR 9,000,000.

11. As a consequence of the aforementioned and in accordance with the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Single Judge finds that the Respondent has to fulfill its contractual obligations towards the Claimant. Therefore, the Single Judge concludes that the Respondent has to pay the Claimant the amount of EUR 1,800,000, corresponding to 20% of the transfer compensation paid by Shanghai SIGP to the Respondent”.

27. The Decision with its supporting grounds was notified to the Parties on 10 December 2015.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. In accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “Code”), the Appellant filed its statement of appeal with the Court of Arbitration for Sport (the “CAS”) challenging the Decision on 30 December 2015. Pursuant to Article R50 of the Code, the Appellant applied that the appeal should be submitted to a sole arbitrator considering the simplicity of the matter in dispute.

29. In accordance with Article R51 of the Code, the Appellant filed its appeal brief on 12 January 2016 (the “Appeal Brief”).

30. By a letter dated 13 January 2016, the Respondent agreed to the appointment of a Sole Arbitrator.

31. On 19 January 2016, the Respondent requested pursuant to Article R55 of the Code that the time limit for the filing of the answer be fixed after the payment by the Appellant of its share of the advance of costs.

32. On 20 January 2016, the CAS Court Office confirmed that the time limit for the Respondent to file its answer was to be fixed upon receipt by the CAS of the Appellant's payment of its share of the advance of costs.
33. By letter of 8 February 2016, the CAS Court Office acknowledged receipt of the Appellant's payment of its share of the advance of costs and indicated that the time limit for the Respondent to file its answer would start running upon receipt of that correspondence by courier.
34. By the same letter, the Parties were informed that, pursuant to Article R54 of the Code, the President of the Appeals Arbitration Division had appointed Mr. Ivaylo Dermendjiev, attorney-at-law in Sofia, Bulgaria, as Sole Arbitrator in this procedure.
35. In accordance with Article R55 of the Code, the Respondent filed its answer on 29 February 2016 (the "Answer").
36. By letter of 2 March 2016, the CAS Court Office acknowledged receipt of the Answer. The CAS Court Office further referred to Article R56 of the Code, providing that unless the parties agree otherwise or the Sole Arbitrator orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer. With reference to Article R57 of the Code, the Parties were invited to state by 9 March 2016 whether they prefer a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.
37. By a letter dated 7 March 2016, the Respondent, "*in the interest of saving time and cost*" and due to the low complexity of the factual and legal issues and the lack of witness statements, expressed its preference that the Sole Arbitrator decide the matter without holding a hearing.
38. Likewise, by a letter dated 10 March 2016, the Appellant noted its preference for the Sole Arbitrator to render an award based on the Parties' written submissions.
39. On 15 March 2016, the CAS Court Office informed the Parties that, in light of their preference and in accordance with Article R57 of the Code, the Sole Arbitrator had decided to render an award based on the Parties' written submissions.
40. By letter of 23 March 2016, the CAS Court Office informed the Parties of the Sole Arbitrator's decision to order them to file an additional round of written submissions, pursuant to Article R57 and R44.3 of the Code. Accordingly, the Appellant was invited within 10 days to file its reply to the Answer. Upon receipt of such reply, the Respondent would be granted a similar time limit to file its response.
41. By a letter dated 6 April 2016, filed with the CAS on 12 April 2016, the Appellant informed the CAS Court Office that it would not file a reply and requested that an award be issued based on its first submission.

42. By a letter of the CAS Court Office dated 12 April 2016, the Respondent was invited to file its response if it wished to do so.
43. On 22 April 2016, the Respondent announced that, in the absence of any additional submission from the Appellant, it had no cause to file a response.
44. On 13 June 2016, the Parties signed the Order of Procedure. By signing of the Order of Procedure, the Parties confirmed their agreement that the Sole Arbitrator may decide this matter based on the Parties' written submissions and that their right to be heard had been respected.
45. Accordingly, pursuant to Article R57 of the Code, the Sole Arbitrator considers himself to be sufficiently well informed to decide this matter without the need to hold a hearing.

V. POSITIONS OF THE PARTIES

A. *The Appellant*

46. Regarding the facts, in its submissions the Appellant asserts as follows:
 - The Appellant concluded with the Respondent the Loan Agreement on 9 September 2011 for the temporary registration of the Player for a period of 10 months and for a loan fee of EUR 6,000,000, containing the permanent transfer Option to be exercised against payment of the Guaranteed Option Fee and the other Contingent Fees;
 - Al Ain expressed the wish to exercise the Option and the Transfer Agreement was made on 20 June 2012 between Al Ain and Sunderland with an additional payment of EUR 2,000,000;
 - Al Ain has achieved the Pro League on the seasons 2011/2012, 2012/2013, 2014/2015 and the President cup of the season 2013/2014;
 - Al Ain has already paid to Sunderland as Contingent Fees for winning the Pro League and the President Cup an amount of EUR 1,100,000 (one million one hundred thousand Euros);
 - Moreover, as the Player has scored more than 20 goals in the seasons of 2011/2012 and 2013/2014, Al Ain paid to Sunderland Contingent Fees of EUR 500,000 (five hundred thousand Euros);
 - The total amount that has been received by Sunderland for the transfer of the player and the Contingent Fees is EUR 9,600,000 (nine million six hundred thousand Euros);
 - On 7 July 2015, Al Ain entered into SIPG Transfer Agreement for a total amount of EUR 9,000,000 (nine million Euros);
 - Sunderland filed a claim before the FIFA asking for payment of the 20% in accordance to the sell-on clause;

- The Single Judge passed the Decision in regard to Sunderland's claim on 10 November 2015.
47. On the merits, the Appellant relies on the holding in the award in CAS 2010/A/2098 concerning the purpose of the sell-on clause:
- “The sell-on clause contains a well-known mechanism in the world of professional football: its purpose is to “protect” a club (the “old club”) transferring a player to another club (the “new club”) against an unexpected increase, after the transfer, in the market value of the player’s services; therefore, the old club receives an additional payment in the event the player is “sold” from the new club to a third club for an amount higher than that one paid by the new club to the old club. In transfer contracts, for that reason, a sell-on clause is combined with the provision defining the transfer fee: overall, the parties divide the consideration to be paid by the new club in two components, i.e. a fixed amount, payable upon the transfer of the player to the new club, and a variable, notional amount, payable to the old club in the event of a subsequent “sale” of the player from the new club to a third club”.*
48. The Appellant further submits that the total amount received by the Respondent with regard to the Player is EUR 9,600,000. The Appellant argues that, whereas the purpose of the sell-on clause is to protect the former club from any increase in the transfer market value of the player, in the present case the Player's transfer fee has not increased and reached a value that could affect the Respondent’s interest. On the contrary, the Respondent continued receiving Contingent Fees for each achievement of the Appellant. The Appellant concludes that, taking into account the total amounts received by the Respondent and the total amount received by the Appellant for the further transfer of the Player, it can be considered a prejudice to the principle and the purpose of the sell-on clause as defined in CAS case law (CAS 2010/A/2098).
49. On a subsidiary basis, the Appellant maintains that certain deductions should be made out of the transfer fee received by SIPG. These include: (i) the intermediary remuneration paid by the Appellant to an intermediary in the amount of 3% of the transfer fee under the SIPG Transfer Agreement, i.e. EUR 270,000 and (ii) the solidarity contribution of 5% of the transfer fee under the SIPG Transfer Agreement, i.e. EUR 450,000. Thus, the net amount of the transfer to SIPG after deduction of the said amounts equals to EUR 8,280,000.
50. In the Appeal Brief, the Appellant requested the following relief:
- “Accept the present Appeal.*
- Set aside the decision of FIFA's Dispute Resolution Chamber.*
- Decide that the Respondent is not entitling for the 20% of the transfer fee.*
- To allocate to the Respondent the costs and fees of this Appeal, and costs of the case before the FIFA an amount of CHF 15,000 which has been paid by the Appellant and a contribution CHF 7,000 towards the appellant's costs.*
- On Subsidiary Basis in case of rejecting the present appeal*
- To deduct the cost and the expenses of transfer fee (5% solidarity contribution and 3% the intermediary remuneration) from any dues to Sunderland.*

To divide any decided amounts to be paid in 4 installments”.

B. *The Respondent*

51. As for the relevant facts, the Respondent asserts the following:
- On 9 September 2011, the Parties entered into the Loan Agreement in respect of the temporary transfer of the Player from Sunderland to Al-Ain;
 - The Loan Agreement contained an option for Al-Ain to acquire the Player's permanent registration at financial terms as set out in Clause 4.1 and Clause 6.1 of the Loan Agreement;
 - In full knowledge of the transfer terms, Al-Ain exercised the Option and the Parties then entered into the permanent transfer agreement on 20 June 2012, which mirrored the transfer terms contained in the Loan Agreement. The particular provisions that have relevance are reproduced in Clause 3.3 and Clause 4.1 of the Transfer Agreement;
 - On 7 July 2015, Al-Ain entered into the SIPG Transfer Agreement under which SIPG agreed to pay to Al-Ain a transfer fee of EUR 9,000,000 plus various contingent payments to be paid to Al-Ain upon the happening of certain events. With respect to the SIPG Transfer Agreement the Respondent refers to Clauses 4.1 and 4.2;
 - Al Ain has received the transfer fee under the SIPG Transfer Agreement in full;
 - Ain disputed the amount claimed which caused the Respondent to refer the matter to the Dispute Resolution Chamber of FIFA.
52. As a matter of law, the Respondent's submission, in essence, may be summarized as follows. Pursuant to the clear wording of Clause 3.3 of the Transfer Agreement (the "Sell-on Clause"), the Respondent is entitled to 20% of any sums that Al Ain receives in connection with Al Ain's transfer of the Player to SIPG. The Sell-on Clause does not provide for any adjustments or deductions to be made to the sums that Al-Ain receives from this transfer before calculating Sunderland's entitlement under the Sell-on Clause.
53. The Sell-on Clause should be interpreted in accordance with the principles established in Swiss law and the practice of the Swiss Supreme Court. In that respect, the real and common intention of the Parties must be first established. The wording of the Transfer Agreement should be the starting point here. Sunderland submits that the wording used by the Parties in respect of the sell-on clearly reflects the Parties' intentions in this regard, i.e. that Sunderland should receive 20% of any sums that Al Ain receives in connection with Al Ain's future transfer of the Player. It is well-established that a party seeking to rely on a subjective interpretation which diverges from the literal interpretation of the text bears the burden of proof. It is notable that Al Ain has not submitted any evidence that the real and common intention of the parties is anything other than what is stated in the Transfer Agreement.
54. The objective interpretation of the disputed clause is also in support of Sunderland's position when applying the principle of trust under Swiss law which is based on the general duty good

faith. Al Ain being an established football club, which is commercially experienced and familiar with transfer agreement and the terms used therein should have understood the Sell-on Clause to mean that Sunderland would receive 20% of any sums Al Ain receives in respect of the future transfer of the Player.

55. The Appellant's claim that no sums are payable to the Respondent under the Sell-on Clause because Al Ain paid more than EUR 9,000,000 under the Loan Agreement and the Transfer Agreement lacks legal basis and of any merit. The amounts paid by Al Ain under the Loan Agreement and the Transfer Agreement have no relevance in calculating any sell-on due to Sunderland. Otherwise, the Parties would have included wording to this effect. The Respondent further notes that Al Ain did not dispute its liability to pay a sell-on amount to Sunderland in the proceedings before FIFA, it only disputed the amount of such sell-on amount.
56. The Appellant's secondary case that the 3% commission Al Ain agreed to pay to an intermediary should be deducted for the purposes of calculating the Respondent's sell-on entitlement must also fail. In Respondent's submission, it was entirely a matter for Al Ain whether it wished to appoint an intermediary in relation to the sale of the Player and how much it wished to pay to such intermediary for his commission. This has no bearing on Sunderland's sell-on entitlement.
57. As to the 5% solidarity contribution Al Ain was obliged to distribute pursuant to clause 4.1 of the SIPG Transfer Agreement, the Respondent states that it is undermined by the provisions of Clause 4.1 of the Transfer Agreement, providing that "*any amount due to any third party club whatsoever as solidarity shall be paid exclusively by Al-Ain and Al-Ain shall not have the right to deduct and/or retain any sum from the sums paid to Sunderland pursuant to this Agreement*". The Respondent further points out that the agreement of Al Ain with SIPG regarding the distribution of the solidarity deviates from the rule of Article 1 of Annex 5 to RSTP and is a commercial decision of the Appellant.
58. The Respondent objects to the Appellant's request that the sell-on payment be paid in four instalments. Such request has no basis, also considering that Al Ain has already received the transfer fee under the SIPG Transfer Agreement in full.
59. Finally, the Respondent maintains that Al Ain's reliance on the "definition" of a sell-on clause in CAS 2010/A/2098 is misplaced. The purpose of a sell-on clause is not just about "protecting" a club transferring a player to another club against an unexpected increase and entirely depends on what the parties intended and what is stated in the sell-on clause itself.
60. In its Answer, the Respondent requested the following relief:
 - I. This Answer is admissible and well-founded;*
 - II. Al-Ain's appeal is dismissed in its entirety and the Decision is upheld;*
 - III. Al-Ain must immediately pay to Sunderland the sum of EUR 1,800,000 plus interest;*
 - IV. Al-Ain is liable to pay to Sunderland 20% of the SIPG Contingent Payments it receives from SIPG without set-off or deduction; and*

V. Al-Ain must pay in full, or, in alternative, a contribution towards, the costs and expenses, including Sunderland's legal costs and expenses, pertaining to these appeal proceedings before the CAS”.

VI. JURISDICTION OF THE CAS

61. Article R47 of the Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”.

62. The jurisdiction of the CAS, which is not disputed by either Party and which has been confirmed by the Parties by signing the Order of Procedure, derives from Article 67 of the FIFA Statutes (edition 2014, in force as of 1 April 2015). The provisions of the FIFA Statutes that are relevant to that effect in these proceedings are the following:

Article 66 “Court of Arbitration for Sport (CAS)”:

“1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials and licensed match agents and players’ agents.

2. The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

Article 67 “Jurisdiction of CAS”:

“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.

4. The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect.

[...]”.

63. The Parties have conferred jurisdiction to the CAS also by the clear reference to it contained in Clause 4.3, second sentence, of the Transfer Agreement.

64. It follows that the CAS has jurisdiction to decide this dispute.

VII. ADMISSIBILITY

65. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.

66. The grounds of the Decision were notified on 10 December 2015. The statement of appeal was filed on 30 December 2015 and, thus, within the deadline of twenty-one days set in Article R49 of the Code and in Article 67.1 of the FIFA Statutes referred to in the Decision itself.

67. No further recourse against the Decision is available within the structure of FIFA.

68. Accordingly, the appeal filed by Al Ain is admissible.

69. In its Answer, the Respondent requested that *“the Panel makes a declaration in the Award in relation to Sunderland's entitlement in respect of the SIPG Contingent Payments, in order to avoid any similar disputes between the parties in the future”*. Sunderland further stated: *“Pursuant to clear wording of the Sell-on Clause, Sunderland asserts that it should receive 20% of the total amount of the SIPG Contingent Payments that Al-Ain receives without any set-off deductions”*. In its prayers for relief Sunderland requested *inter alia* that the Sole Arbitrator decides in the award Al Ain is liable to pay Sunderland 20% of the SIPG Contingent Payments it receives from SIPG without set-off deductions.

70. The Code does not provide for the possibility of the respondent to file in appeals arbitration proceedings a counterclaim against the decision challenged by the appellant - any party wishing to have the disputed decision set aside or modified has to file an independent appeal. Although the Respondent's request was not made as counterclaim in the strict sense of the word or as an appeal against the Decision, in effect it seeks modification or a supplement of the holding of the Decision. FIFA was seized with a claim to decide solely on the issue of Sunderland's entitlement to receive 20% of the transfer fee under the SIPG Transfer Agreement, not with a claim for 20% of the amount of the SIPG Contingent Payments which were agreed between Al Ain and SIPG in excess to the transfer fee. The Sole Arbitrator is not in a position to decide on a claim that has not been previously reviewed within FIFA and for which the internal remedies are not exhausted. CAS jurisprudence shows that, in reviewing a case in full, a Panel cannot go beyond the scope of the previous litigation and is limited to the issues arising from the challenged decision (CAS 2007/A/1396 & 1402, CAS 2012/A/2875).

71. Accordingly, the Respondent's request that the Sole Arbitrator decides in the award that Al Ain be liable to pay Sunderland 20% of the SIPG Contingent Payments it receives from SIPG without set-off deductions is inadmissible.

VIII. APPLICABLE LAW

72. Article R58 of the Code provides as follows:

“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 a 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 decision”.

73. The matter at stake relates to an appeal against a FIFA decision, and reference must hence be made to Article 66.2 of the FIFA Statutes which states that:

“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

74. In Clause 4.3 of the Transfer Agreement the Parties recognized and confirmed that the agreement *“is subject to the regulations of FIFA”*.

75. The Parties expressly agreed that, for the resolution of the dispute, the Sole Arbitrator shall apply primarily the FIFA Regulations and, subsidiarily, Swiss law.

76. Therefore, the FIFA rules and regulations shall be applied primarily. Swiss law applies subsidiarily to the merits of the dispute.

77. In the present case the *“applicable regulations”* for the purposes of Article R58 of the Code are, indisputably, the FIFA’s regulations, because the appeal is directed against a decision issued by FIFA, which was passed applying FIFA’s rules and regulations. More precisely, the Sole Arbitrator agrees with the Single Judge that the regulations concerned, apart from the FIFA Statutes, are particularly the Regulations on the Status and Transfer of Players, edition 2015 (“RSTP”), considering that the matter was brought to FIFA on 17 July 2015 after the entry into force of the RSTP 2015 (1 April 2015).

78. The specific provisions of the FIFA rules and regulations which are relevant in this arbitration are set in the RSTP and include the following:

Article 12bis (“Overdue payables”):

“1. Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements.

[...]

3. In order for a club to be considered to have overdue payables in the sense of the present article, the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s)”.

Article 1 of Annex 5 to RSTP (“Solidarity contribution”):

“If a professional moves during the course of a contract, 5% of any compensation, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years.[...]”

IX. THE MERITS OF THE APPEAL

79. The core principle applicable by CAS is the *de novo* principle resulting from Article R57 of the Code. According to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the Sole Arbitrator may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.
80. Based on the Parties’ submissions, the issues for determination are the following:
- a) Is Sunderland entitled to receive payment pursuant to the Sell-on Clause?
 - b) Depending on the answer to (a) above, what is the amount of the payment due to Sunderland pursuant to the Sell-on Clause?
 - c) Depending on the answer to (b) above, is the amount of the payment due to Sunderland pursuant to the Sell-on Clause determined correctly in the Decision?
- A. *Is Sunderland entitled to receive payment pursuant to the Sell-on Clause?*
81. As a starting point, the Sole Arbitrator must identify the relevant contractual provisions devoted to Sunderland’s entitlement to receive sell-on payment.
82. The Sell-on Clause reads as follows:
- “Should the Player be sold by Al Ain to another club then Sunderland shall receive 20% of any transfer fee received (including guaranteed sums and contingent fees). Al Ain agrees to disclose full details of any sale to Sunderland upon such occurring”.*
83. Clause 3.5 of the Transfer Agreement further provides:
- “If the Player is sold or transferred (by virtue of a player trade) to another club and a fee is due to Sunderland in accordance with clause 3.3 or 3.4 above, this shall be paid in full to Sunderland one month after the transfer of the Player unless there is a payment schedule negotiated between Al Ain and another club then such payment to Sunderland shall be linked with the afore mentioned payment schedule”.*
84. Clause 4.1 of the Transfer Agreement reads as follows:
- “For the avoidance of doubt, the Transfer Fee and the any contingent fees payable to Sunderland by Al Ain shall include both the FIFA training compensation and FIFA solidarity mechanism quota due to Sunderland. Any other amount due to any other third club whatsoever as solidarity mechanism shall be paid exclusively by*

Al Ain and Al Ain shall not have the right to deduct and/or retain any sum from the sums paid to Sunderland pursuant to this Agreement”.

85. It is undisputed that pursuant to the SIPG Transfer Agreement the Player was transferred from the Al Ain to SIPG for a transfer fee of EUR 9,000,000 (nine million Euros) payable in one instalment.
86. It is further not in dispute that Al Ain received from SIPG the transfer fee under the SIPG Transfer Agreement in the amount of EUR 9,000,000 in full.
87. The issue to be decided is if the subsequent transfer of the Player from Al Ain to SIPG triggers the Respondent’s entitlement to receive payment pursuant to the Sell-on Clause. The Parties stand on entirely contradicting positions. As described above in the award, the Appellant maintains that a payment under the Sell-on Clause would be due to the Respondent only in case of increase in the value of the Player. On the contrary, the Respondent holds that a sell-on payment is due in all cases irrespective of the transfer fee received by the Appellant under the second transfer. Consequently, the answer to the question in dispute depends on the interpretation of the Sell-on Clause.
88. For the present purposes, the interpretation of the Sell-on Clause must be carried out according to the general rules of contract interpretation. According to the principles established in the applicable Swiss law, the court shall first seek to bring to light the real and common intent of the parties, empirically as the case may be, on the basis of clues without regard to the inaccurate expressions or designations they may have used. Failing this, it shall then apply the principle of reliance and seek the meaning that the parties could and should give according to the rules of good faith to their reciprocal expressions of will considering all the circumstances (ATF 140 III 134 at 3.2; 135 III 295 at 5.2, p. 302 and the cases quoted, ATF 4A_676/2014 at 3.3). Should the application of this principle fail to bring to a conclusive result, some alternate means of interpretation may be resorted to, such as the so-called rule of ambiguous clauses, pursuant to which, in case of doubt, the contract must be interpreted against the party which drafted it (*in dubio contra stipulatorem* or *proferentem*; ATF 124 III 155 at 1b, p. 158 and the cases quoted).
89. In order to interpret Clause 3.3 of the Transfer Agreement, it is necessary to make reference to Article 18(1) of the Swiss Code of Obligations (“CO”), dealing with the interpretation of contracts:

“As regards both the form and content of the contract, the real intent which is mutually agreed upon shall be considered, and not an incorrect statement or manner of expression used by the parties, whether due to error, or with the intention of concealing the true nature of the contract” [Translation of the official text by the Swiss-American Chamber of Commerce, 2005].
90. Under this provision, the parties’ common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention (WINIGER, Commentaire Romand – CO I, Basel 2003, n. 18-20 ad Art. 18 CO). This interpretation will first take into account the ordinary sense

one can give to the expressions used by the parties and how they could reasonably understand them (WINIGER, *op. cit.*, n. 26 ad art. 18 CO; WIEGAND, *Obligationenrecht I*, Basel 2003, n. 19 ad art. 18 CO). The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation (WINIGER, *op. cit.*, n. 33, 37 and 134 ad art. 18 CO; WIEGAND, *op. cit.*, n. 29 and 30 ad art. 18 CO). By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must – according to the jurisprudence of the Swiss Federal Court – be interpreted based on the principle of confidence. This principle implies that a party’s declaration must be given the sense its counterparty can give to it in good faith (“Treu und Glauben”: WIEGAND, *op. cit.*, n. 35 ad art. 18 CO), based on its wording, the context and the concrete circumstances in which it was expressed (ATF 124 III 165, 168, consid. 3a; 119 II 449, 451, the same in CAS 2008/A/1544).

91. In other words, the Sole Arbitrator has to identify the real and common intent of the parties, pursuant to the mentioned principles.
92. The Sole Arbitrator considers that the case at hand is to be analysed in the light of the provisions of CO dealing with the conditional obligations. In accordance with article 151(1) of CO, “*a contract which is dependent upon the occurrence of an uncertain fact in order to be binding is deemed to be conditional*”. Therefore, Clause 3.3 of the Transfer Agreement must be considered as a conditional clause in the sense of Article 151(1) of the CO, which is also corroborated by the CAS jurisprudence (CAS 2009/A/1756). When signing the Transfer Agreement dated 20 June 2012, the claim of the Respondent based on Clause 3.3 of this agreement was conditional upon the fulfilment of the two following elements: (i) transfer of the Player by Al Ain to a third club against payment of a transfer fee and (ii) payment by this third club of a transfer fee to Al Ain. The second chapter of the 4th title of the first part of CO contains provisions regarding the obligations which are submitted to conditions. It results from these provisions that Swiss law distinguishes between a condition precedent, which is defined at Article 151 CO, and a condition subsequent, which is defined at Article 154 CO. The Sole Arbitrator is clearly of the opinion that the obligation provided by Clause 3.3 of the Transfer Agreement is to be construed as conditional according to Article 151(1) CO. When entered into, this obligation was dependent upon the occurrence of a future and uncertain facts, namely the transfer of the Player to a third club for a transfer fee to be received by the Appellant.
93. The occurrence of the first condition (transfer of the Player to a third club) is not in dispute between the Parties - the SIPG Transfer Agreement regarding the transfer of the Player was entered into between Al Ain and SIPG on 7 July 2015.
94. It is the fulfilment of the second condition that is giving rise to the different and conflicting interpretations suggested by the Parties. While the payment of the transfer fee by SIPG to Al Ain in the amount of EUR 9,000,000 is not disputed, the Appellant has advanced the argument that the contingent fee under the Sell-on Clause is due only if the transfer fee received from the third club (SIPG) is in excess of the amounts already received by Sunderland from Al Ain pursuant to the Loan Agreement and the Transfer Agreement.

95. The literal meaning of the Sell-on Clause (Clause 3.3 of the Transfer Agreement) is that if the Player is sold to another club by Al Ain then Sunderland shall receive 20% of *any* transfer fee received (including guaranteed sums and contingent fees), regardless of the amount of the transfer fee under the subsequent transfer agreement (be it higher or lower than the transfer fee under the Transfer Agreement).
96. The Sell-on Clause is drafted in such manner so that Sunderland would be entitled to the sell-on payment irrespective of the amount of the transfer fee received by Al Ain from the third club (“20% of *any transfer fee received*”). The wording of Clause 3.3 of the Transfer Agreement is clear and unambiguous. The immediate interpretation of the clause, considering the ordinary sense of the language used therein, results in the conclusion that the Respondent’s entitlement is triggered by receipt of the Appellant of any and whatever amount as a consideration for the transfer of the Player from the third club. The contingent payment under the Sell-on Clause is not dependent on any other condition except from the payment of a transfer fee received by Al Ain. The Sell-on Clause does not contain expressions of the kind that Sunderland will have the right to obtain the 20% of the transfer fee only if such fee is exceeding a certain amount or the transfer is closed for an amount not below certain level or that the Respondent will be entitled to a percentage of the amount received which is over and above a particular amount, etc.
97. In a Decision 4A_124/2014 of 7 July 2014 at 3.4.1 the Swiss Federal Supreme Court held the following:
- “Even if it is apparently clear, the meaning of a text signed by the parties is not necessarily decisive, as purely literal interpretation is prohibited (Article 18(1) CO). When the wording of a contract clause appears crystal clear at first sight there may still be some other conditions of the contract, the goal sought by the parties, or some other circumstance causing the text of the clause to fail to express the exact meaning of the agreement concluded. However, there is no reason to depart from the literal meaning of the text adopted by the parties to the contract if there is no serious reason to doubt that it does not correspond to their intent (ATF 140 III 134 at 3.2; 135 III 295 at 5.2, p. 302 and the cases quoted)”².*
98. Therefore, in order that the Sell-on Clause is not interpreted according to its literal wording, the Sole Arbitrator should have been advised of some other conditions of the Transfer Agreement, the goal sought by the Parties, or some other circumstance causing the text of the clause to fail to express the exact meaning of the agreement concluded. Otherwise, there would be no reason to depart from the literal meaning of the text. The Sole Arbitrator notes that in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its “burden of proof”, i.e. must meet the onus to substantiate its allegations and affirmatively prove the facts on which it relies with respect to that issue. It is the Appellant’s burden to prove that the Parties’ mutual intent was anything else than what is stated in the agreement.
99. In determining the intent of a party or the intent which a reasonable person would have had in the same circumstances, it is necessary to look first to the words actually used or the conduct engaged in. However, as explained above, the investigation is not to be limited to those words or the conduct even if they appear to give a clear answer to the question. In order to go beyond

² The original decision is in French. The full text is available on the website of the Federal Tribunal, www.bger.ch.

the apparent meaning of the words or the conduct of the parties, due consideration is to be given to all relevant circumstances of the case. This includes the negotiations and any subsequent conduct of the parties.

100. Neither party has presented witnesses, who had a direct knowledge of the events that could have helped to understand the context of the negotiations between Sunderland and Al Ain. It leaves the Sole Arbitrator with the difficult task to determine the common intent (if it would be different from what appears from the expressed agreement) of the Parties with very little documentary evidence and factual elements. No offers, faxes, memos of meetings and discussions, clarifying the process of negotiation, drafting and signing of the Transfer Agreement, were produced in the course of the present proceedings.
101. As to the subsequent conduct of the parties, the Sole Arbitrator notes that during the procedure before the Single Judge and until the Decision was passed, the Appellant did not contest the right of the Respondent to receive in accordance with Clause 3.3 of the Transfer Agreement a sum of money on the account that it sold the Player for less than it paid to the Respondent. The Appellant solely disputed the amount to be received by the Respondent arguing that certain deductions should be made from the transfer fee received under the SIPG Transfer Agreement (intermediary remuneration and solidarity contribution). The Appellant did not, until the proceedings before the CAS, challenge nor contest the principle of the payment due to the Respondent on the basis of the Sell-on Clause.
102. Indeed, clauses providing for kind of risk-sharing and of participation of the transferring club in possible, uncertain gains obtained by the new club in the event of a further transfer to a third club, are not uncommon in international transfer agreements of professional football players. The economic rationale of such clauses is, generally, that by agreeing into such arrangement, the transferring club accepts to receive, in a first place, a lower “first” transfer fee, with the expectation of receiving an additional “fee” if the recipient club will be able to transfer, with profit, the player to a third club (see for instance CAS 2005/A/896). These clauses are most common in transfers involving young promising players.
103. The Sole Arbitrator, taking in due consideration the wording of the Transfer Agreement and after careful review of all means of evidence produced by the Parties, is of the view that the purpose of the arrangement contained in Clause 3.3 of the Transfer Agreement is not to provide the Respondent with an additional payment only if the Appellant would be able to transfer the Player to a third club with profit (i.e. for an amount exceeding that previously paid by the Appellant to the Respondent). Would this have been the case, the real intention of the Parties should have been manifested in a clearer way. Accordingly, the Sole Arbitrator holds that Clause 3.3 of the Transfer Agreement is to be interpreted not as a provision granting a profit share in the “sale” of the Player to a third party only in case the Player is “sold” for a price exceeding the transfer compensation received by Sunderland under the Loan Agreement and the Transfer Agreement.
104. The above understanding is supported by the following. In Clause 3.4 of the Loan Agreement, Sunderland assumed an obligation, reciprocal to the sell-on obligation undertaken by Al Ain in

Clause 4.2 of the Loan Agreement and Clause 3.3 of the Transfer Agreement. Clause 3.4 of the Loan Agreement provides:

“Should Al-Ain fails to undertake the Option, or the Player does not consent to such, and the Player is subsequently sold to another club by Sunderland then Al-Ain shall be entitled to 50% of any guaranteed transfer fee received by Sunderland which is over €5,000,000 (five million Euros) up to a maximum final payment of €3,000,000 (three million Euros). When Al-Ain has received €3,000,000 all other sums shall be retained by Sunderland.

By way of example, if the Player is sold by Sunderland to another club for a transfer fee of €6,000,000 (six million Euros) then Al-Ain would receive 50% of €1,000,000 (one million Euros), which equals to €500,000 (five hundred thousand Euros)”.

105. It is evident that according to Clause 3.4 of the Loan Agreement, unlike the conditions under the Sell-on Clause, the payment to be received by Al Ain is restricted in three aspects: (i) Al Ain would receive certain percentage of any guaranteed transfer fee, not of any contingent fees; (ii) the payment would be due only if the Player is transferred by Sunderland for a transfer fee which is over EUR 5,000,000 and (iii) the maximum final payment may not exceed the amount of EUR 3,000,000.
106. Therefore, in the case of Clause 3.4 of the Loan Agreement (transfer of the Player by Sunderland after the loan period, Al Ain failing to utilize the Option or the Player not consenting to it) the Parties have adopted a different approach. If they wished so, the Parties were also free to narrow the circumstances under which Sunderland would be entitled to sell-on payment. Instead, the Sell-on Clause simply provides that Sunderland shall receive *“20% of any transfer fee received (including guaranteed sums and contingent payments)”*.
107. The Appellant relies on the ruling in CAS 2010/A/2098 where the Panel stated that *“The sell-on clause contains a well-known mechanism in the world of professional football: its purpose is to “protect” a club (the “old club”) transferring a player to another club (the “new club”) against an unexpected increase, after the transfer, in the market value of the player’s services; therefore, the old club receives an additional payment in the event the player is “sold” from the new club to a third club for an amount higher than that one paid by the new club to the old club. In transfer contracts, for that reason, a sell-on clause is combined with the provision defining the transfer fee: overall, the parties divide the consideration to be paid by the new club in two components, i.e. a fixed amount, payable upon the transfer of the player to the new club, and a variable, notional amount, payable to the old club in the event of a subsequent “sale” of the player from the new club to a third club”*.
108. The Sole Arbitrator agrees with the Panel in CAS 2010/A/2098 to the extent that this is one possible purpose of the sell-on clauses. In other cases, however, the contracting parties may have attached another purpose to the sell-on clause, e.g. to ensure that the old club will receive additional payment in the event that the player is transferred by the new club to a third club regardless of the amount of the transfer fee under the subsequent transfer, whether it was higher or lower than the amount of the initial transfer.
109. Further, it is indicative that, in the grounds of the award, the Panel in CAS 2010/A/2098 reviewed a particular sell-on clause. The dispute in the above referenced case involved a specific

sell-on clause contained in a transfer agreement concluded between Sevilla FC and Racing Club of Lens. The said sell-on clause provided, as follows:

“2.2.4 - Profit-sharing. In case of resale of the player S. by Sevilla FC to another club, racing Club of Lens shall receive:

- *10% of the capital gain between 4,000,000 Euro and 8,000,000 Euro.*
- *15% beyond 8,000,000 Euro.*
- *These amounts may be cumulated”.*

110. Clearly, the parties there agreed in Article 2.2.4 of the transfer agreement that in case of “*resale*” of the Player by Sevilla to another club, Lens would receive an additional portion of the price to be paid by Sevilla, expressed as a percentage of the “*capital gain*” made by Sevilla. Therefore, the Panel in CAS 2010/A/2098 reflected upon a typical profit-sharing sell-on clause. The Sell-on Clause discussed in the present case is different.

111. It therefore follows that, in the circumstances and in light of the particular Sell-on Clause, Sunderland is entitled to receive payment pursuant to it.

B. *What is the amount of the payment due to Sunderland pursuant to the Sell-on Clause?*

112. Having established that Al Ain is obliged to pay a sell-on amount to Sunderland, the Sole Arbitrator has to decide on the specific amount due. According to the Sell-on Clause the sell-on payment shall be determined by the following formula: 20% of the transfer fee under the SIPG Transfer Agreement, i.e. 20% of EUR 9,000,000 = EUR 1,800,000. In that regard, the Sole arbitrator has to assess whether the Appellant’s secondary request for relief can be upheld, namely if certain deductions should be made from the transfer fee received by Al Ain under the SIPG Transfer Agreement (intermediary remuneration and solidarity contribution).

113. As to the intermediary remuneration allegedly paid by Al Ain to an intermediary (3% of the transfer fee under the SIPG Transfer Agreement equal to EUR 270,000), the Sole Arbitrator finds no compelling reason why this payment should be deducted from the transfer fee. The Sell-on Clause speaks of “*any transfer fee received*”, not of a net transfer fee, i.e. a sum received after deduction of the costs in direct connection with the transfer of the Player, including the agent’s costs or intermediary remuneration. Entering into the intermediary agreement was a business decision of the Appellant which cannot be held to the detriment of the Respondent.

114. The Appellant further requests that the amount of EUR 450,000 (5% of the transfer fee) be deducted from the transfer fee on the account that in accordance with the SIPG Transfer Agreement Al Ain committed to make the solidarity distribution in the said amount. Indeed, Clause 4.1 of the SIPG Transfer Agreement provides that the transfer fee includes the FIFA solidarity contribution, such compensation shall be distributed by Al Ain and will not be withheld from the transfer fee.

115. The Sole Arbitrator observes that according to the provision of Article 1 of Annex 5 to RSTP, 5% of any compensation, not including training compensation paid to the player's former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years.
116. RSTP reflect the following principles on solidarity contribution: (i) it is the new club that has the obligation to pay the solidarity contribution to the club(s) entitled to it; (ii) towards third parties, i.e. the clubs entitled to the solidarity contribution, the obligation to pay the contribution remains with the new club, even if there are internal arrangements between the new club and the transferring club; (iii) the transferring club and the new club are free to agree on a shift of the final, financial burden of the solidarity contribution and, in particular, to agree on a rule regarding any reimbursement due or not.
117. In deviation from the RSTP provision (for which there is no legal obstacle), the Appellant agreed to receive the transfer fee under the SIPG Transfer Agreement without deductions and to distribute it as per the solidarity mechanism in the FIFA regulations.
118. This internal arrangement between Al Ain and SIPG regarding the issue who will carry the financial burden of the solidarity contribution is not binding on the Respondent.
119. Besides, Clause 4.1 of the Transfer Agreement explicitly provides that *“any amount due to any third party club whatsoever as solidarity shall be paid exclusively by Al-Ain and Al-Ain shall not have the right to deduct and/or retain any sum from the sums paid to Sunderland pursuant to this Agreement”*. This means that for the purpose of calculating the sell-on payment under Clause 3.3 of the Transfer Agreement the amount of the transfer fee shall not be affected by any solidarity payments made by the Appellant.
120. As a result, the Appellant's secondary defence with regard to the deduction of the solidarity contribution also fails.
121. The Appellant's request that any awarded amount is divided in four instalments, to which the Respondent objected, must also be denied.
122. Clause 3.5 of the Transfer Agreement provides that the fee due to Sunderland in accordance with Clause 3.3 (the Sell-on Clause) shall be paid *“in full”* after the transfer of the Player unless there is a payment schedule negotiated by Al Ain and the third club. Only in the latter case the payment due to Sunderland would be paid pro rata and would be linked to such payment schedule. It is not disputed that Al Ain received the transfer fee from SIPG in one instalment immediately following the signing of the SIPG Transfer Agreement. Therefore, in the absence of consent by the Respondent, there is no legal basis on which the Sole Arbitrator could decide to divide the debt in instalments.
123. It therefore follows that Al Ain is liable to pay Sunderland the amount of EUR 1,800,000 (20% of EUR 9,000,000) in one instalment.

- C. *Is the amount of the payment due to Sunderland pursuant to the Sell-on Clause determined correctly in the Decision?*
124. Having found that Al Ain is liable to pay to Sunderland the amount of EUR 1,800,000, the Sole Arbitrator is in accord with the Single Judge directing the payment of the same amount in the Decision.
125. Any other requests or prayers for relief submitted by the Parties to the Sole Arbitrator must be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Al Ain FC on 30 December 2015 against the decision issued by the Single Judge of the FIFA Players' Status Committee on 10 November 2015 is dismissed.
2. The Decision of the Single Judge of the FIFA Players' Status Committee passed on 10 November 2015 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.