



**Arbitration CAS 2017/A/5077 Al Jazira Football Sport Company v. José Mesas Puerta, award of 18 December 2017**

Panel: Mr Sofoklis Pilavios (Greece), President; Prof. Massimo Coccia (Italy); Mr Hendrik Willem Kesler (The Netherlands)

*Football*

*Players' agent contract*

*Competence of the FIFA PSC to hear international disputes in connection with the activity of players' agents*

*Player's written consent that his club pays his player's agent on his behalf*

*Claim for a reduction of the commission due to the agent under the contract*

1. **Art. 30 para. 2 of the FIFA Players' Agents Regulations (FIFA PAR; edition 2008) sets forth that in the case of international disputes in connection with the activity of players' agents, a request for arbitration proceedings may be lodged before the FIFA Players' Status Committee (PSC). Given that said provision only requires the existence of an international dispute in connection with the activity of a player's agent for the competence of said body to hear a dispute, the legal basis (contractual or non-contractual liability) of a claim lodged by an affected party is not crucial to the establishment of the competence of the FIFA PSC.**
2. **Pursuant to art. 19 para. 4 of the FIFA PAR, a representation contract shall explicitly state who is responsible for paying the players' agent and in what manner. Any laws applicable in the territory of the association shall be taken into account. Payment shall be made exclusively by the client of the players' agent directly to the players' agent. However, after the conclusion of the relevant transaction, the player may give his written consent for the club to pay the player's agent on his behalf. The payment made on behalf of the player must reflect the general terms of payment agreed between the player and the player's agent. By signing the relevant documents, the parties enter in a tri-partite agreement which, under Swiss law, has no particular requirements of form.**
3. **Agreements must be respected by the parties in good faith in accordance with the principle *pacta sunt servanda*. In the absence of stipulation to the contrary, there is no link between the length of time a player spent at one club and the amount of the contractual commission payable to his agent. Therefore the club cannot claim for the reduction of the amount of the commission payable to the agent because the player was transferred to another club before the expiry of the employment contract he signed with said club.**

## I. PARTIES

1. Al Jazira Football Sport Company (the “Club” or the “Appellant”) is a football club with its seat in Abu Dhabi, United Arab Emirates, playing in the Arabian Gulf League, the top professional football league in the United Arab Emirates. It is affiliated to the United Arab Emirates Football Association which is, in turn, a member of the Fédération Internationale de Football Association (FIFA).
2. José Mesas Puerta (the “Agent” or the “Respondent”) is a Spanish players’ agent, who is licensed by the Spanish Football Federation.

## II. FACTUAL BACKGROUND

### A. Background facts

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. 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. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 1 October 2011, the Agent concluded a representation contract (the “Representation Contract”) with the player A., a Moroccan professional footballer (the “Player”), which was valid for two years and provided *inter alia* the following:

*“FOURTH: The representative shall receive from the player remuneration equal to 10% of the total amount of its annual wages, including all types of income but excluding the bonuses and special awards that the Club agrees with the player and squad. The referred consideration shall only be valid with reference to agreements entered into after the execution of the contract hereunder. The player shall decide on how to undertake the payment of the referred consideration, whether individually (not subject to VAT) or through a commercial company (in which case the respective VAT shall accrue). The club may make the payment directly to the agent and if the amount equal to 10% is not met the player shall complete it.*

(...)

*The assessment and payment to the representative of the aforementioned amounts shall be made by the end of each season and after the club has paid the player”.*

5. On 6 June 2013, the Agent and the Player concluded an additional agreement (the “Commission Agreement”), which stated that:

*“WHEREAS*

*(...)*

*2 – As a result of the work carried out the AGENT, THE PLAYER finalized his transfer to club AL JAZIRA FOOTBALL SPORT COMPANY of Abu Dhabi (hereinafter THE CLUB), with whom he signed a professional football contract for the next 4 seasons.*

*3 – As per clause FOURTH of the representation contract referred in 1. above, THE PLAYER shall pay the AGENT, on account of commission, 10% of his annual wages amounting to ONE MILLION ONE HUNDRED THOUSAND EUROS (1.100.000,00€).*

*4 – The player wishes, once agreed by the interested parties, THE CLUB AL JAZIRA to directly pay the commission referred to in the paragraph below to the AGENT, and to that end the parties sign the agreement hereunder which shall be governed by the following*

*PROVISIONS*

*1. – The player accepts that THE CLUB shall directly pay TO THE AGENT the commission referred in the Whereas section.*

*2. – The agreement hereunder is brought to the attention of the CLUB, with the purpose that a document expressing the commitment of payment of the commission by THE CLUB to THE AGENT is issued.*

*3. – After payment of the referred commission by the CLUB, THE PLAYER shall not pay the AGENT any amount in relation to the professional footballer contract signed with THE CLUB”.*

6. On 7 June 2013, the Club issued a document captioned “Commission” (the “Commission Document”), which stated the following:

*“This is to certify that Al Jazira Sports Company will pay 10% to Mr Jose Jesus Mesas of Elite Sport Asesores S.L. as a commission of the Player [A.]’s contract, which worth Euro 1,100,000 (One Million One Hundred Thousand Euro)”.*

7. On 30 June 2013, the Club, the Player and the Spanish football club G. concluded a transfer agreement for the transfer of the Player from G. to the Club against a fixed transfer fee of EUR 8,500,000 (the “Transfer Agreement”).

8. On the same day, the Club and the Player signed an employment contract valid until 30 June 2017 (the “Employment Contract”). The Employment Contract provided for a total remuneration of the Player in the amount of EUR 11,000,000 during its four-year term, as well as additional performance bonus payments. In particular, according to the salary payment schedule stipulated in the Employment Contract, the Club should pay to the Player four advance payments of EUR 1,000,000 each, payable at the beginning of each season (before 15 July of each respective year), as well as a salary of EUR 1,600,000 for the first year, EUR

1,700,000 for the second year, EUR 1,800,000 for the third year and EUR 1,900,000 for the fourth year.

9. The Agent was not a party to either the Transfer Agreement or the Employment Contract.
10. On 8 August 2014, the Club and the French Football Club O. concluded a transfer agreement for the transfer of the Player from the Club to O. (the “Second Transfer Agreement”) and on 12 August 2014, the Club and the Player mutually terminated their employment relationship.

#### **B. Proceedings before the FIFA Players’ Status Committee**

11. On 20 March 2014, the Agent lodged a claim with the Players’ Status Committee of FIFA (the “FIFA PSC”) against the Club, requesting payment of the outstanding commission in the amount of EUR 1,100,000. The Agent amended his prayers for relief on 16 February 2016 requesting interest 5% *p.a.* on the aforementioned amount as from 7 June 2013 until the date of effective payment and EUR 10,000 for legal fees and costs.
12. The Club, by way of its response, rejected the Agent’s claim and submitted that the Agent had no legal grounds to file a claim against it as he did not provide any services to the Club and no representation agreement was concluded between them. The Club further challenged the FIFA PSC jurisdiction to rule on the claim because the Agent was never a party to any of the contracts concluded between the Club and the Player.
13. On 27 July 2016, the Single Judge of the FIFA PSC rendered his decision (the “Appealed Decision”), by means of which it partially accepted the Agent’s claim. The operative part of the decision stated the following:
  - “1. *The claim of the Claimant, José Mesas Puerta, is admissible.*
  2. *The claim of the Claimant, José Mesas Puerta, is partially accepted.*
  3. *The Respondent, Al Jazira Football Sport, has to pay to the Claimant, José Mesas Puerta, within 30 days as from the date of notification of this decision, the outstanding amount of EUR 1,100,000, plus interest at a rate of 5% per year from 20 March 2014 until the date of effective payment.*
  4. *Any further claims lodged by the Claimant, José Mesas Puerta, are rejected.*
  5. *If the aforementioned sum, plus interest as provided above, is not paid within the aforementioned deadline the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee for consideration and a formal decision”.*
14. On 16 March 2017, FIFA communicated to the parties the grounds of the Appealed Decision, following a request of the Club, which, *inter alia*, determined the following:

- “3. *With regard to his competence, the Single Judge of the Players’ Status Committee pointed out that in accordance with the provisions set out by the Regulations, FIFA has jurisdiction on matters relating to licensed players’ agents, i.e. on individuals who hold a valid players’ agent license issued by the relevant member Association.*
4. *In this respect, the Single Judge underlined that the present matter concerns a dispute between a players’ agent licensed by the Spanish Football Federation and an Emirati club regarding an alleged outstanding commission.*
5. *As a consequence, the Single Judge of the Players’ Status Committee is competent to decide on the present matter which has an international dimension (cf. art. 30 par. 2 of the Regulations).*

(...)

7. *In doing so and to start with, the Single Judge took note that on 1 October 2011 the player and the Claimant concluded a contract valid for two years entitling the latter to receive a commission amounting to 10% of the total player’s remuneration except bonuses. Moreover, the Single Judge noted that clause four of the contract provided the possibility that the commission would be paid directly by the Respondent to the Claimant.*
8. *Equally, the Single Judge acknowledged that on 6 June 2013, the player and Claimant concluded the agreement by means of which the latter was entitled to receive from the player a commission amounting to EUR 1,100,000 (cf. clause four of the contract) in connection to the transfer of the player to the Respondent. Moreover, point 1 in combination with point 4 of the agreement established expressly the player’s consent that the relevant commission shall be paid by the club on behalf of the player.*
9. *In addition, the Single Judge acknowledged that it remained uncontested that, on 7 June 2013, the Respondent issued the document, in accordance with which it agreed to pay the amount of EUR 1,100,000 on behalf of the player, corresponding to the commission due for conclusion of the employment contract between the player and the Respondent.*
10. *At this stage, the Single Judge took note that the Claimant had requested the amount of EUR 1,100,000 from the Respondent on the basis of the document, whereas, the Respondent had alleged that the Claimant was not entitled to receive a commission from them since it did not conclude a representation contract with the Claimant and since it was not a party in the legal instruments concluded between the player and the Claimant.*
11. *Having duly examined the argumentation and documentation put forward by both parties, the Single Judge referred to art. 19 par. 4 of the Regulations which provides, inter alia, that “the player may give his written consent for the club to pay the player’s agent on his behalf” and, on this account, recalled that, by means of the contract as well as the agreement, the player expressed such required consent in writing.*
12. *In continuation, the Single Judge turned his attention to the Respondent’s argument regarding the due date of the commission payments and pointed out that, although the contract stipulated that the*

*commission payments shall be done in accordance with the player's annual salary, the more recent agreement as well as, in particular, the document established the Claimant's entitlement to a lump sum payment amounting to EUR 1,100,000, which was due at the date of the issuance of the document.*

13. *In view of all the above, the Single Judge decided that, in accordance with the general principle of pacta sunt servanda which in essence means that agreements must be respected by the parties in good faith, the Respondent must pay to the Claimant the commission agreed upon in the amount of EUR 1,100,000.*

(...)

16. *In addition, considering the Claimant's request, the Single Judge decided that the Respondent has to pay an annual interest at a rate of 5% over the amount of EUR 1,100,000 from the date of lodging the present claim, i.e. on 20 March 2014 until the date of effective payment”.*

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 6 April 2017, the Club submitted a statement of appeal in accordance with art. R47 and R48 of the Code of Sports-related Arbitration (the “Code”) to the Court of Arbitration for Sport (the “CAS”), challenging the Appealed Decision. With its statement of appeal, the Appellant also appointed Prof. Massimo Coccia as arbitrator. The appeal was directed against FIFA as well.
16. On 21 April 2017, the Respondent nominated Mr Hendrik Willem Kesler as arbitrator.
17. On 25 April 2017, FIFA sent a letter to the CAS Court Office indicating that they deem that FIFA cannot be considered as a Respondent in the present arbitration.
18. On 26 April 2017, the Appellant filed its appeal brief requesting the CAS to:

*“(i) Set aside the decision of the Single Judge of the FIFA Players' Status Committee dated 27 July 2016;*

*(ii) Find that FIFA had no jurisdiction to analyse the claim submitted by the Players' Agent José Mesas Puerta;*

*Subsidiarily, in the event that the CAS considers that FIFA has jurisdiction,*

*(iii) Confirm that Al Jazira Football Sport Company is not bound to pay any commission to the Players' Agent José Mesas Puerta;*

*Subsidiarily, in the event that the Panel considers that Al Jazira is liable to pay a commission to the Players' Agent José Mesas Puerta,*

*(iv) Determine that said commission cannot exceed the final amount of EUR 260,000 (two hundred and sixty thousand Euros);*

- (v) *Order the Respondents to pay the full amount of the CAS arbitration costs;*
- (vi) *Order the Respondent to pay a significant contribution towards the legal costs and other related expenses of Al Jazira Football Sport Company, at least in the amount of EUR 40,000”.*
19. On 5 May 2017, FIFA sent a letter to the CAS Court Office addressing the procedural aspect raised by the Appellant in connection with FIFA’s competence. In this regard, it referred to the relevant section of the Appealed Decision and further stressed that all the arguments raised as to the existence of a contractual relationship between the Appellant and the Respondent concern the substance of the dispute, particularly if the claim is sustained and should be accepted or rejected, but not FIFA’s jurisdiction itself. FIFA requested that they be excluded from the procedure at stake.
20. On 12 May 2017, the Appellant withdrew the appeal against FIFA and, on 15 May 2017, the CAS Court Office informed the parties that FIFA is no longer a party to the present arbitration.
21. On 22 May 2017, the Respondent filed his answer in accordance with art. R55 para. 1 of the Code requesting the CAS:
- “1. To dismiss the present appeal of Al Jazira Football Sport Company, in view of the several reasons pointed out in the present Statement of Defence. In other words, to deny all the requests of the Appellant, considering that all of them are groundless.*
  - 2. To fully uphold the decision of FIFA DRC and state that Al Jazira Football Sport Company has to pay to Mr. José Mesas Puerta the amount of EUR 1,100,000 (One Million One Hundred Thousand Euro) plus 5% interest p.a. as from 20 March 2014 until the effective date of payment.*
  - 3. To confirm the fact that the Club should reimburse to the Agent the amount of CHF 5,000 of his costs of the FIFA proceedings, as stipulated by the par. 6 of the Appealed Decision.*
  - 4. To fix a sum of CHF 25,000 to be paid by the Appellant to the Agent, to help the payment of its legal fees costs.*
  - 5. To condemn the Appellant to the payment of the whole CAS administration costs and the Arbitrators fees”.*
22. On 23 May 2017, the CAS Court Office invited the parties to state whether they prefer a hearing to be held in this matter.
23. On 24 May 2017, the Respondent informed the CAS Court Office that he preferred for a hearing to be held.
24. On 30 May 2017, the Appellant wrote to the CAS Court Office stating that *“holding a hearing in the current proceedings is not necessary to decide the disputed matter and therefore prefers for the Panel to issue an award based on the parties’ written submissions”.*

25. On 21 June 2017, the CAS Court Office informed the parties that the Panel appointed to decide this matter had been constituted as follows:
  - President: Mr Sofoklis Pilavios, Attorney-at-Law in Athens, Greece.
  - Arbitrators: Prof. Massimo Coccia, Attorney-at-law in Rome, Italy.  
  
Mr Hendrik Willem Kesler, Attorney-at-law in Enschede, the Netherlands.
26. On 27 June 2017, the CAS Court Office informed the parties that the Panel had decided to hold a hearing in this matter.
27. On 10 August 2017, the CAS Court Office issued an order of procedure, which was signed and returned to the CAS by the parties on 14 and 17 August 2017, by the Respondent and the Appellant respectively.
28. On 28 September 2017, a hearing took place at the CAS Court Office in Lausanne, Switzerland.
29. The Panel sat in the following composition:
  - President: Mr Sofoklis Pilavios, Attorney-at-law in Athens, Greece.
  - Arbitrators: Prof. Massimo Coccia, attorney-at-law in Rome, Italy.  
  
Mr Hendrik Willem Kesler, attorney-at-law in Enschede, the Netherlands.
30. The Panel was assisted by Mr Daniele Boccucci, CAS Counsel.
31. The following persons attended the hearing:
  - The Appellant was represented by its legal counsel, Mr Bernardo Palmeiro.
  - The Respondent attended the hearing personally and was also represented by Mr Juan de Dios Crespo Pérez and Mr Ivan Bykovskiy.
32. At the outset of the hearing, the parties confirmed that they did not have any objection as to the constitution and composition of the Panel.
33. At the conclusion of the hearing, the parties confirmed that their right to be heard and to be treated equally in the present proceedings before the Panel had been fully respected, following which the Panel closed the hearing and announced that its award would be rendered in due course.

#### IV. SUBMISSIONS OF THE PARTIES

34. The following outline of the parties' positions is illustrative only and does not necessarily comprise every submission advanced by the parties. The Panel has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

##### A. The Appellant

35. The Appellant's submissions, in essence, may be summarized as follows:

- The Appellant's position is that (i) the FIFA PSC had no jurisdiction to hear the present dispute, (ii) the Appellant never assumed any obligation towards the Respondent, and, (iii) should the CAS decide that the Appellant assumed indeed an obligation towards the Respondent, the amount due is to be calculated considering only the remuneration effectively paid to the Player under the Employment Contract until its termination and not the total value of the Contract.
- Firstly, the international nature of the dispute at stake is not sufficient to establish the jurisdiction of the FIFA PSC. In order for such jurisdiction to be established, it is necessary that there be a contractual relationship between the parties, which is not the case here. As the Appellant never assumed the obligation to pay the Respondent's commission, said obligation remained with the Player. The only legal relationship entered into by the Respondent is the one with the Player.
- Consequently, there is no formal or material contractual relationship connecting the Appellant with the Respondent and the FIFA PSC should have rejected the Respondent's claim on the grounds of lack of jurisdiction.
- Secondly, as to the merits of the dispute, there was no agreement and no contract was entered into between the Appellant and the Player or the Appellant, the Player and the Respondent, providing that the Appellant indeed assumed the debt of the Player towards the Respondent.
- The Commission Document issued by the Appellant is a "*mere letter of acknowledgement*", by means of which the Appellant expressly acknowledged the Player's request that a certain payment be made on his behalf. It is certainly not a binding representation contract. The fact that the Player gave his written consent to the Appellant to make the payments to the Respondent on the Player's behalf does not mean that the Appellant assumed the Player's debt towards the Respondent. Assumption of debt under Swiss law requires a contract between the debtor and the third party (*i.e.* the Appellant). The said contract must comply with the requirements of the Swiss Code of Obligations and should include a clear promise of the third party to liberate the original debtor from the debt. Assumption of debt cannot occur by means of a document issued individually by the assuming party

and one cannot possibly conclude that the Appellant's written statement of 7 June 2013 represents an agreement.

- The fact that the Appellant issued the Commission Document is no evidence of an intention to assume the Player's debt towards the Respondent. This is further demonstrated by the fact that in both the Representation Contract and the Commission Agreement, it is stated that the Player must pay any amounts not paid by the Appellant and that he is only released from such obligation once payment of the entire commission is executed. The Appellant never effectively assumed the Player's obligation to pay the commission to the Respondent.
- Thirdly, in the unlikely event that the Panel considers that the Appellant assumed the Player's debt towards the Respondent, the Appellant submits that only a fraction of the amount of EUR 1,100,000 which was awarded by the Appealed Decision is due to the Respondent. The amount awarded by FIFA corresponds namely to the total amount of the Respondent's commission for the full term of the Employment Contract, *i.e.* 4 years. Moreover, according to the Representation Contract, the Respondent is entitled to receive his commission at the end of each season and after the Player has received all the payments from the Appellant.
- It is therefore impossible that the full amount of EUR 1,100,000 became immediately and in full due on 7 June 2013 when the Appellant issued the Commission Document, whereas at the same time the Employment Contract was signed by the Appellant and the Player on 30 June 2013. The Commission Document is nothing more than a formalisation of the general engagement of the Appellant in accepting the Player's desire to have the Appellant make the payment of the Respondent's commission. However, such unilateral statement cannot be deemed as a contractual undertaking by the Appellant.
- Furthermore, the Commission Document does not comply with the requirements set out in the FIFA Players' Agents Regulations and it does not contain the specific terms of payment, which are necessary in order for it to become enforceable.
- The parties' intention is reflected in the Representation Contract only. The Respondent is entitled to 10% of the fixed remuneration received by the Player, to be paid at the end of each year and after the Player has received his remuneration from the Appellant. Considering that the Player was transferred to O. after his first season with the Appellant, and that he only received a salary of EUR 2,600,000, the Respondent is thus entitled to receive a commission of EUR 260,000. As a result, the amount awarded to the Respondent by the CAS, if any, cannot exceed that amount.

## **B. The Respondent**

36. The Respondent's submissions, in essence, may be summarized as follows:

- At the time of the Player's transfer to the Appellant, the former had a valid representation contract with the Respondent, whereas on 6 June 2013, the Player and the Respondent also signed the Commission Agreement which provided that the Respondent's commission shall be paid to him directly by the Appellant. The Appellant issued the Commission Document, the existence of which is not disputed by the Appellant, to approve the aforementioned condition of the Commission Agreement.
- The Appellant's allegations on the lack of any contractual relationship with the Respondent are contradicted by the fact that the Appellant agreed to pay the amount described in the Commission Document to him and that in November 2013 the Appellant engaged in negotiations for the payment of the commission in dispute.
- The only possible explanation of the meaning of the Commission Document is that it was an unconditional recognition of the Appellant's debt towards the Respondent. Art. 18 of the Swiss Code of Obligations cannot apply as the terms of the Commission Document cannot be deemed as unclear or doubtful.
- The Appellant's argument that there is no contractual relationship between the Appellant and the Respondent should be dismissed. The Commission Document is the contractual basis which binds the parties to this dispute. Moreover, the payment of the agreed commission to the Respondent by the Appellant was a condition and a pre-requisite for the conclusion of the Player's transfer from G. and the signing of the employment contract between the Appellant and the Player.
- There is no excuse for the Appellant's refusal to pay the agreed commission amount. In any event, the wording of the Commission Document "*the Club certifies that it will pay*" leaves no room for a different interpretation.
- The Appellant's conduct to issue the Commission Document confirming its intention to pay the amount of EUR 1,100,000 to the Respondent created a legitimate assumption to the Respondent. To refuse its own acknowledgment is for the Appellant a violation of the legal principle of *estoppel* and of the principle of good faith.

## V. JURISDICTION

37. The jurisdiction of the CAS, which is not disputed, derives from art. 58 para. 1 of the FIFA Statutes (2016 edition) as it determines that "*[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question*" and art. R47 of the CAS Code.
38. In addition, both parties signed the Order of Procedure acknowledging the jurisdiction of the CAS. It follows that the CAS has jurisdiction to decide on the present dispute.

## VI. ADMISSIBILITY

39. The appeal was filed within the 21 days set by art. 58 para. 1 of the FIFA Statutes. The appeal complied with all other requirements of art. R48 of the CAS Code, including the payment of the CAS Court Office fees.
40. It follows that the appeal is admissible.

## VII. APPLICABLE LAW

41. Art. R58 of the Code (2017 edition) 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

42. The Panel notes that art. 57 para. 2 of the FIFA Statutes (2016 edition) stipulates the following:

*“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”.*

43. Consequently, the Panel will decide the present dispute primarily in accordance with the FIFA Regulations and, subsidiarily, apply Swiss law in case of a possible gap in the FIFA Regulations.
44. In particular, the Panel notes that the case at hand concerns facts occurred in 2013 in relation to the services rendered by a licensed players’ agent. Therefore, the Panel finds that the 2008 edition of the FIFA Players’ Agents Regulations (hereinafter referred to as the “FIFA Agents Regulations”), which ceased to be in force on 1 April 2015 (when it was superseded by the FIFA Regulations on working with intermediaries), contain rules which are relevant for the assessment of this case.

## VIII. MERITS

45. According to art. R57 para. 1 of the Code, the Panel has “full power to review the facts and the law”. As repeatedly stated in the CAS jurisprudence, by reference to this provision the CAS appeal arbitration procedure entails a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Panel to make an independent determination as to merits (see e.g. CAS 2007/A/1394).
46. In light of the facts and the circumstances of the case, as well as considering the Appellant’s contentions in support of its claims, the Panel observes that the main issues to be resolved are the following:

- (i) Was the FIFA PSC competent to decide on the claim filed by the Respondent on 20 March 2014?
- (ii) Is the Appellant obliged to pay to the Respondent remuneration for the latter's services related to the conclusion of the Transfer Agreement and, if so, is the amount due EUR 1,100,000 or should the remuneration be reduced to no more than EUR 260,000?

#### **A. Competence of the FIFA PSC to deal with the matter at hand**

47. In its appeal, the Appellant essentially argues that the Single Judge of the FIFA PSC was not competent to decide on the substance of the Respondent's claim against the Appellant. The Appellant does not cast doubt on the international dimension of the matter at hand, but disputes the jurisdiction of the FIFA PSC alleging that the present dispute does not fall within the scope of the FIFA Agents Regulations as there is no contractual relationship between the Appellant and the Respondent.
48. The Panel notes that art. 30 para. 2 of the FIFA Agents Regulations, the applicability of which is not disputed by any of the parties, states the following:

*"In the case of international disputes in connection with the activity of players' agents, a request for arbitration proceedings may be lodged with the FIFA Players' Status Committee".*
49. The Panel further notes that FIFA judicial bodies are entitled, *ex officio*, to decide on their competence, including the competence to determine whether or not a dispute is of an international dimension in accordance with the FIFA (Agents) Regulations.
50. Moreover, as a general rule, the international dimension is represented by the fact that the Agent concerned is not a national of the country of the association with which the relevant club is affiliated (see to that effect CAS 2016/A/4441, referring to the interpretation of art. 22 lit. b of the FIFA Regulations on the Status and Transfer of Players, which contains a similar wording to the aforementioned provision of art. 30 para. 2, namely *"employment-related disputes between a club and a player of an international dimension"*).
51. Having established that the Appellant did in fact submit an objection to the FIFA jurisdiction in the course of the proceedings before the FIFA PSC, since otherwise the Appellant would have been precluded from raising the plea of lack of competence of the FIFA PSC in the CAS proceedings for the first time, the Panel points out that the present dispute is a dispute between an Agent of Spanish nationality and a Club based in Abu Dhabi, United Arab Emirates, regarding an allegedly outstanding commission. As such, the Panel finds that the FIFA PSC would, in principle, be the competent body to decide on the Agent's claim, involving a Spanish Agent and an Emirati Club.
52. The Panel takes due note of the Appellant's objection to FIFA's competence to hear the matter at hand, because the Appellant and the Respondent, according to the Appellant, never entered

into any contractual relationship. In this respect, however, and with specific regard to the content of the provision of art. 30 para. 2 of the FIFA Agents Regulations cited above, the Panel reckons that said provision only requires the existence of an “*international dispute in connection with the activity of players’ agents*” as the sole condition for the competence of the FIFA PSC to hear the case; the legal basis of the claim of the affected party is not crucial to the establishment of the competence of the FIFA PSC.

53. Indeed, the Panel notes that this interpretation of art. 30 para. 2 of the FIFA Agents Regulations is corroborated by the CAS jurisprudence, which has deemed FIFA to be competent to hear cases of both contractual and non-contractual liability under art. 30 para. 2 of the FIFA Agents Regulations (see for the latter case CAS 2007/A/1334).
54. In view of the foregoing, the Panel finds that the Single Judge of the FIFA PSC was competent to decide on the substance of the Respondent’s claim against the Appellant, thus rejecting the relevant prayer for relief of the Appellant.

**B. What is the remuneration due, if any, to the Respondent by the Appellant?**

55. The Appellant claims that it never entered into any agreement with the Respondent, as it alleges that the Commission Document represents merely an acknowledgement of the Player’s request that a certain payment be made to the Respondent on the Player’s behalf. Secondly, should the Panel decide to reject the appeal in this respect, the Appellant argues that the commission due should be reduced to not exceed the amount of EUR 260,000, corresponding to 10% of the Player’s remuneration for the duration of the Player’s stay with the Appellant before he was transferred to O. on 8 August 2014.
56. The Respondent, on the other hand, rejects the Appellant’s allegations in total and submits instead that there is no room for alternate interpretation of the Appellant’s clear recognition of its debt towards the Respondent, included in the Commission Document, expressed by the wording “*the Club certifies that it will pay*”.
57. Pursuant to art. 19 para. 4 of the FIFA Agents Regulations “[t]he representation contract shall explicitly state who is responsible for paying the players’ agent and in what manner. Any laws applicable in the territory of the association shall be taken into account. Payment shall be made exclusively by the client of the players’ agent directly to the players’ agent. However, after the conclusion of the relevant transaction, the player may give his written consent for the club to pay the player’s agent on his behalf. The payment made on behalf of the player must reflect the general terms of payment agreed between the player and the player’s agent”.
58. In relation to the role of the Respondent in the transfer of the Player to the Appellant, the Panel notes that it is not disputed between the parties that the Respondent provided his services to the Player, as his representative, related to the negotiations and the conclusion of the Transfer Agreement and the Employment Contract. Further than that, the Respondent’s role in the transfer is confirmed by the explicit references of the Commission Agreement to the Respondent’s participation in the transfer from G. to the Appellant, which was also not disputed by the Appellant.

59. In particular, the Commission Agreement stipulates, *inter alia*, the following:

*“1. – The player accepts that THE CLUB shall directly pay TO THE AGENT the commission referred in the Whereas section.*

*2. – The agreement hereunder is brought to the attention of the CLUB, with the purpose that a document expressing the commitment of payment of the commission by THE CLUB to THE AGENT is issued.*

*3. – After payment of the referred commission by the CLUB, THE PLAYER shall not pay the AGENT any amount in relation to the professional footballer contract signed with THE CLUB”.*

60. As such, the Commission Agreement contains not only the Player’s “wish” to have the Appellant pay the agent commission of EUR 1,100,000 directly to the Respondent, but also a requirement that the Appellant issue a document expressing its “*commitment of payment*” to that effect. This regulation of the payment of an agent’s commission, according to which the parties agree that the transferee club and not the player will assume the payment of the agent fee, is not unheard of in professional football transfers and it is certainly in accordance with the methods of payment for a representation contract that are allowed under art. 19 para. 4 of the FIFA Agents Regulations.
61. At the same time, the Panel remarks that the Commission Document was indeed issued by the Appellant the day following the conclusion of the Commission Agreement, thereby indicating that the Appellant was made aware of the existence and the provisions of the Commission Agreement and that the Appellant agreed with the arrangement included therein as to the payment of the Respondent’s commission.
62. Such conclusion is confirmed not only by the clear wording of the Commission Document relating to the acknowledgement of the payment arrangement (“*This is to certify that Al Jazira Sports Company will pay 10% to Mr Jose Jesus Mesas of Elite Sport Asesores S.L. as a commission of the Player [A]’s contract, which worth Euro 1,100,000 (One Million One Hundred Thousand Euro)*”), but also by the Appellant’s own admission that the Commission Document was regarded by the Player “*as a prerequisite to conclude the employment contract with Al Jazira*” and it was also issued by the Appellant as such.
63. The Appellant further invokes the provisions of the Swiss Code of Obligations (“SCO”) on the assumption of debt (art. 175 *et seq.*), claiming that a third party can only replace the debtor after concluding a contract in writing with the creditor, which cannot be the case here as no agreement in writing was concluded between the Appellant and the Respondent.
64. The Panel is not satisfied that the conditions of art. 175 *et seq.* of the SCO are relevant in the matter at hand as the Panel observes in this respect that assumption of debt is not the legal basis under which the Appealed Decision decided to uphold the Respondent’s prayers for relief before the FIFA PSC.

65. In view of the above, the Panel is convinced that the Respondent performed his services pursuant to the Representation Contract and the Commission Agreement.
66. The Panel is further convinced that in the course of the negotiations for the conclusion of the Transfer Agreement and the Employment Contract, the Player and the Appellant together with the Respondent who was acting as the Player's representative, all three parties came to an agreement as to which party would pay the Respondent's fee for the conclusion of the Player's transfer from G. to the Appellant. From a combined reading of the Commission Agreement together with the Commission Document – and in particular the extracts "*with the purpose that a document expressing the commitment of payment of the commission by THE CLUB to THE AGENT is issued*" and "*to certify that Al Jazira Sports Company will pay 10% to Mr Jose Jesus Mesas of Elite Sport Asesores S.L. as a commission*" (emphasis added) – as well as considering the fact that the Commission Document was issued by the Appellant one day following the Commission Agreement, the Panel finds that the Appellant unreservedly committed to pay the Respondent's fee of EUR 1,100,000.
67. In this respect, the Panel cannot ignore the clear wording of the Commission Document, but also the fact that, in the Appellant's own words, the Commission Document was regarded by the Player "*as a prerequisite to conclude the employment contract with Al Jazira*" and it was thus issued by the Appellant as such.
68. As a result, it is beyond doubt that, by issuing the Commission Document, the Appellant became party to a trilateral agreement in relation to the payment of the Respondent's commission, as described above. The Appellant paying the Respondent's commission was clearly regarded by the parties as an essential element of the tri-partite relationship which also contained the agreement for the Player's transfer to the Appellant and salary. The Panel further notes that such trilateral agreement under Swiss law has no particular requirements of form.
69. Accordingly, for the reasons stated above, the Panel is content to conclude that, in return for the negotiation of the Player's Transfer Agreement and Employment Contract and as a condition for the conclusion of the transfer, the parties agreed that the Respondent's commission would be paid by the Appellant. This agreement was recorded in the Commission Agreement and was accepted by the Appellant by issuing the Commission Document, thereby entering into the above-mentioned trilateral agreement.
70. The Appellant did not offer any evidence in support of its assertions, which might have proved the reasons that are indicated by the Appellant to justify the issuing of the Commission Document, and which would have contradicted the clear wording of the Commission Document.
71. In relation to the Appellant's assertions with respect to the application of various provisions of Swiss law, the Panel notes the following:
  - (i) Assumption of debt (*reprise de dette*) is an institution regulated in the SCO (art. 175 *et seq.* SCO), by means of which a payment commitment is transferred from the initial to a

new debtor. The Appellant asserts that it never assumed the debt of the Player towards the Respondent and that signing the Commission Document did not have that effect. According to the Appellant, assumption of debt requires the three parties involved (creditor, initial debtor and assuming party) to enter into a written agreement, which the Appellant disputes. In this respect, and as already mentioned above, the Panel remarks that assumption of debt was not the legal basis under which the FIFA PSC upheld the Respondent's claim. Therefore, disputing the existence of assumption of debt does not suffice *per se* to successfully challenge the Appealed Decision. Furthermore, as to the substance of the Appellant's argument, the Panel notes that no evidence has been adduced to support the Appellant's view, which, in addition, is contradicted by the clear wording of the Commission Document. Moreover, it was the Appellant itself which admitted that the Commission Document was regarded by the Player "*as a prerequisite to conclude the employment contract with Al Jazira*" and it was thus issued by the Appellant as such. Consequently, the conclusion of the Panel is that the Appellant, by issuing the Commission Document, entered into the above-described trilateral agreement with the Player and the Respondent, committing itself to pay the Respondent's fee of EUR 1,100,000. Therefore, the question whether an assumption of debt was in fact agreed or not between the parties is without merit.

- (ii) The Appellant further claims that the interpretation of the documents and legal relationships between the parties made in the Appealed Decision runs counter art. 18 para. 1 SCO<sup>1</sup>, as assuming that the Appellant intended to take over the Player's debt when issuing the Commission Document goes "*against the logic of the agreement*". The Panel cannot help to notice the clear wording of the Commission Agreement by means of which the Player consented to his agent's fee being paid by the Appellant, as well as of the Commission Document by means of which the Appellant "certified" that it will pay the amount in dispute. Under the circumstances, the assessment of the "form and terms" and the surrounding facts of the case, the Panel finds no room for a different interpretation along the lines proposed by the Appellant.

72. Further, as an aside, the Appellant submitted as evidence of its position (namely that it never assumed any debt of the Player towards the Respondent) the fact that it is stated in all the agreements that the Player must pay to the Respondent any amounts of his commission in the event that it is not paid by the Appellant. However, the Panel finds this to be unconvincing. On the contrary, it is rather so that said provisions only make sense in case the parties in fact agreed that, in principle, the Respondent's commission was to be paid by the Appellant.
73. Last but not least, the fact that the Commission Document contains no due date for the payment of EUR 1,100,000 does not run counter to the existence of the tri-partite legal relationship between the parties and the Player.

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<sup>1</sup> The relevant provision stipulates that: "*When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement*".

74. As to the matter of whether the commission due should be reduced, the Panel agrees with the Respondent's arguments.
75. First of all, the Panel notes that, in principle, the doctrine of *pacta sunt servanda* (which is enshrined in both the FIFA Regulations and Swiss law), which in essence means that agreements must be respected by the parties in good faith, is the guiding general principle by which the merits of this case will be examined. In this regard, the Panel further notes that when applying the doctrine of *pacta sunt servanda*, the proper interpretation of an agreement is of particular importance.
76. In this respect, the Panel observes that the agreement between the parties provided that the Appellant will pay to the Respondent the total amount of EUR 1,100,000, corresponding to the Respondent's commission for negotiating the transfer of the Player to the Appellant.
77. Secondly, the Panel feels itself comforted in its conclusion by the considerations of other CAS Panels concerning the treatment of agent commissions that are agreed on the basis of a club-player employment relationship, which is subsequently cut short, finding that:

*"There is nothing in the Agreement which explicitly stated that the commission owed was subject to the Player completing the full term of the Employment Agreement. As stated above, the Agent completed all the obligations required of him under the Agreement and whether the Player left the Club after three (3) months, or completed the entire three (3) years was irrelevant. The full amount of commission was owed to the Agent once the transfer and the Employment Agreement were concluded. The Club was free to include a clause in the Agreement linking the Player's stay with the Club with the amount of commission owed to the Agent, but it chose not to do so"* (CAS 2015/A/4250, para. 88 and similar wording in CAS 2015/A/4326, para. 83);

and

*"if the Parties' indeed intended to fluctuate or vary the Commission depending on the Player's stay at Ittihad, then the same should have been reflected in the Commission Agreement"* (CAS 2016/A/4485, para. 79).

78. For the sake of clarity, the Panel acknowledges that the above-mentioned CAS awards deal with cases where the employment relationship was cut short because of a unilateral termination with just cause on the part of the player because of severe breach committed by the club. However, the Panel cannot but observe that the situation is similar in the matter at hand, as the Appellant consented to the Player being transferred to O. by signing the Second Transfer Agreement and collecting the transfer fee agreed upon by the parties thereto.
79. Consequently, the Panel finds that the Appellant has to pay to the Respondent the total amount of the agreed commission, *i.e.* EUR 1,100,000.
80. As a result, the Panel decides to confirm the Appealed Decision and to reject the prayers of relief of the Appellant.

81. Any further claims or requests for relief are dismissed.

### **ON THESE GROUNDS**

**The Court of Arbitration for Sport rules that:**

1. The appeal filed by Al Jazira Football Sport Company on 6 April 2017 against the decision issued on 27 July 2016 by the FIFA Players' Status Committee is dismissed.
2. The decision issued on 27 July 2016 by the FIFA Players' Status Committee is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.