Arbitration CAS 2016/A/4642 Phnom Penh Crown Football Club v. Asian Football Confederation (AFC), award of 6 December 2016 (operative part of 19 August 2016)

Panel: Mr Nicholas Stewart QC (United Kingdom), President; Mr Bernhard Heusler (Switzerland); Mr Chi Liu (China)

Football
Eligibility of a club to participate in a competition
Validity of decision making
Disciplinary measures
Validity of sanctions imposed on club for the behavior of third persons
Non-joinder of interested or affected parties and their rights to be heard

1. **If the rules and regulations of a federation provide that a specific person or body of the federation has the power to render a specific decision, but instead the respective decision is taken by a different person or body, the decision is not a valid decision and has to be set aside.**

2. **In order to be qualified as disciplinary provision, a rule needs to foresee the finding of breach of any specific regulation as well as the imposition of a sanction for the breach. It is not sufficient that the consequences foreseen by a specific rule are felt by their addressee as distinctly punitive measure.**

3. **In the absence of a clear rule which makes a club strictly liable for specific actions of its officers or employees or even for spectators, a club cannot be punished for the illicit behaviour of any such persons or individuals. *E.g.*, in case a rule foresees sanctions on clubs for cases in which the club is *"directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match"*, the respective sanctions may only be applied provided that evidence exists establishing that the respective club has been "directly or indirectly involved" in illicit behaviour of its officers or employees, or if the illicit actions by those persons or individuals are somehow attributable to the club. It is irrelevant in this context that the actions in question by the officers or employees are without doubt grossly improper conduct designed for example to influence the outcome of matches.**

4. **No order for relief can be granted which affects the rights of absent third parties. In this context a crucial distinction has to be made between the third party's *interests* and the third party's *rights*. *E.g.* if a confederation determines to refuse club A admission to a specific competition based on alleged breaches by that club of the Confederation's rules and if later on the decision related to the non-admission is reversed due to the fact that it had not been correctly rendered in the first place, club B – nominated as replacement for club A for the respective competition – does not have any right to participate in the**

competition; rather it only has the right to have the applicable statutes and regulations correctly and fairly applied in relation to the admission to the competition. Accordingly, even if club B had not been involved or heard in the respective reversal proceedings this would not constitute a breach of the accepted principle that no order for relief can be granted which affects the rights of an absent third party.

I. INTRODUCTION

1. This is an appeal by Phnom Penh Crown Football Club ("the Appellant") against a decision of the Asian Football Confederation ("the AFC" or "the Respondent") dated 20 May 2016 ("the Appealed Decision") refusing the Appellant admission to participate in the AFC Cup 2017 – Playoff Qualifiers ("the Competition"). The effect of the Appealed Decision, if valid, was that another Phnom Penh club, Nagaworld FC, would have taken the Appellant's place in the Competition and would have played the first games during the week beginning Sunday 21 August 2016.

II. PARTIES

2. The Appellant is a Cambodian football club founded (under a different name) in 2001 and plays in the first division of the Cambodian football league. It has won the Cambodian League title in 2002, 2008, 2010, 2011, 2014 and 2015. The Appellant is a member of the Football Federation of Cambodia ("FFC"), which organises and operates the Cambodian football league.

3. The Respondent is the football governing body for the Asian continent and issued the decision which is under appeal in these proceedings. The Respondent is established under the laws of the Federation of Malaysia. Its seat is in Kuala Lumpur. The FFC is a Member Association of the AFC in accordance with the AFC Statutes.

III. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing in Lausanne on Friday 19 August 2016. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows.

5. While the arbitral tribunal ("the Panel") has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning. This applies particularly to the extensive material placed before the Panel concerning the steps taken by the Appellant following discovery of the nefarious activities of individual coaches (and possibly also players) mentioned below, the steps taken by the FFC to investigate and punish such actions

and the details of the steps taken by the AFC to obtain information and investigate what had happened in Cambodia in relation to all those matters. The Panel has fully considered all that material and the related submissions made by the parties but in view of its decisions on the essential points in this appeal, the Panel does not find it necessary to discuss that material and those submissions in any detail in this award.

6. The key provision in the AFC Statutes is Article 73.6, which states:

> *"73.6 The admission to an AFC competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures".*

This provision was introduced into the AFC Statutes in 2010 to support the AFC's concerted and laudable struggle to eradicate match manipulation. It is the provision on which the Appealed Decision was expressly based.

7. The main background facts of this case from November 2015 to March 2016 are:

a. At the end of October 2015, the Appellant was given access to a voice recording which the Appellant considered included discussions among four of the Appellant's coaching staff ("the Four Coaches") about ways to achieve the dismissal of the Appellant's Head Coach Mr Sam Schweinburger. Among other matters the Four Coaches appeared to have discussed having Appellant's players injure other players in training and having some players not play to the best of their ability, all that being with a view to convincing the Appellant's President that Mr Schweinburger should be dismissed.

b. On 7 November 2015, based on that recording the Appellant informed the Four Coaches and seven players that they were suspended indefinitely by the Appellant. Although the Appellant considered there was no concrete evidence against the players, it decided that suspension was appropriate pending further enquiries.

c. On 8 November 2015, the Appellant released a statement to the media giving information of those suspensions. It sent a copy of the statement to the FFC.

d. A few days after 8 November 2015, the Appellant provided the FFC with a copy of the recording.

e. On 12 November 2015, the Four Coaches provided the FFC with a Counter-Statement of their position in connection with their suspension.

f. On 11 and 19 November, the seven players filed their own claims with the FFC, stating their positions in connection with their suspension.

g. On 20 November 2015, the FFC formed an Ad Hoc Committee to investigate the matter.

h. On 23 November 2015, the Appellant attended a meeting of the FFC Ad Hoc Committee to explain the suspensions the Appellant had imposed on the Four Coaches and the seven players.

i. The Appellant was not then contacted again by the Ad Hoc Committee or any other FFC body about this matter.

j. On 3 and 16 December 2015, the Four Coaches and the seven players attended meetings of the FFC Ad Hoc Committee at which they were questioned and asked to explain the recording.

k. On 12 December 2015, the Appellant won a game against Nagaworld FC and thereby the Appellant became champions of the Cambodian League for the 2015 season.

l. On 26 December 2015, the Ad Hoc Committee met and decided to report its findings and all the evidence to the FFC Disciplinary Committee. The Ad Hoc Committee then prepared a consolidated report to be submitted to the FFC Disciplinary Committee for its consideration.

m. On 29 January 2016, the FFC provided the Appellant with a copy of the FFC Disciplinary Committee decision, which was to suspend the Four Coaches but exonerate the seven players. The FFC also ordered the Appellant to pay the seven players their outstanding salaries and declared that those players were free to sign for another club for the following season starting in February 2016.

n. On 1 February 2016, the Appellant appealed to the FFC Appeal Committee against that decision of the FFC Disciplinary Committee, asking for harsher sanctions against the Four Coaches and reassessment of the case against the players.

o. On 11 February 2016, the FFC Appeal Committee confirmed the decision of the FFC Disciplinary Committee.

p. On 16 February 2016, the AFC wrote to the FFC requesting information concerning that decision of the FFC Disciplinary Committee so as "to enable the AFC to undertake disciplinary action and/or extend the sanctions on a Confederation basis in accordance with the AFC Disciplinary Code and/or the AFC Code of Ethics".

q. On 29 March 2016, the FFC responded to the AFC and provided various documents including the FFC Disciplinary Committee decision.

Then further relevant facts from April and May 2016 are:

r. On 27 April 2016 the FFC submitted to the AFC the Entry Form and Participating Team Agreement for the Appellant to participate in the Competition (the Appellant being nominated by the FFC at that point simply because it had been the champion club of the Cambodian League for the 2015 season).

s. On 20 May 2016 the AFC notified the FFC of the Appealed Decision as follows:

"We acknowledge receipt of the Entry Form dated 27 April 2016 and Participating Team Agreement dated 27 April 2016 nominating Phnom Penh Crown FC (PPCFC) as the representative of the Football Federation of Cambodia (FFC) to participate in the AFC Cup 2017 – Playoff Qualifiers (Competition).

We refer to the letter dated 9 March 2016 from the FFC to the AFC which enclosed, inter alia, the decision of the FFC Disciplinary Committee dated 29 January 2016 which sanctioned four (4) officials affiliated with PPCFC for offences relating to match-manipulation.

We kindly draw your attention to Article 73.6 of the AFC Statutes which states:

> The admission to an AFC competition of a Member Association or club directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level can be refused with immediate effect, without prejudice to any possible disciplinary measures.

Accordingly, please take note that the admission of PPCFC to participate in the Competition is refused with immediate effect.

In order to facilitate that the FFC is represented in the Competition, we kindly request that you provide the Entry Form and Participating Team Agreement of your nominated team (next highest ranked in the league) by latest 3 June 2016".

t. On 23 May 2016, the FFC asked the AFC to reconsider the Appealed Decision on the ground that it was not fair and that the Appellant was being sanctioned for "doing something completely legal and for the protection of the game".

u. On that same day 23 May 2016, the AFC notified the Appealed Decision to the Appellant.

v. On 25 May 2016, the AFC informed the FFC that the Appealed Decision was final.

w. On 26 May 2016 the Appellant (not yet having been notified that the AFC had informed the FFC that the Appealed Decision was final) wrote to the AFC stating that the Appellant was being sanctioned unfairly as it was the Appellant itself which had triggered the proceedings against the Four Coaches and the players and requesting the AFC to reconsider the Appealed Decision.

x. On 31 May 2016, the AFC informed the Appellant via the FFC that the Appealed Decision was final.

y. Also on 31 May 2016, the FFC nominated Nagaworld FC (the runner-up in the Cambodian League for the 2015 season) as its representative club in the Competition

and submitted an the Entry Form and Participating Team Agreement for Nagaworld FC to participate in the Competition.

z. On 17 June 2016, the draw for the Competition took place and Nagaworld FC was then scheduled to play its first matches in the Competition:

- Tuesday 23 August 2016 v Three Star Club (Nepal)
- Thursday 25 August 2016 v Erchim FC (Mongolia).

8. The Appellant has sought by this appeal to the CAS to have the Appealed Decision set aside and the AFC ordered to accept the Appellant's participation in the Competition.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. Main procedural steps before the hearing on Friday 19 August 2016

9. In accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code"), the Appellant filed its statement of appeal on 3 June 2016, together with a request for provisional measures under Article R37 of the Code. The Appellant nominated Mr Bernhard Heusler as arbitrator, requesting that Mr Heusler should be the sole arbitrator. Mr Heusler submitted his "Arbitrator's Acceptance and Statement of Independence" form on 19 July 2016, accepting his appointment.

10. On 15 June 2016, the Respondent filed its comments on the Appellant's request for provisional measures, concluding for the dismissal of such request.

11. On the same date, the Respondent objected to the Appellant's request for a Sole Arbitrator and requested that the case be submitted to a Panel of three arbitrators.

12. On 16 June 2016, the President of the CAS Appeals Arbitration Division rendered an order dismissing the Appellant's request for provisional measures filed on 3 June 2016.

13. By letter to the CAS of 17 June 2016, the AFC reiterated that this appeal should be decided by a panel of three arbitrators, in view of the seriousness of the matters involved.

14. By letter to the CAS of 17 June 2016 the Appellant requested a 5-day extension of time to file its appeal brief and that request was granted under Article R32 of the Code on 20 June 2016. There was a further 5-day extension agreed between the parties and granted by the CAS as notified in a CAS letter to the parties 27 June 2016. The Appellant filed its appeal brief within the extended time limit on 4 July 2016.

15. On 8 July 2016, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division had decided to submit the case to a Panel of three arbitrators pursuant to Article R50 of the Code.

16. By letter to the CAS of 15 July 2016 the AFC requested that the time limit for the filing of its answer under Article R55 of the Code should be fixed after the payment by the Appellant of its advance of costs under Article R64.2 of the Code. Such request was granted by the CAS Court Office on the same date.

17. By letter of 19 July 2016, the Appellant requested that a decision on this appeal be rendered by the Panel before 19 August 2016.

18. By a letter to CAS of 20 July 2016, the AFC nominated Mr Liu Chi as an arbitrator (the arbitrator nominated by the AFC on 15 July 2016, Mr José Juan Pintó, having declined to be appointed). Mr Liu Chi submitted his "Arbitrator's Acceptance and Statement of Independence" form on 22 July 2016.

19. By letters of 28 July 2016, the CAS Court Office acknowledged receipt of the Appellant's payment of its share of the advance of costs and notified the parties that a new deadline for filing of the appeal brief was 20 days from receipt of that 28 July 2016 letter.

20. On 3 August 2016, Mr Nicholas Stewart QC submitted his "Arbitrator's Acceptance and Statement of Independence" form, accepting his appointment under Article R54 of the Code.

21. By letter of 4 August 2016, the CAS notified the parties that the Panel constituted to decide this case comprised Mr Stewart as President with Mr Heusler and Mr Liu Chi as the two other arbitrators; and that the case file was being transferred to the Panel on that day. There has been no objection by either party to the composition of the Panel.

22. On 10 August 2016, the Appellant filed a second request for provisional measures ("the Second Request for provisional measures", see paragraph 28 ff. below).

23. On 12 August 2016, the Respondent filed its answer to the Second Request for provisional measures.

24. By letter of 12 August 2016 the CAS notified the parties that the Panel had decided to hold a hearing of this appeal at the CAS Court Office in Lausanne on Friday 19 August 2016.

25. On 16 August 2016, the CAS Court Office notified the parties of the order rendered by the Panel on the Second Request for provisional measures, by which the relevant request was dismissed.

26. On 17 August 2016, the Respondent filed its answer pursuant to Article R55 of the Code.

27. By letter of 17 August 2016 the CAS Court Office sent the parties a copy of the Order of Procedure, which was duly signed on behalf of each party. The hearing was held as scheduled on Friday 19 August 2016 (see paragraph 47 ff. below).

B. Applications for provisional measures before the hearing Friday 19 August 2016

28. Before the hearing on 19 August 2016 the Appellant made two applications for provisional measures under Article R37 of the Code, both of which were refused. Each application clearly stemmed from the Appellant's concern that without such measures it would not be possible for the Panel to decide this appeal and render its award in time to give the Appellant effective relief if the appeal succeeded.

29. In the event, because the Panel heard the case urgently on 19 August 2016 and notified the operative part of the award to the parties on the same day, the Panel's award has given the Appellant the effective relief it required. It is therefore not necessary to set out here a detailed account of the two applications for provisional measures.

30. The first application for provisional measures under Article R37 of the Code was made in the statement of appeal filed on 3 June 2016. The Appellant asked primarily for a stay of execution of the Appealed Decision, so that the Appellant would be included in the draw for the AFC Cup Playoff Qualifying Draw due to take place on 17 June 2016. The AFC filed an answer on provisional measures on 15 June 2016. As the Panel had not yet even been constituted, the application fell to be decided by the President of the CAS Appeal Arbitration Division ("the Division President") who first ruled on the *prima facie* CAS jurisdiction in this appeal. She decided that such *prima facie* jurisdiction was established and that the appeal was admissible, while expressly noting that the final decision on jurisdiction would be made by this Panel.

31. The Division President dismissed that first application on the ground that the Appellant had not even addressed or made any submission with respect to two of the requirements for the grant of provisional measures: that they were necessary to protect the applicant from irreparable harm and that the interests of the applicant outweighed those of the respondent.

32. The second application for provisional measures was filed on 9 August 2016. Again, the primary relief sought was a stay of execution of the Appealed Decision. By that date the hearing had been confirmed for 19 August 2016 but it remained uncertain whether the Panel would be able to conclude the hearing and communicate the operative part of its award to the parties in time to give the Appellant effective relief if its appeal succeeded.

33. The AFC filed its answer on provisional measures on 15 June 2016. The AFC requested the Panel to strike this appeal from the CAS roll and terminate the arbitration procedure "on the basis that the relief sought infringes upon the rights of a third-party not subject to the proceedings" (meaning Nagaworld FC). It asked in the alternative that the Panel should dismiss the request for provisional measures.

34. The Panel declined to make any order on the request to strike out the appeal and terminate the arbitration procedure, taking the view that it was clearly an issue to be considered and decided after the hearing on 19 August 2016. In any case, as discussed below in the section Merits, the Panel eventually decided against the AFC on this issue.

35. On the request for provisional measures, the Panel also had to rule first on the *prima facie* CAS jurisdiction in this appeal. It decided that such *prima facie* jurisdiction was established and that the appeal was admissible, while noting that its *prima facie* ruling would also not prevent this same Panel from making a final ruling in due course that the CAS had no jurisdiction on this appeal.

36. On 16 August 2016 the CAS Office communicated to the parties the Panel's decision on the second application for provisional relief (and on the AFC's application for the appeal to be struck out). The Panel dismissed the application. Although there was no certainty, the Panel had the intention and confident expectation (which turned out to be justified) that it would be able to make its final decision on the appeal and communicate the operative part of the award either on that same day of the hearing or at the latest by Monday 22 August 2016 (i.e. before the date of the first match of the AFC Cup Playoff Qualifiers to which the Appellant could participate if the appeal be upheld). Accordingly, the Panel did not see any significant risk of irreparable harm to the Appellant if it refused the requested stay of execution while it proceeded towards urgent resolution of this appeal at or after the hearing scheduled for Friday 19 August 2016.

C. Communications concerning Nagaworld FC up to the 19 August 2016 hearing

37. There is an obvious sense in which Nagaworld FC ("Nagaworld") has an interest in this appeal. That is apparent from the first paragraph of this award. However, Nagaworld has not taken any part in this appeal. Submissions made by the AFC as to the consequences of Nagaworld's non-participation in this appeal are examined below in the sections of this award dealing with the merits of this appeal.

38. In order to explain how Nagaworld came to be absent from these proceedings, this section of the award sets out the communications from the filing of the statement of appeal and the hearing on 19 August 2016 between, on the one hand, the CAS and, on the other hand, the Appellant, the AFC and Nagaworld.

39. This appeal was brought against the AFC as the sole respondent.

40. By a letter to the CAS of 20 June 2016, counsel for the Appellant wrote that on the receipt of the AFC's answer (filed 15 June 2016) to the first request for provisional measures, the Appellant had become aware that the FFC had apparently nominated Nagaworld as a replacement for the Appellant in the Competition and that the nomination had apparently been accepted by the AFC. The letter stated that, consequently, the Appellant had decided to add Nagaworld FC as respondent in this appeal.

41. However, the difficulty for the Appellant, as drawn to its attention in a reply from the CAS by letter the following day 21 June 2016, was that the 21 day time limit for an appeal, starting from its receipt of the Appealed Decision on 23 May 2016, had already expired. Accordingly, the addition of Nagaworld as a respondent required the consent of both Nagaworld and the AFC.

42. By letter of 24 June 2016, the AFC notified the CAS expressly that it did not consent to the addition of Nagaworld as a respondent and that has remained the AFC's stance throughout. That was enough on its own to kill the Appellant's notion of adding Nagaworld as a respondent but in any case Nagaworld has never given its consent either (and in fact has never communicated with the CAS Office at all in connection with these proceedings).

43. By its counsel's 21 June 2016 letter to the CAS the Appellant, who by then obviously realised that it was never likely to obtain the necessary consents to add Nagaworld as a respondent, attempted to open up an alternative procedural avenue: the participation of Nagaworld in this appeal by intervention under Article R41.3 of the Code, which states:

> *"If a third party wishes to participate as a party to the arbitration, it shall file an application to this effect with the CAS Court Office, together with the reasons therefor within 10 days after the arbitration has become known to the intervenor, provided that such application is filed prior to the hearing, or prior to the closing of the evidentiary proceedings if no hearing is held".*

44. By a letter also dated 21 June 2016, the CAS Court Office did notify Nagaworld that the Appellant had filed an appeal against the Appealed Decision. That letter had preceded receipt at the CAS of the Appellant's counsel's letter of the same date to the CAS and was specifically directed to the question whether Nagaworld consented to be added as a respondent, and not to the question whether it wished to participate under Article R41.3 of the Code. Nevertheless, it would still have been a clear notice to Nagaworld triggering the start of the 10 day period specified in Article R41.3 of the Code within which a third party wishing to participate in the arbitration must file an application to that effect with the CAS Court Office.

45. There was some difficulty or doubt about the fax number and email address first given to the CAS for Nagaworld. However, the CAS re-sent its 21 June 2016 letter on 22 June 2016 to a new email address for Nagaworld. Moreover, by a letter of 19 July 2016 sent to Nagaworld by fax and email, the CAS notified Nagaworld again of the existence of this appeal and informed Nagaworld expressly that the Appellant had identified Nagaworld as an interested party pursuant to Article R41.3 of the Code. The statement of appeal and appeal brief were enclosures with the letter and were sent separately to Nagaworld by courier.

46. Nagaworld never responded to the CAS. It was not bound to respond and the result is that Nagaworld has never consented to be added as a respondent, has never made any application under Article R41.3 of the Code and has not participated in any way at all in this appeal. The question whether all that had any effect on the outcome of this appeal is considered under Merits below.

D. The hearing in Lausanne on Friday 19 August 2016

47. A hearing was held on Friday 19 August 2016 at the CAS Court Office in Lausanne, Switzerland. The Appellant was represented by counsel Mr José Luis Andrade and Mr David Casserly. The AFC was represented by Mr James Kitching, AFC Head of Sports Legal, Disciplinary and Governance, assisted by counsel Mr Lavin Vignesh.

48. The Panel is appreciative of the written and oral submissions of the parties and also of the successful efforts made by both parties and their representatives to achieve an urgent hearing in Lausanne. That was done in time to enable a decision which, as the appeal has succeeded, has given effective relief. In particular, we note with thanks that the AFC's representatives, who had at one point asked for the hearing to take place in Kuala Lumpur, travelled from there to Lausanne for the hearing.

49. Neither the Appellant nor the AFC called any witnesses, so the appeal has been heard and decided entirely on documentary evidence, with the benefit of the extremely helpful written and oral submissions from both parties' representatives.

50. In its answer the AFC had asked for its submission that the statement of appeal was defective, because of the non-joinder of Nagaworld (as to which see paragraphs 103 ff. below) should be separately considered and decided by the Panel; and then only if the Panel ruled in favour of the Appellant on that issue should the Panel then go on to hear the parties on the remaining issues relating to the Appealed Decision. However, the Panel decided that the more practical and effective course was to hear submissions on all issues at the hearing scheduled for 19 August 2016 and then rule on all issues following the hearing.

51. The parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings. The Panel has carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the parties, both in their written submissions and at the hearing, even if they have not been specifically mentioned in the present Award.

52. In view of the urgency for the parties to know where they stood and what needed to be done in the light of the Panel's decision, as permitted by Article R59 of the Code, the Panel urgently issued the operative part of its award, which was communicated to the parties on 19 August 2016, with the Panel's reasons to follow in due course.

V. SUBMISSIONS OF THE PARTIES

A. Appellant's submissions

53. The Appellant's submissions can be summarised as follows.

(1) The Appealed Decision was invalid because it was made by the AFC General Secretary or by the General Secretariat whereas it ought to have been made by the AFC Competitions Committee.

(2) The Appealed Decision should be set aside because the AFC's process leading to the Appealed Decision was arbitrary and unfair and violated due process, because:

- The Appellant had never been subject to any proceedings or sanction in relation to the matters relied on by the AFC in support of the Appealed Decision and had never been given an opportunity to be heard by the AFC before the Appealed Decision.

- The AFC had failed to establish to the requisite standard of proof of "comfortable satisfaction" that the Appellant had been *"directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level"* (and the Appellant had not been so involved).

- In the Appealed Decision the AFC had stated that the FFC Disciplinary Committee had sanctioned four officials affiliated with the Appellant for *"offences relating to match-manipulation"*, but that was incorrect as the Four Coaches had not been sanctioned for match-fixing but for corruption.

- There was no evidence that the Four Coaches had actually influenced the outcome of matches; and if (contrary to the Appellant's submission) an offence of match-fixing did not require that fixing had actually occurred, there was no evidence that the Four Coaches had attempted to manipulate the outcome of matches.

(3) Article 73.6 of the AFC Statutes did not make clubs strictly liable for the actions of its officials or employees: a club was not necessarily *"directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level"* just because an official or employee of the club had been so involved. In this case, for Article 73.6 to have applied so as to give the AFC power to refuse the Appellant's admission to the Competition, it was necessary to establish that the Appellant's actions had been intentional or negligent.

(4) The Appellant could not be held responsible for the actions of the Four Coaches, as it was an intended victim of their actions. Accordingly, the Appellant itself had done nothing which could have justified applying Article 73.6 so as to refuse the Appellant admission to the Competition.

(5) The Appealed Decision was disproportionate, unreasonable and justified.

54. In its statement of appeal the Appellant requested that the Appealed Decision be overturned. Consistently with that request, in its appeal brief the Appellant asked specifically that the CAS should:

(i) Set aside the Appealed Decision;

(ii) Order the AFC to accept the participation of Phnom Penh Crown Football Club in the AFC Cup 2017 – Playoff Qualifiers and to adopt all measures which may be necessary for that purpose;

(iii) Order the AFC to pay the full amount of any CAS arbitration costs;

(iv) Order the AFC to pay a significant contribution towards the legal costs and other related expenses of the Appellant, at least in the amount of €30,000.

B. Respondent's submissions

55. The Respondent's submissions can be summarised as follows.

(1) The Appealed Decision was not a disciplinary decision but was an administrative measure made by the AFC General Secretariat. The General Secretariat was competent to issue the Appealed Decision, which was a valid decision of the AFC taken by the correct procedure under the AFC's Statutes and regulations.

(2) It is a critical interest of sports governing bodies (including the AFC) to protect the integrity and reputation of its competitions. The application of Article 73.6 of the AFC Statutes by the Appealed Decision reflected the AFC's zero-tolerance policy against match manipulation.

(3) The Appellant had been indirectly involved in activities aimed at arranging or influencing the outcome of matches at national level, so that Article 73.6 could be applied to refuse the Appellant admission to the Competition. The AFC accepts that on that issue the burden of proof is upon the AFC and that the applicable standard of proof is "comfortable satisfaction". It submits that it has discharged that burden to the applicable standard.

(4) There was clear evidence that the four officials of the Appellant (i.e. the Four Coaches) had undertaken activities aimed at arranging or influencing the outcome of matches at national level. The Appellant is to be held responsible for their actions. For the purposes of Article 73.6 and in accordance with relevant CAS jurisprudence, it is clear that the Appellant was "indirectly involved" in those activities.

(5) The Appealed Decision was a valid exercise of the discretionary power in Article 73.6.

(6) The AFC's refusal to admit the Appellant to the Competition was not a sanction but was administrative in nature. Accordingly, the principle of proportionality was irrelevant.

(7) That refusal, by the Appealed Decision, was in any case entirely reasonable. Article 73.6 represents the first and preventive level of the AFC's fight against match-fixing and it is required to protect the integrity, image and reputation of the AFC competitions. The exclusion of the Appellant from the Competition for one year was a perfectly legitimate, proportionate and necessary means to protect that interest.

(8) In any case, as well entrenched in the CAS jurisprudence, any procedural violation at first instance can be cured by a *de novo* appeal to the CAS (as in this case) in accordance with Article R57 of the Code.

(9) The relief sought by the Appellant directly affected the rights of Nagaworld, which is neither a party nor able to be joined to these proceedings by the Panel. The Panel therefore has no scope for review of the Appealed Decision and no power to order the relief sought. The failure of the Appellant to include Nagaworld as a co-respondent is fatal to this appeal, which should therefore be stricken from the CAS roll (and this arbitration process terminated).

56. By its answer to the appeal brief, the AFC as respondent requested that the Panel should:

(i) strike the matter from the CAS roll and terminate the arbitration procedure;

(ii) in the alternative, dismiss the appeal in full;

(iii) order the Appellant to pay the full costs of this arbitration procedure;

(iv) order the Appellant to pay the costs and expenses of the Respondent, of a sum no less than USD30,000.

VI. JURISDICTION AND ADMISSIBILITY

57. The *Competition Regulations - AFC Cup 2017 Playoff Qualifiers* ("the Competition Regulations") state in Article 68.1:

"Participating Clubs, Member Associations, Participating Players, and Participating Officials acknowledge that, once all internal channels have been exhausted at the AFC, their sole recourse shall be to the Court of Arbitration for Sport (CAS). The Code of Sports-related Arbitration shall be applicable".

58. That provision falls to be applied in conjunction with Article 65.2 of the AFC Statutes, which states:

"Recourse may only be made to CAS after all other internal AFC channels have been exhausted. Appeals should be lodged with CAS within twenty-one (21) days of notification of the decision in question".

59. The Appellant having invoked the CAS jurisdiction by its filing of the statement of appeal, the AFC expressly stated in its answer that it agreed the CAS had jurisdiction to rule on this matter in accordance with the provisions cited in the two previous paragraphs.

60. Article R47 of the Code states:

"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".

61. Moreover, the jurisdiction of the CAS is not contested by the Respondent and is confirmed by the parties' signatures on the Order of Procedure sent to them on 17 August 2016 and their conduct and participation in the proceedings without objection.

62. It is clear that the CAS has jurisdiction to decide this appeal.

63. The relevant rules for filing the appeal have been followed in accordance with all applicable time limits. The Panel determines that this appeal is admissible.

VII. APPLICABLE LAW

64. Pursuant to Article R58 of the Code, in an appeal arbitration procedure before the CAS:

"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".

65. The applicable regulations within the meaning of the above provision are the AFC Statutes and regulations and the Competition regulations. The AFC is domiciled in Malaysia so that its statutes and regulations are to be interpreted and applied in accordance with the law of the Federation of Malaysia. The parties have not chosen any other rules of law to be applied to this dispute. Accordingly, the law applicable to this appeal is the law of the Federation of Malaysia, both in relation to the interpretation and application of the applicable statutes and regulations of the AFC and subsidiarily in accordance with Article R48 of the Code.

66. No submissions were made by either party as to the law of the Federation of Malaysia. The Panel notes that, subject to any statutory provisions to different effect, the principles of the law of Malaysia are derived from English common law.

VIII. MERITS

67. The first question we consider is whether the Appealed Decision was validly taken by the correct person or body of the AFC. The letter of 20 May 2016 communicating the Appealed Decision to the FFC is written and signed by the General Secretary and on its face it strongly suggests that he (or the General Secretariat – the Panel accepts the AFC's position that no distinction is to be drawn) had taken the decision and was not merely notifying it.

68. However, we do not need to make that inference from the letter alone as the AFC in its answer very fairly and openly describes the process and makes it clear that it was indeed the General

Secretariat which actually took the decision to refuse the Appellant admission to the Competition.

69. The Competition Regulations contain two provisions, cited by both parties, directly relevant to this point:

> Article 2.1: *The AFC Competitions Committee shall be responsible for organising the Competition in accordance with the AFC Statutes. The AFC General Secretariat shall carry out the necessary administrative work in support of the AFC Competitions Committee.*
>
> Article 5.1: *The AFC Competitions Committee shall determine which Participating Clubs shall be eligible to enter the Competition. Such determination shall be undertaken with reference to the AFC Member Association Ranking (MA Ranking).*

70. The Panel also notes Article 2.2 of the Competition Regulations, which lists twelve specific responsibilities after the introductory words: *The responsibilities of the AFC shall include, but are not limited to:* [then lists 2.2.1 to 2.2.12]. It is crystal clear to the Panel that the words *"Competitions Committee"* have been mistakenly omitted between *"the AFC"* and *"shall include"*, as that is the only way that Article 2.1 and 2.2 make sense when read together. Accordingly, the Panel reads those words into Article 2.1.

71. The Appellant cited two other provisions of the Competition Regulations:

> Article 6.2: *In the case of a Participating Club withdrawing or being excluded from the Competition, the AFC Competition Committee shall be responsible for making any necessary decisions, including without limitation whether to:*
>
> *6.2.1 replace the Participating Club*
>
> Article 74.1: *Matters not provided for in these Regulations shall be decided by the AFC Competitions Committee. Such decisions are final and binding.*

and cited other AFC provisions as follows:

> Article 44.I of the AFC Statutes: *The Competitions Committee shall organise and manage AFC competitions and matches including making decisions on any matters related to these competitions and matches in accordance with these Statutes and all relevant Regulations.*
>
> Article 10.1 of the AFC Organisation Regulations (2016): *The General Secretary has the responsibility and authority to make decisions on all administrative matters that are not subject to the AFC Statutes, these Regulations or the regulations of other AFC bodies.*
>
> Article 9.44 of the AFC Organisation Regulations (2016): *The Competitions Committee shall:*
>
> 9.44.1 *organise and manage AFC competitions and matches, including making decisions on any matters related to these competitions and matches in accordance with the AFC Statutes and relevant regulations;*

…

9.44.3 *deal with general issues with regards to AFC competitions.*

72. The AFC additionally cites Articles 18.3 and 39 of the AFC Statutes:

Article 18.3: *The General Secretariat is the administrative body of the AFC.*

Article 39.1: *The General Secretariat shall carry out all the administrative work of the AFC under the direction of the General Secretary.*

73. The Panel also notes Article 40 of the AFC Statutes, which sets out in Article 40.3 a list of eleven responsibilities of the General Secretary which, while clearly not exhaustive, do emphasise the administrative nature of his or her duties (e.g. 40.3 k): *sign decisions on behalf of any AFC Committee, provided that no other ruling exists in the relevant regulations*).

74. These provisions of the AFC Statutes and various regulations are cited extensively because the question of the General Secretary's duties and powers in relation to Article 73.6 is pivotal. If it was not within his duties and powers to make the decision to refuse the Appellant admission to the Competition, the appeal succeeds on that ground alone to the extent that the Appealed Decision must be set aside.

75. The AFC submits that the decision under Article 73.6 is an administrative measure; and that it is part of the General Secretariat's responsibility to implement the decision of the Competitions Committee under Article 5 of the Competition Regulations approving the MA Ranking for a certain time period, which determines the Member Associations from which the eligible clubs for the Competition are drawn. It submits that it is such an administrative measure to assess whether a club nominated by a Member Association to participate in the Competition meets all the necessary requirements for admission.

76. On this issue the AFC relies upon the CAS jurisprudence drawing a distinction between administrative measures and disciplinary measures: CAS 2007/A/1381; CAS 2008/A/1583 & 1584. The AFC submits that refusal of admission to the Competition under Article 73.6 is an administrative measure, by contrast with a disciplinary measure under the AFC Disciplinary Code which provides for sanctions for individuals, clubs and Member Associations.

77. The Panel accepts that Article 73.6 is not strictly a disciplinary provision, even though the refusal of admission to the Competition would inevitably be felt by a club as distinctly punitive. Application of Article 73.6 does not involve a finding of breach of any specific AFC regulation and therefore necessarily does not lead to imposition of any sanction for a breach. Disciplinary measures are quite separate, as recognised in the concluding words of Article 73.6: *without prejudice to any possible disciplinary measures*.

78. It does not follow, however, that the refusal of admission to the Competition under Article 73.6 then falls straight into a simple category labelled "administrative measures" so that it is a decision within the power of the General Secretary.

79. The Panel has examined the entire raft of relevant statutes and regulations of the AFC and has come to the firm conclusion that any decision to refuse admission to the Competition had to be taken by the Competitions Committee and was not within the power of the General Secretary.

80. Article 73.6 does not involve a mere check to see if a club has met specified requirements for admission to the Competition. It involves two distinct steps:

(1) Establishment that the club has been directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match;

and, if so

(2) Exercise of a discretion whether or not to refuse the club admission to the Competition.

81. There may well be circumstances in which step (1) requires no more than a straightforward check by the General Secretariat and a report to the Competitions Committee that the club's involvement in such activity is established. For example, where the General Secretariat had been able to verify that such involvement had already been found against the club by a completed and unquestionably legitimate disciplinary process, or by a public court, there would usually be no need for any further investigation. But in other circumstances the establishment of involvement in match-fixing for step (1) may require investigation beyond the scope of the General Secretary's powers and functions.

82. However, what is said in the previous paragraph relates only to step (1). Step (2) is in every case beyond the powers and responsibilities of the General Secretary. The Panel understands and has no issue with the AFC's policy of zero tolerance of match-fixing. That policy is for the AFC to decide and follow, not this CAS Panel. The Panel further appreciates that the effect of the policy is that once step (1) had been established, there would usually need to be quite exceptional circumstances for the club then to be allowed to participate in the Competition. Nevertheless, Article 73.6 clearly does not provide for automatic refusal of admission: on its wording, admission of a club involved in the specified activity can be refused but is not automatic. The General Secretary may make a recommendation to the Competitions Committee on the decision whether or not to refuse admission. The Competitions Committee may even adopt a declared policy or practice of generally accepting such recommendations provided always that it considers in each case whether there are circumstances which should lead it to depart from the recommendation. What the Competitions Committee cannot do is leave or delegate the decision to the General Secretary. That is clearly what happened in this case.

83. The AFC has not sought to disguise the fact that it was the General Secretariat which made the decision to refuse the Appellant admission to the Competition. The Panel is appreciative of the fair and open way in which the point has been argued on this appeal. However, the result is that the Appealed Decision was not a valid decision, because it was the Competitions Committee and not the General Secretariat which had the power to make that decision.

84. The appeal therefore succeeds on that ground alone and the Appealed Decision must be set aside.

85. On its own this ground of our decision would have meant that the discretionary decision whether or not to admit the Appellant to the Competition still remained to be made. Under Article R57 of the Code that could have been done either by the matter being remitted by the Panel for decision by the Competitions Committee or by the Panel taking the decision itself (and in that latter case the Panel would be considering the matter *de novo*, which cures any procedural flaws at the previous instance). In fact it has been unnecessary for the Panel to decide which procedure should be adopted. It will be seen from the other grounds of the Panel's decision on this appeal that there is no basis for the decision under Article 73.6 to be taken afresh anyway.

86. In paragraph 81 above the Panel has alluded to the potentially widely varying circumstances in which it may need to be established, as what we have called step (1) in the application of Article 73.6, whether or not a club has been involved in match-fixing activity. The facts of this case, as examined by the AFC for the purposes of Article 73.6, did not include a disciplinary finding against the Appellant, either by the FFC or the AFC (and no public court was involved at any point). That raised the question, fully argued between the parties on this appeal, whether the Appellant had been denied a fair opportunity of presenting its case to the AFC before any decision was taken to refuse the Appellant admission to the Competition. The Appellant argues that it ought to have had that opportunity of persuading the AFC not to conclude that the Appellant had been either directly or indirectly involved in any activity as mentioned in Article 73.6.

87. After the FFC Ad Hoc Committee's investigations in November and December 2015 mentioned in paragraph 7 above, the FFC had submitted the Appellant's name as the Cambodian club it proposed to be admitted to the Competition, despite the negative publicity surrounding the Appellant club and the Four Coaches. As a first response, for example, the AFC could have asked the FFC to make further investigations before the AFC made a decision about admission of the Appellant under Article 73.6 of its statutes. But whatever process the AFC had adopted, the Appellant contends that there had to be a fair opportunity for the Appellant's position to be presented to the AFC before that decision was made.

88. While valuing the thorough and helpful submissions of the parties on this question, as on all the other issues in the appeal, the Panel finds it unnecessary to decide or to examine further this particular issue. The Panel has set aside the Appealed Decision anyway on the first ground, that it was invalidly taken by the General Secretariat. A decision either way on this further issue could make no difference at all to the outcome of this appeal.

89. The next question which fell for decision by the Panel was whether Article 73.6 could be applied at all to refuse the Appellant admission to the Competition on the facts of this case. To put it in the terms of the steps (1) and (2) which we have identified in paragraph 80 above, the question for this Panel in relation to step (1) is: Was there any basis on which the Appellant could be said

to have been "directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level"?

90. If the answer to that question were Yes, then the discretionary decision at step (2) would remain to be resolved, either by remission to the AFC Competitions Committee or by this Panel. If the answer is No, then step (2) does not arise and there is no need (and in fact, no legitimate room) for the exercise of discretion whether or not to refuse the Appellant admission to the Competition.

91. The Panel's decision is that the answer is No, so that step (2) does not even arise. The reason is simple but fundamental: On the evidence presented to the Panel, the actions of the Four Coaches, which are the actions treated by the AFC General Secretariat as activity aimed at arranging or influencing the outcome of matches, were not attributable to the Appellant club at all. Their actions were motivated and aimed at furthering their own interests in a corrupt manner and not the interests of the Appellant club. The Appellant was the actual or intended victim of their nefarious activity. Accordingly, the majority of the Panel concludes that they could not have been acting as the Appellant's agents in those activities.

92. It is useful to be clear about the unusual nature of that activity. It certainly follows from the summary in paragraph 7a above that the Four Coaches' activity did fit the words of Article 73.6 of the AFC Statutes. It is obvious that discussion and planning of deliberate injury of players and deliberately having them not play to the best of their ability was *"activity aimed at arranging or influencing the outcome"* of matches. It is more aptly described as influencing than arranging, but either is sufficient to constitute the improper activity defined in Article 73.6. It was not match-fixing in the sense of collusion with the opposition or with prospective gamblers but it was certainly grossly improper conduct designed to influence the outcome of matches. The AFC was fully justified in being seriously concerned about the Four Coaches' nefarious activity but that does not mean that it was a reason to refuse the Appellant admission to the Competition.

93. The Panel was presented with a considerable volume of material describing what had been alleged and found against the Four Coaches. The Appellant presented no material and made no submissions to show that the activity of the Four Coaches had any other motive than to undermine Mr Schweingruber's position or even to suggest that:

- any officers or executives of the Appellant club approved or knew anything about that activity; or
- there was any sensible reason why they would have done.

There was also no suggestion from the AFC that any written or oral evidence, including cross-examination, from witnesses would alter the factual picture as far as those matters were concerned. Despite the urgency to hear and decide the appeal before the Competition got under way on 23 August 2016, the Panel was ready and willing to receive written witness statements and hear oral evidence if asked in accordance with the provisions of the CAS Code. But in the end it was not asked.

94. So far as any of the Appellant's players colluded with the Four Coaches in those nefarious activities, which is unclear, the same principles and the same observations apply. On the evidence presented to the Panel, the majority of the Panel concludes that their actions also could not be attributed to the Appellant club.

95. The majority of the Panel considers it important to note that the AFC's counsel expressly accepted that Article 73.6 did not impose strict liability on a club and to appreciate the implication. It is possible to have regulations which make a club strictly liable for specified actions of its officers or employees or even for spectators. That is a common approach, for example, in football associations' regulations directed against the notorious problems of crowd disturbances and fans' misbehaviours. Where that form of strict liability is the clear effect of a regulation, liability of the club for the actions of its officers, employees or other third parties does not depend upon any of those persons acting as agent of the club in law. The importance of the policy, and the problem to which it is directed, is held to justify a regulation imposing such strict liability without the need for agency.

96. The Panel does not say that Article 73.6 *could* not have been framed in such a way as to impose that form of strict liability in support of a zero-tolerance policy towards match-fixing. That certainly could have been and could be done for the future. Whether it ought to be done in that way is entirely a matter for the AFC and not for this Panel, which expresses no view on that. The important point to note for this appeal is that strict liability is not the effect of Article 73.6 of the AFC Statutes as it currently stands.

97. The AFC's counsel were entirely fair and correct in accepting that Article 73.6 did not impose strict liability. That is also the Panel's clear view.

98. The majority of the Panel concludes that for the purpose of Article 73.6, the Appellant itself could therefore only be involved in match-fixing activity through the activity of its agents. The majority holds that, on unchallenged facts presented by the parties to the Panel in this case, the actions of the Four Coaches (and any players involved with them) could not be treated in law as the actions of the Appellant. It follows that the Appellant club could not be regarded by the AFC as having been involved in match-fixing activity, so that step (1) in the application of Article 73.6 is not established. The question of discretion at step (2) therefore cannot arise.

99. There is accordingly no question of remitting the decision under Article 73.6 for further consideration by the AFC Competitions Committee; and by the same token, no question of this Panel revisiting that decision itself. The established facts on which the AFC based the Appealed Decision (albeit invalidly by its General Secretary), and which the AFC has asserted on this appeal, do not show that the Appellant has been directly or indirectly involved in any activity aimed at arranging or influencing the outcome of a match at national or international level. There was and is therefore no basis on which the Appellant could be refused admission to the Competition under Article 73.6.

100. The appeal is therefore allowed on this ground also, separately and independently of the Panel's decision that the General Secretariat did not have the power to make a valid Article 73.6 decision.

101. On this issue the Panel notes that it rejects the Appellant's submission that the evidence relied on by the AFC failed to show that the Four Coaches had been involved in match-fixing. The Appellant submitted that the Four Coaches had been sanctioned by the FFC for corruption under Article 62 of the FFC Disciplinary Code and not for match-fixing. While that is technically correct, it is an utterly unrealistic submission. The corruption in question clearly included activity aimed at influencing the outcome of matches. If the actions of the Four Coaches had been properly attributable to the Appellant and treated as the Club's actions, there is not a shadow of doubt that the Appellant club could have been refused admission to the Competition if the AFC Competitions Committee had so decided in the exercise of its discretion.

102. The AFC's profound concerns about the improper match-influencing intentions and activities of the Four Coaches appear to have been fully justified. However, on the facts of this case that did not justify holding the Appellant club responsible for those intentions and activities.

Effect of non-joinder and non-participation of Nagaworld

103. Those being the Panel's decisions and reasons on the merits of the appeal as between the Appellant and the AFC, the final issue to be considered is the AFC's submission that the non-joinder of Nagaworld is fatal to this appeal and, regardless of its merits otherwise, the appeal must be dismissed. The AFC's position is that the Panel has no scope for review of the Appealed Decision.

104. The AFC has expressed scepticism about the Appellant's assertion that it was only upon receipt of the AFC's 15 June 2016 answer to the Appellant's first request for provisional measures in this appeal that it had become aware that Nagaworld was the FFC's nominated replacement for the Appellant in the Competition. The AFC's point is that as soon as the Appellant had been refused admission to the Competition, it was obvious that the runner-up in the Cambodian League (which was Nagaworld) would be nominated by the FFC; and that was apparent from the terms of the Appealed Decision as notified to the Appellant on 23 May 2016. There is force in that observation, although it could also be said that until the AFC had formally admitted Nagaworld to the Competition it would have been premature to join Nagaworld as a respondent. However, those are matters requiring no resolution and no further comment by this Panel. The simple fact is that Nagaworld was never joined as a respondent and has expressed no wish to participate in this appeal.

105. In those circumstances, the question is whether or not the non-joinder and non-participation of Nagaworld in this appeal prevents this Panel from granting the relief sought by the Appellant, if the Panel otherwise finds the appeal well-founded (as it has done).

106. The AFC's submission on this point is set out in its answer (paragraphs 57 and 58):

The effect of the relief sought is that the Appellant would replace Nagaworld in the Competition. This clearly and directly affects the rights of Nagaworld. The impact of the flawed Statement of Appeal, however, is that Nagaworld is not a co-respondent in these proceedings and is unable to be heard. Accordingly, ***Nagaworld can only participate in the proceedings with the consent of the Respondent (which is not given****) and of Nagaworld (which is not apparent)* [Bold underlining is in the original].

In such cases, Panels and the Division President(s) have consistently held that the CAS has no scope for review; that it cannot render a decision which may purport to affect the rights of a party that has not been named as a respondent in compliance with the requisites stipulated in R48 of the CAS Code.

107. The majority of the Panel takes the view that this submission by the AFC is not defeated simply by the fact that Nagaworld never expressed a wish to participate in the appeal (in fact, never responded at all to the CAS: see paragraph 46 above). No submission was made by the parties to the appeal that Nagaworld was bound by the same arbitration agreement as the parties. Accordingly, Nagaworld could have seen from Article R41.3 of the Code that it could only participate if both the Appellant and the AFC agreed. Whether or not Nagaworld knew that the AFC was not going to agree, the participation of Nagaworld was not within its own hands alone. It therefore cannot be said that Nagaworld forfeited any right to be heard or any right to participate in the Competition which might be taken away as a consequence of a successful appeal leading to the Appellant replacing Nagaworld in the Competition.

108. The AFC relies on the CAS jurisprudence to support its submission that the Panel cannot order the relief sought by the Appellant. As reflected in that passage of the AFC submissions, the principles have been stated in slightly different ways in different CAS cases, for example:

(1) The Panel cannot make a decision which would directly affect the situation of a third party without that party being able to present its position (or possibly, which goes further, without that party being a co-respondent): CAS 2011/A/2551, Decisions on provisional and conservatory measures, 9 September 2011 and 3 November 2011.

(2) The Panel cannot order relief which affects the rights of an absent third party: CAS 2004/A/594, Decision 1 March 2005

109. Before examining previous CAS decisions, it is well to note how far-reaching the principle could be if strictly and literally applied in the way that the AFC submits. It would cover, for example, the following scenario:

An Olympic gold-medal winning athlete is stripped of his/her title for a doping offence and exercises a right of appeal to the CAS. If the decision stands, the second-placed athlete will be declared the gold medallist and Olympic champion, the bronze medallist moves up to silver and the fourth placed athlete takes the bronze (leaving aside that other athletes move up but still into non-medal placings). – The AFC's submission would mean that at least three other athletes would need to be joined as co-respondents to the appeal (and many more if it was a relay event), as otherwise the CAS Panel could give no relief to the Appellant whatever the merits of his/her appeal.

110. Of course, if a principle clearly applies, then the practical consequences have to be accepted, however inconvenient. Nevertheless, when it is possible to identify situations in which the practical consequences of a principle could be unmanageable in the real world, it is well to test the principle rigorously.

111. The AFC's counsel's submissions on this point put three CAS decisions at the forefront: CAS/2014/A/3862; CAS 2011/A/2551, Decisions on provisional and conservatory measures, 9 September 2011 and 3 November 2011; and CAS 2011/A/2654.

112. The cited CAS/2014/A/3862 decision was a decision by a sole arbitrator on an application for provisional measures. However, although crucial ingredients of the factual situation are not obviously distinguishable from the present appeal, this Panel does not need to analyse the decision. The arbitrator stated that the submission on the point of relevance to this appeal was "merely academic". Accordingly, leaving aside that previous CAS decisions are not binding precedents, that particular case did not involve an arbitrator's *decision* on this point at all. Moreover, it does not appear that the arbitrator's remarks followed anything approaching full argument on the point.

113. The case CAS 2011/A/2551 is another case where it was in the context of decisions on provisional and conservatory measures that questions were considered concerning non-joinder of interested or affected parties and their rights to be heard. Accordingly, the views expressed by a very experienced panel need to be weighed with due allowance for that limited context and the apparently slight argument addressed to the panel on those issues.

114. In the CAS 2011/A/2551 case, as in the CAS/2014/A/3862 case, there were undoubted parallels with the facts of the present appeal. Following the involvement of the Appellant of the case CAS 2011/A/2551 in match-fixing and some clear signals from UEFA, in August 2011 the Turkish Football Federation ("the TTF") withdrew the Appellant of the case CAS 2011/A/2551 from the 2011-12 UEFA Champions League. UEFA's Emergency Panel immediately decided to replace the Appellant of the case CAS 2011/A/2551 with the runners-up in the 2010-11 Turkish League, Trabzonspor AS. The same UEFA panel also decided to replace Trabzonspor with Athletic Club Bilbao in the Europa League.

115. There were two applications for provisional measures brought by the Appellant of the case CAS 2011/A/2551 in the course of its appeal. The first application included a request that "[The Appellant of the case CAS 2011/A/2551] *be immediately reintegrated in the 2011/2012 UEFA Champions League group stage"*, which would have resulted in Trabzonspor losing its place. This Panel acknowledges that, unlike in the case CAS/2014/A/3862, it was actually a ground for dismissal of that first application for provisional measures in the case CAS 2011/A/2551 that the panel decided it was precluded from taking a decision which would directly affect the situation of a third party (i.e. Trabzonspor) without that party being able to present its position.

116. After referring to *"the third crucial preliminary consideration"*, i.e. whether the Appellant of the case CAS 2011/A/2551 had addressed its appeal to all the appropriate respondents, paragraph 6.8

of the CAS 2011/A/2551 decision included the following statements (numbered here for convenience):

(1) *"The Panel feels that [reinstatement of* [the Appellant of the case CAS 2011/A/2551]*] would only be possible if Trabzonspor had been brought into these proceedings as a co-respondent".*

(2) *"Whilst there are other third parties that might also be affected by granting the provisional measures sought by* [the Appellant of the case CAS 2011/A/2551]*, Trabzonspor would be affected the most".*

(3) *"It would have been a simple step for* [the Appellant of the case CAS 2011/A/2551] *to take by bringing Trabzonspor into the proceedings".*

(4) *"The Panel has to respect Trabzonspor's right to be heard on a matter as important to its position in the Champions League".*

117. There is certainly in that passage, as the point we have numbered (1), an apparently unequivocal statement that if there was to be any question of an order which reinstated the Appellant of the case CAS 2011/A/2551 in the Champions League group stage at Trabzonspor's expense, then Trabzonspor needed to have been joined as a co-respondent, and not merely heard as an interested party (noting that the penultimate paragraph of Article R41.4 of the Code does appear to contemplate such a distinction).

118. The same panel's decision on the second request by the Appellant of the case CAS 2011/A/2551 for provisional measures (also rejected) discussed this issue in paragraph 6.7 as follows:

> *"Finally, while UEFA argued that* [the Appellant of the case CAS 2011/A/2551] *should have joined Trabzonspor as a party after the First Order [on provisional measures], in accordance with Article 41.2 of the Code, it is only an option for respondents, not appellants.* [The Appellant of the case CAS 2011/A/2551] *could not join Trabzonspor to these proceedings and they would be out of time limits to appeal should they have sought to commence a fresh appeal (directed against the Respondents and Trabzonspor) after the First Order. The Panel agree with the position of the TTF, it has no obligation to inform Trabzonspor of their potential to request to intervene. The position of the Panel remains the same as in the First Order, even if it were to determine that there were "new facts", these do not change the crucial fact that Trabzonspor are not a party to these proceedings and would need to be heard on any request that would affect its situation".*

119. The position of Trabzonspor in the case CAS 2011/A/2551 was essentially the same as the position of Nagaworld in the present case. However, this Panel does not see the same insuperable difficulty as apparently seen by the panel in the case CAS 2011/A/2551.

120. The present Panel does unequivocally accept the principle that no order for relief can be granted which affects the rights of absent third parties: see CAS 2004/A/594, paragraph 7.7. The cited CAS 2011/A/2654 case is clearly in that category. The foundation of the Appellant in the case CAS 2011/A/2654 was its protest that the Fédération Burkinabé de Football ("the Burkina Faso FF") had fielded an ineligible player in two 2012 Africa Cup of Nations qualification matches between N. and Burkina Faso, both won 4-1 by Burkina Faso. N.'s protest was rejected

by the Appeal Board of the Respondent of the case CAS 2011/A/2654 following a hearing at which the Burkina Faso FF had been present, but when the Appellant in the CAS 2011/A/2654 case appealed to the CAS it made the Respondent of the case CAS 2011/A/2654 the sole respondent. The relief sought by the Appellant in the case CAS 2011/A/2654 on its CAS appeal included reversal of the two match scores to declare N. 3-0 winners and recalculation of qualification points. The effect would have been replacement of Burkina Faso by N. in the final round of that competition.

121. The CAS decision in the case CAS 2011/A/2654 was a clear application of the principle which, as indicated in paragraph 116 above, this Panel accepts.

122. We do not consider the same principle is applicable to the facts of the present case. The key point is a crucial distinction between Nagaworld's *interests* and Nagaworld's *rights*. It is obvious that Nagaworld has an *interest* in the outcome of this appeal. If the Appellant club was admitted to the Competition, Nagaworld could have been required to drop out. That was certainly the express basis of the AFC's submissions, as set out in paragraph 103 above.

123. Although it is not and could not be part of the evidence, because the operative part of the Panel's award was issued on 19 August 2016, the Panel is aware that since that date, although the Appellant has been admitted to the Competition as the Panel ordered, Nagaworld has not been excluded from the Competition and did play its previously scheduled fixture against Three Star Club Nepal on 23 August 2016. Strictly speaking, that was in accordance with the Panel's order, which directed the AFC *"to admit Phnom Penh Crown Football Club to participate in the AFC Cup 2017 Playoff Qualifiers and to adopt all measures necessary for that purpose"* but expressed nothing at all about Nagaworld. As long as the Appellant was admitted, the wording of the Panel's order left it open to the AFC to allow Nagaworld also to remain in the Competition. That was not what the Panel expected or intended on 19 August 2016, as when we issued the operative part of our award we were continuing to accept at face value the AFC's assertion that if the Appellant was admitted, Nagaworld would be excluded. That assertion was, after all, an essential foundation of the AFC's argument for the striking out or dismissal of the appeal on this Nagaworld point. Nevertheless, the strict effect of the operative part of the Panel's award, which fully stands exactly in its terms as issued on 19 August 2016, did not necessarily exclude Nagaworld from the Competition.

124. It follows that the order made by this Panel did not, either in its terms (the critical point) or in its practical implementation, take away any *rights* of Nagaworld. Accordingly, even if the AFC were correct in its submission that Nagaworld would have had to be a co-respondent for any decision to be rendered which purported to affect what the AFC regarded as Nagaworld's rights, the order made on 19 August 2016 was unobjectionable as it did not prevent Nagaworld's participation in the Competition.

125. However, based on what was expressly submitted by the AFC on this appeal, it was the clear assumption of the Panel, when issuing the operative part of our order on 19 August 2016, that the order would have the consequence that Nagaworld would be excluded. In our view, that

consequence would not have constituted a breach of the accepted principle that no order for relief can be granted which affects the rights of an absent third party.

126. As matters stood on the day of the hearing on 19 August 2016, Nagaworld was the Cambodian football club admitted to the Competition. But it is fallacious to treat Nagaworld as then having a right to participate in the Competition which could have been taken away from it by the success of this appeal. Nagaworld's right was to have the statutes and regulations of the FFC and the AFC correctly and fairly applied in relation to the Competition. The effect was that if the Appellant had been properly refused admission to the Competition in accordance with those statutes and regulations, then Nagaworld was entitled to have the question of its own admission to the Competition considered in accordance with the same statutes and regulations. If, on the other hand, the Appellant had been unfairly refused admission to the Competition, so that in accordance with those statutes and regulations the Appellant ought to have been the only Cambodian club admitted to entry by the AFC, then Nagaworld had no right at all to participation in the Competition.

127. It follows that the result of this appeal as between the Appellant and the AFC also determined whether Nagaworld ever had any right to participate in the Competition. It was the AFC which applied its statutes and regulations so as to refuse the Appellant admission to the Competition. Once it had been determined by this Panel that the AFC had applied them wrongly and that the Appellant had been unjustifiably refused admission, it followed that Nagaworld had never had any right to participate. Nagaworld's rights (i.e. as mentioned in paragraph 122 above, to have the statutes and regulations of the FFC and the AFC correctly and fairly applied in relation to the Competition) had been fully respected, with the result that as far as participation in the AFC Competition was concerned it could have lost out this year simply by having coming second to the Appellant in the Cambodian League.

128. The result is that even if the AFC had denied the participation of Nagaworld in the Competition on the basis of the Panel's decision, that would not have taken away any legal right of Nagaworld. The Panel appreciates that this analysis differs from the views expressed in the CAS 2011/A/2551 and CAS/2014/A/3862 decisions on provisional measures. Nevertheless, it is our considered and unanimous view. It also explains why as a matter of principle the potentially impractical consequences of scenarios such as the one outlined in paragraph 105 above need not arise. It may well be that there are cases where it is only sensible for affected third parties to be joined, even if it is not essential to the resolution of the appeal and the granting of relief as sought. But that is a question to be dealt with in each case when and where it arises.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Phnom Penh Crown Football Club on 3 June 2016 against the decision issued by the Asian Football Confederation on 20 May 2016 is upheld.

2. The decision issued by the Asian Football Confederation on 20 May 2016 is set aside.

3. The Asian Football Confederation is ordered to admit Phnom Penh Crown Football Club to participate in the AFC Cup 2017 Playoff Qualifiers and to adopt all measures necessary for that purpose.

(…)

6. All other motions or prayers for relief are dismissed.