



**Arbitration CAS 2017/A/5058 Al-Ittihad FC v. Fédération Internationale de Football Association (FIFA), award of 18 December 2017**

Panel: Mr Hendrik Kesler (The Netherlands), President; Mr Saleh Al Obeidli (United Arab Emirates); Mr Mark Hovell (United Kingdom)

*Football*

*Disciplinary sanction (deduction of points)*

*Definition of a decision*

*Responses to requests for reconsideration of a decision not subject to appeals*

*Discontinuation of the implementation of an order of deduction of points*

1. A decision is a unilateral act sent to one or more determined recipients and is intended to produce legal effects. Such act must (i) express an *animus decidendi* of a sport governing body in connection with a specific topic or legal situation, and (ii) be communicated to the relevant addressee. The form of the communication has no relevance to determine whether there exists a decision or not.
2. The execution by the secretariat to the FIFA Disciplinary Committee of a final and binding decision of the FIFA Disciplinary Committee may under such circumstances be considered as a *decision*. However, once such *decision* is taken, FIFA's response to a request for reconsideration of such *decision* cannot be qualified as an appealable decision. One cannot artificially extend the deadline to appeal one decision by continuously asking for reconsideration of such decision upon receipt of a rejection of the request for reconsideration.
3. Once an order of deduction of points has been requested by one creditor and notified by the FIFA Disciplinary Committee to the relevant association, this measure has turned into a sanction which execution or enforcement do not depend on the creditor's or on the debtor's will. Said measure becomes a binding sanction that cannot be stayed, suspended or withdrawn, unless exceptional circumstances so justify.

**I. PARTIES**

1. Al-Ittihad Club FC (the "Appellant" or the "Club") is a football club with its registered office in Jeddah, Saudi Arabia. The Club is registered with the Saudi Arabian Football Federation (the "SAFF"), which in turn is affiliated to the Fédération Internationale de Football Association.

2. The Fédération Internationale de Football Association (the “Respondent” or “FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

## II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions and the evidence examined in the course of the present appeals arbitration proceedings and at the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

### A. Proceedings before the FIFA Dispute Resolution Chamber

4. On 22 November 2009, the football player Mr D (the “Player”), filed a claim against the Club before the Dispute Resolution Chamber of FIFA (the “FIFA DRC”), claiming an amount of USD 1,480,000, plus interest.
5. The Club disputed the Player’s claim.
6. On 12 December 2013, the FIFA DRC issued a decision (the “FIFA DRC Decision”), with *inter alia* the following operative part:
  - “1. *The claim of the [Player] is partially accepted.*
  2. *The [Club] has to pay to the [Player], within 30 days as from the date of notification of this decision, the amount of USD 150,000 as well as 5% interest p.a. on said amount as from 12 December 2013 until the date of effective payment.*
  3. *If the amount plus interest due in accordance with point 2 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.*
  4. *Any further claims lodged by the [Player] are rejected”.*
7. On 19 March 2014, the grounds of the FIFA DRC Decision were communicated to the parties.
8. On 8 April 2014, the Player lodged an appeal against the FIFA DRC Decision with the Court of Arbitration for Sport (“CAS”).
9. On 29 January 2015, CAS issued an arbitral award (the “CAS Award”), with the following operative part:

“1. *The appeal filed by [the Player] on 8 April 2014 is partially upheld.*

2. *The Decision issued by the Dispute Resolution Chamber of FIFA on 12 December 2013 is partially set aside.*
  3. [The Club] *shall pay* [the Player] *an amount of USD 350'000 (three hundred and fifty thousand US dollars) plus interest of 5% from 4 March 2010.*
  4. [...].
  5. [...].
  6. *All other prayers for relief are dismissed”.*
10. On 27 April 2015, the Player informed the FIFA Players’ Status and Governance department that, to such date, the Club had not made any payment of the amount due and requested the opening of expedited disciplinary proceedings.
  11. On 8 May 2015, FIFA’s Players’ Status and Governance department informed the Club that it should immediately pay the relevant amount to the Player and to provide it with a copy of the payment receipt of the relevant amount by 19 May 2015, in the absence of which the file would be forwarded to the FIFA Disciplinary Committee.
  12. On 18 May 2015, the Club requested to be provided with a one-month extension of the relevant deadline.
  13. On 20 May 2015, the Player informed FIFA’s Players’ Status and Governance department that he had not received any payment and requested the matter to be forwarded to the FIFA Disciplinary Committee.
  14. On 10 June 2015, FIFA’s Players’ Status and Governance department indicated to the parties that it would proceed to forward the entire file to the FIFA Disciplinary Committee for consideration and a formal decision.
  15. On 19 October 2015, the Player informed the FIFA Players’ Status and Governance department that the Club had paid him a total amount of USD 475,709, but that, since the Player’s total claim amounted to USD 484,988 (comprised of an amount of USD 350,000 awarded by CAS, interest at a rate of 5% *p.a.* over such amount accruing as from 4 March 2010 until 9 October 2015, a contribution of USD [...] (CHF [...]) towards his legal costs and other expenses incurred in connection with the arbitration, as well as USD [...] (CHF [...]) related to the arbitration costs), a payment of USD 9,279 remained outstanding.
  16. On 12 January 2016, the Player informed the FIFA Players’ Status and Governance department again that the Club had failed to comply with the CAS Award as the amount of USD 9,279 was still outstanding.

**B. Proceedings before the FIFA Disciplinary Committee**

17. On 22 June 2016, the secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings against the Club. The Club was urged to pay the outstanding amount to the Player immediately, in which case the disciplinary proceedings would be closed.
18. On 10 July 2016, the Club informed the SAFF that it *“paid all the amounts enumerated in the judgment”*. No evidence was presented that the SAFF forwarded such letter to the secretariat to the FIFA Disciplinary Committee.
19. On 13 July 2016, the secretariat to the FIFA Disciplinary Committee informed the Club that the case would be submitted to the FIFA Disciplinary Committee for evaluation on 9 August 2016. The Club was again urged to pay the outstanding amount to the Player immediately, in which case the disciplinary proceedings would be closed.
20. The Club did not respond to the letters of the secretariat to the FIFA Disciplinary Committee.
21. On 9 August 2016, the FIFA Disciplinary Committee issued its decision (the “FIFA DC Decision”), with the following operative part:

- “1. The [Club] is pronounced guilty of failing to comply with the [CAS Award] and is, therefore, in violation of art. 64 of the FIFA Disciplinary Code.*
- 2. The [Club] is ordered to pay a fine to the amount of CHF 1,000. The fine is to be paid within 30 days of notification of the present decision (...).*
- 3. The [Club] is granted a final period of grace of 30 days as from the notification of the present decision in which to settle its debt to the [Player].*
- 4. If payment is not made by this deadline, the creditor may demand in writing from the secretariat to the FIFA Disciplinary Committee that three (3) points be deducted from the debtor’s first team in the domestic league championship. Once the creditor has filed this request, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee. The order to implement the points deduction will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee.*
- 5. If the [Club] still fails to pay the amount due even after the deduction of the points in accordance with point 4 above, the FIFA Disciplinary Committee will decide on a possible relegation of the debtor’s first team to the next lower division.*
- 6. As a member of FIFA, the [SAFF] is reminded of its duty to implement this decision and, if so requested, provide FIFA with proof that the points have been deducted. If the [SAFF] does not comply with this decision despite being ordered to do so, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to expulsion from all FIFA competitions.*

7. *The costs of these proceedings amounting to CHF 500 are to be borne by the [Club] and shall be paid according to the modalities stipulated under point 2 above.*
  8. *The creditor is directed to notify the secretariat to the FIFA Disciplinary Committee of every payment received”.*
22. On 22 August 2016, the terms of the FIFA DC Decision were duly notified to the Club, *via* its legal representative, to the Player, *via* his legal representative, and to the SAFF. None of the parties requested the grounds of the FIFA DC Decision, as a consequence of which it became final and binding.
  23. On 10 November 2016, the Player informed the secretariat to the FIFA Disciplinary Committee that the Club had failed to pay the amount due towards him and requested that 3 points be deducted from the first team of the Club.
  24. On 14 December 2016, the secretariat to the FIFA Disciplinary Committee asked the SAFF to implement point 4 of the FIFA DC Decision and to deduct 3 points from the Club’s first team in the domestic league championship.
  25. On 16 December 2016, the Club informed the secretariat to the FIFA Disciplinary Committee that its letter dated 14 December 2016 was *“totally inadequate and you must annul your request as the payment of all the debts were made much before the letter of [the Player’s lawyer]”*.
  26. On 19 December 2016, the Club informed the secretariat to the FIFA Disciplinary Committee that it had provided it on 16 December 2017 with proof of the fact that all pending amounts had been settled in full *“before the decision was taken by the FIFA Disc. Co, being the sole problem, that your most esteemed services were not informed in due time by the Player”*.
  27. On 19 December 2016, the Player requested the secretariat to the FIFA Disciplinary Committee to suspend the execution of the sanction imposed until 5 January 2017.
  28. On 21 December 2016, the Club informed the secretariat to the FIFA Disciplinary Committee as follows:

*“Please find herein attached a communication dated 19 December 2016 from the Player’s lawyer requesting the suspension of the sanction imposed by your most esteemed services over [the Club] until the 5<sup>th</sup> of January 2016 [sic].*

(...)

*In the meantime we are confident said issue will be clarified, as the relevant amount to the Player were transferred to the bank details he provided by means of his letter dated 2<sup>nd</sup> of March 2015”.*
  29. On 21 December 2016, the Club informed the secretariat to the FIFA Disciplinary Committee as follows:

*“The date indicated in the documents herein attached as proof of payment is the 17<sup>th</sup> of October 2015.*

*Only the amount of USD 9,279 is allegedly outstanding according to the Player himself.*

*As per the above, it is crucial that the sanction is suspended until the 5<sup>th</sup> of January 2017 as demanded by the Player’s legal representative in his latest correspondence to your most esteemed services”.*

30. On 22 December 2016, the Club provided the secretariat to the FIFA Disciplinary Committee with proof of payment of an amount of USD 9,279 to the Player and requesting it to *“declare the annulment of the relevant FIFA Disc. Co. sanction ordered against our client and inform accordingly the [SAFF]”*.
31. On 23 December 2016, the secretariat to the FIFA Disciplinary Committee noted from the Club’s correspondence dated 22 December 2016 that the outstanding amount due to the Player had been paid on such date. With reference to the content of points 3 and 4 of the FIFA DC Decision, FIFA recalled that *“if the relevant payment is not made within the final deadline granted by the FIFA Disciplinary Committee and once the creditor has filed the request for the deduction of three (3) points, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee”*. As a consequence, the secretariat to the FIFA Disciplinary Committee *“once again kindly ask[ed] the [SAFF] to implement point 4 of the [FIFA DC Decision] and to deduct three (3) points from the first team of the club Al-Ittihad Club”*.
32. On 23 December 2016, the Club informed the secretariat to the FIFA Disciplinary Committee, *inter alia*, as follows:

*“The amount which was outstanding in favour of the Player had been paid by our client in due time, however to the erroneous bank account.*

*This was due to a clerical mistake which has been duly acknowledged by the Player and accepted by the latter. In fact, the Player’s legal representative will confirm the above to the FIFA Disciplinary Committee within the shortest deadline.*

*Accordingly, we herein urge the FIFA Disciplinary Committee to withdraw its order to the [SAFF]”.*

33. On 23 December 2016, the secretariat to the FIFA Disciplinary Committee informed the Club, the Player and the SAFF as follows:

*“[W]e take note that according to the legal representative of the [Club] “the amount which was outstanding in favour of the player had been paid by our client in due time, however to the erroneous bank account”.*

*In this respect, we wish to emphasise that we have not been provided with any evidence regarding such alleged payment.*

*In line with our previous correspondence (herewith attached), we kindly ask the [SAFF] to implement point 4 of the [FIFA DC Decision] and to deduct three (3) points from the first team of the club Al-Ittihad Club”.*

34. On 23 December 2016, the Club reiterated its request and provided proof of payment of the amount of CHF 9,594 to CAS on an unknown date (as was already provided on 16 December 2016) and that only by mistake it was remitted to a wrong bank account.
35. On 2 January 2017, the SAFF informed the secretariat to the FIFA Disciplinary Committee of the enforcement of the three point deduction from the Club in the Saudi Professional League.
36. On 4 January 2017, the Player informed the secretariat to the FIFA Disciplinary Committee that the outstanding payment was received and that the payment of CHF 9,594 was made before his request for the points deduction and that only due to an administrative error it was not received by him.
37. On 11 January 2017, the Club informed the secretariat to the FIFA Disciplinary Committee that the Player himself stressed that he should not have asked for the imposition of a disciplinary sanction against the Club. The Club asked the secretariat to the FIFA Disciplinary Committee to contact the SAFF and order the latter to lift the 3-point deduction.
38. On 16 January 2017, the Club demanded reconsideration of the deduction of the three points from the secretariat to the FIFA Disciplinary Committee, arguing that the Club had good faith in paying a large part of the Player’s entitlements, but that this incorrect procedure occurred because of the death of the former president of the Club and a misunderstanding between the outstanding amount and the similar amount to be deposited to CAS.
39. On 18 January 2017, the SAFF forwarded the Club’s letter dated 16 January 2017 to the secretariat to the FIFA Disciplinary Committee.
40. On 20 February 2017, the secretariat to the FIFA Disciplinary Committee repeated the considerations it communicated before to the Club, the Player and the SAFF on 23 December 2016, adding that the disciplinary proceedings against the Club were closed, since all financial duties had been fulfilled.
41. On 21 February 2017, the Club informed the secretariat to the FIFA Disciplinary Committee as follows:

*“[A]ccording to your communication, you merely follow the request of the creditor. But, on the 16<sup>th</sup> of December 2016, we have proven that non-payment was due to an error and, moreover THE VERY SAME CREDITOR sent a fax requesting the WITHDRAWAL of his previous request of deduction the points [sic].*

*Thus, if it is a mere administrative issue, you should have followed the latest request of the creditor of no deduction of the points.*

*I therefore request AN URGENT DECISION BY THE DISCO stating that the point must be returned.*

*Such a decision must be urgent as the season of the Saudi Premier League finishes in the next month and a half and in order to protect [the Club's] rights of a possible appeal before CAS".*

42. On 7 March 2017, the Club reiterated its request for an urgent decision.
43. On 17 March 2017, the secretariat to the FIFA Disciplinary Committee informed the Club, the Player and the SAFF as follows:

*"We refer to the above-mentioned matter and acknowledge receipt of the correspondences from the legal representative of the [Club] dated 21 February 2017 and 7 March 2017, the content of which has received our full attention and copies of which we hereto enclose for the other party's perusal.*

*In this regard, we wish to refer you once again and, in particular, to the content of point 4 of the [FIFA DC Decision] which establishes that "the points will be deducted automatically without a formal decision having to be taken by the FIFA Disciplinary Committee".*

*Bearing in mind the foregoing, as well as in line with our letters dated 23 December 2016 and 20 February 2017, the deduction of three (3) points from the first team of the [Club] shall be maintained".*

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

44. On 31 March 2017, the Club lodged a Statement of Appeal against the decision/letter rendered/issued by the secretariat to the FIFA Disciplinary Committee dated 17 March 2017, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2017) (the "CAS Code"), naming FIFA as the sole respondent. In this submission, the Club nominated Mr Saleh Al Obeidli, Attorney-at-Law in Dubai, United Arab Emirates, as arbitrator. The Club also applied for a stay of execution of the Appealed Decision.
45. On 12 April 2017, FIFA challenged the admissibility of the appeal and requested for a preliminary decision on the admissibility of the appeal. FIFA expressed the view that its letter dated 17 March 2017 cannot be considered as a final decision passed by one of FIFA's judicial bodies. Finally, although accepting that the proceedings would be conducted in English, FIFA proposed that there would be no need to translate any written evidence filed in Spanish.
46. On 19 April 2017, upon being invited to do so by the CAS Court Office, the Club filed a written submission on admissibility, arguing that FIFA challenge was to be dismissed and objecting to FIFA's request for a preliminary decision on admissibility.
47. On 20 April 2017, FIFA nominated Mr Mark Hovell, Attorney-at-Law in Manchester, United Kingdom, as arbitrator.

48. On 25 April 2017, the Club filed its Appeal Brief, pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments giving rise to the appeal. The Club challenged the Appealed Decision, submitting the following requests for relief:

- “A. Reject the request from FIFA to limit the present procedure to the issue of admissibility.*
- B. Reject the request of FIFA to consider the letter a mere measure of execution.*
- C. To set aside the Decision rendered by FIFA on the 17<sup>th</sup> of March 2017.*
- D. Condemn the Respondent to the payment of the whole CAS administration costs and Panel fees;*
- E. Fix a sum to be paid by the Respondents to the Club in order to cover its defence fees and costs in the amount of CHF 15,000”.*

49. On 2 May 2017, FIFA filed its answer to the Club’s request for stay, requesting it to be dismissed.

50. On 4 May 2017, the President of the Appeals Arbitration Division of CAS rendered an Order on Request for Stay, with the following operative part:

- “1. The request for a stay filed by Al-Ittihad FC on 31 March 2017 in the matter CAS 2017/A/5058 Al-Ittihad FC v. FIFA is rejected.*
- 2. The costs deriving from the present order will be determined in the final award or in any other final disposition of this arbitration”.*

51. On 29 May 2017, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the parties were informed that the arbitral tribunal appointed to decide the present matter was constituted by:

- Mr Hendrik Kesler, Attorney-at-Law in Enschede, the Netherlands, as President;
- Mr Saleh Al Obeidli, Attorney-at-Law in Dubai, United Arab Emirates; and
- Mr Mark Hovell, Solicitor in Manchester, United Kingdom, as arbitrators

52. On 13 June 2017, the CAS Court Office informed the parties that the Panel had decided to rule on the admissibility of the appeal in the final award.

53. On 17 July 2017, Dr Jan Kleiner informed the CAS Court Office that he had taken over the legal representation of the Club from its previous counsel.

54. On 31 July 2017, FIFA filed its Answer, pursuant to Article R55 of the CAS Code. FIFA submitted the following requests for relief:

- “1. Primarily, to declare inadmissible the appeal lodged by the Appellant.*

2. *Subsidiary, should the Panel decide not to the [sic] declare the appeal inadmissible, quod non, to reject the Appellant's appeal in its entirety.*
  3. *To order the Appellant to bear all the costs incurred with the present procedure and to cover all legal expenses of the Respondent related to the present procedure”.*
55. On 2 and 3 August 2017 respectively, upon being invited by the Panel to express their opinion in this respect, FIFA indicated that it did not require a hearing to be held, whereas the Club requested a hearing to be held.
  56. On 16 and 18 August 2017 respectively, FIFA and the Club returned duly signed copies of the Order of Procedure to the CAS Court Office.
  57. On 2 November 2017, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both parties confirmed that they had no objection to the constitution and composition of the Arbitral Tribunal.
  58. In addition to the Panel, Mr Antonio de Quesada, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:  
  
For the Appellant:
    - Dr Jan Kleiner, Counsel;  
For the Respondent:
    - Mrs Alejandra Salmerón García, Legal Counsel in the FIFA Disciplinary department;
    - Mrs Karin Schöneberger, Legal Counsel in the FIFA Disciplinary department.
  59. No witnesses or expert witnesses were heard. The parties had full opportunity to present their case, submit their arguments and answer the questions posed by the Panel.
  60. Before the hearing was concluded, both parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.
  61. The Panel confirms that it fully reviewed and took into account in its discussion and subsequent deliberations all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present award.

#### **IV. SUBMISSIONS OF THE PARTIES**

62. The Club's submissions on the merits of the case (the submissions in respect of the admissibility of the appeal are set out separately below), in essence, may be summarised as follows:

- The Club maintains that FIFA is of the view that the deduction of points is a mere measure of execution which may only be imposed after a request made by the creditor. The Club disagrees with this position and submits that such request from the creditor would then be a potestative decision of the creditor and not a FIFA decision. However, in this case the creditor asked FIFA not to impose such sanction, because the payment was made before the request.
  - FIFA's decision to reject such request "*has been taken without any kind of basis and against the general principles of law qui potest majus potest et minus (he who can do more can do less) or Non debet, cui plus licet, quod minus est, non licere (He who is permitted to do the greater, may with greater reason do the less)*".
  - It is obvious that if a creditor has been empowered to request the FIFA Disciplinary Committee to sanction a debtor, FIFA, once the request to sanction has been filed, cannot remove from the creditor the power to request the sanction to be withdrawn. The laws and regulations of FIFA and the laws of Switzerland do not prevent the creditor to withdraw a request for a sanction. Not being a decision to be taken by FIFA *ex officio*, the request to withdraw the deduction shall be processed.
63. FIFA's submissions on the merits of the case (the submissions in respect of the admissibility of the appeal are set out separately below), in essence, may be summarised as follows:
- FIFA submits that the spirit of Article 64 FIFA Disciplinary Code ("FDC") is to enforce decisions that had been rendered by a body, a committee or an instance of FIFA or CAS in a subsequent appeal decision, which are final and binding. The FIFA Disciplinary Committee could be regarded as acting similarly as an "enforcement authority". Nonetheless, proceedings under Article 64 FDC are to be considered not as an enforcement but rather as the imposition of a sanction for breach of the association's regulations and under the terms of association law.
  - The FIFA Disciplinary Committee, equal to the competence of any "enforcement authority", cannot review or modify as to the substance a previous decision, which is final and binding and thus has become enforceable. Consequently, the FIFA Disciplinary Committee has as a sole task to analyse if the debtor complied with the final and binding decision of the relevant body. If the FIFA Disciplinary Committee is not provided with a proof that the payment has been executed or the parties agreed upon a payment plan, it will render a decision imposing a fine on the debtor for failing to comply with a decision and will grant the debtor a final period of grace as from notification of the decision in which to settle its debt to the creditor and/or to FIFA. The FIFA Disciplinary Committee has to and can only take into consideration all possible facts arising after the date on which the decision had been rendered.
  - In the matter at hand it remained undisputed that the Club failed to pay the Player the total amount due and that USD 9,279 was still outstanding.

- Notwithstanding the multiple possibilities provided by FIFA, the Club decided not to pay the outstanding amount to the Player, without even bothering to reply to any of the correspondences of FIFA in which it was directly invited to submit its position regarding the situation in which it was involved. Not only did the Club blatantly disrespect a final and binding arbitral award of CAS, but it also decided not to participate at all in the disciplinary proceedings until the moment in which it realised that the sanctions imposed within the FIFA DC Decision had been duly executed.
- Should the Club have wished to contest the decision taken by the FIFA Disciplinary Committee, in particular the possibility given to the creditor to request the point deduction if the debtor failed to execute the payments within the deadline given, it would have had to first request the grounds of the decision in line with the express and unambiguous wording of Article 116(1) and (2) FDC. For this reason, the admissibility of an appeal against the implementation of said decision would create a flagrant legal uncertainty as well as to undermine the spirit of the proceedings of Article 64 FDC.
- Point 4 of the FIFA DC Decision does not leave room for interpretation, in the sense that it stipulates that “[i]f payment is not made by this deadline, the creditor may demand in writing from the secretariat to the FIFA Disciplinary Committee that three (3) points be deducted from the debtor’s first team in the domestic league championship. Once the creditor has filed this request, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee. The order to implement the points deduction will be issued on the association concerned by the secretariat to the FIFA Disciplinary Committee”.
- There is no doubt that the Club was well aware of the risks it was incurring by not executing the payment of the total amount due or negotiating and agreeing a payment plan.
- Consequently, the Player formally requested on 10 November 2016 the deduction of three points, which was duly implemented by the SAFF on 2 January 2017 following FIFA’s letters dated 14 and 23 December 2016.
- The correspondence of points deduction is only sent in the event that i) the amount due has not been paid within the final deadline granted (*in casu*, 30 days) and ii) upon express request of the creditor. In this case, as the outstanding amount due had not been paid to the Player, on 10 November 2016 he demanded the points deduction, and due to the fact that both elements were met, the secretariat requested the SAFF the deduction of points without a formal decision having to be taken.
- FIFA agrees with the Player that “it is therefore a potestative decision of the Creditor, not a FIFA decision, to request to sanction the debtor, if the Creditor, and only the creditor, decides to on top of the economic consequences of a Decision, if the latter is not fulfilled within the granted deadline, request FIFA to impose a sanction, it can decide it”. FIFA never denied the above, nor did it attempt to execute the deduction of points *ex officio*.

- The Club's statement that the request of the points deduction was a mistake because the payment was made before the Player's request, is false. From the proof of payment provided by the Club on 22 December 2016 it is clear that the respective payment was only executed on that same day. On 4 January 2017, the Player confirmed having received the payment.
- The Club is bringing false arguments in order to try to confuse the Panel with the payment that it made to the CAS. Indeed, the Club paid the amount of CHF 9,594 to CAS, corresponding to the arbitration costs arising from the procedure CAS 2014/A/3573, which fact has never been disputed by FIFA. However, the fact of having paid such amount does not mean that the one due to the Player had been paid, which did not occur until 22 December 2016 (*i.e.* after the request of the points deduction). It is incontestable that the Club still owed the outstanding amount when the Player requested the points deduction (*i.e.* on 10 November 2016).
- FIFA points out that it is completely aware of the meaning of the principles "*qui potest majus potest et minus*" and "*Non debet, cui plus licet, quod minus est, non licere*", and it can affirm that neither the decision rendered on 9 August 2016 nor the following correspondences from the secretariat to the FIFA Disciplinary Committee are contrary to said principles nor to any general principle of law. The Player knew that if he requested the deduction of the points those would be indeed deducted. The Player is nevertheless not entitled to withdraw the use of a right that was already employed and that had already deployed its effects. Should this be possible, the system would no longer be effective as the Club would know that, in reality, the deduction of points would never be *de facto* implemented.
- The arguments brought forward by the Club – that the Player's letter requesting the points deduction was sent by mistake – besides being incorrect, are not pertinent to justify a prolonged and intentional absence of non-compliance.

## V. ADMISSIBILITY

64. FIFA objects to the admissibility of the appeal. According to FIFA, the letter of the secretariat to the FIFA Disciplinary Committee dated 17 March 2017 is not to be considered as a decision as neither its form, its content nor the intention behind it could make anyone conclude differently. Such correspondence, which was sent by the secretariat to the FIFA Disciplinary Committee – and thus not a FIFA judicial body entitled to pass a decision – does not meet the mandatory requirements of a decision and exclusively belongs to the administrative duties carried out by the FIFA administration in accordance with Article 84 of the FIFA Disciplinary Code. The content of such letter did not modify the Club's legal situation as the deduction of three points was already duly implemented by the SAFF.
65. FIFA further argues that, in the remote case that CAS considers that a request for the points deduction is to be considered as a decision, *quod non*, it should consider as such the first correspondence of FIFA after the FIFA DC Decision and not the one that is currently appealed

against. In any case, such first correspondence was never appealed and thus it would also be final and binding.

66. The Club argues that there cannot be any doubt about the *animus decidendi* of FIFA's letter dated 17 March 2017, as it determines that the points deduction "*shall be maintained*". By ignoring the content of the letters dated 21 February and 7 March 2017, the FIFA Disciplinary Committee decided to reject the request to withdraw the three point deduction. As a consequence, the letter cannot be understood as an informative communication, but only as a decision rejecting the Club's request.
67. The Panel observes that the applicable FIFA regulations, in particular the FIFA Statutes, the FIFA Regulations on the Status and Transfer of Players and the FIFA Disciplinary Code, do not provide any definition for the term "decision". The possible characterisation of a letter as a decision was considered in several previous CAS cases (CAS 2008/A/1633; CAS 2007/A/1251; CAS 2005/A/899; CAS 2004/A/748; CAS 2004/A/659).
68. The Panel endorses the definition of "decision" and the characteristic features of a "decision" identified in the CAS jurisprudence set out below:
  - "[t]he form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal" (CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30; CAS 2005/A/899 para. 63; CAS 2004/A/748 para. 90).
  - "In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties" (CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30; CAS 2005/A/899 para. 61; CAS 2004/A/748 para. 89).
  - "A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects" (CAS 2008/A/1633 para. 31; CAS 2004/A/748 para. 89; CAS 2004/A/659 para. 36).
  - "[a]n appealable decision of a sport association or federation 'is normally a communication of the association directed to a party and based on an 'animus decidendi', i.e. an intention of a body of the association to decide on a matter (...). A simple information, which does not contain any 'ruling', cannot be considered a decision'. (CAS 2008/A/1633 para. 32; BERNASCONI M., "When is a 'decision' an appealable decision?" in: RIGOZZI/BERNASCONI (eds), *The Proceedings before the CAS, Bern 2007*, p. 273)" (CAS 2015/A/4266, para. 51 of the abstract published on the CAS website).
69. The Panel finds that the execution by the secretariat to the FIFA Disciplinary Committee of a final and binding decision of the FIFA Disciplinary Committee may under certain circumstances be considered as a "decision". However, once such "decision" is taken, FIFA's

response to a request for reconsideration of such “decision” cannot be qualified as an appealable decision.

70. Indeed, should the Club have desired to challenge the implementation of the three point deduction, it should have lodged an appeal against the SAFF’s decision to do so, or – possibly – against FIFA’s letter to the SAFF dated 14 December 2016 whereby the latter was requested to implement point 4 of the FIFA DC Decision.
71. The Panel notes that subsequent to FIFA’s letter to the SAFF dated 14 December 2016, the Club requested the secretariat to the FIFA Disciplinary Committee several times to withdraw / lift / reconsider / return its “decision”.
72. The secretariat to the FIFA Disciplinary Committee answered these requests for reconsideration by letters dated 23 December 2016, 23 December 2016 (following a subsequent letter from the Club on the same date), 20 February 2017 and 17 March 2017, all four letters at least indirectly confirming the content of FIFA’s letter to the SAFF dated 14 December 2016.
73. The Panel finds that the fourth letter issued to the Club by the secretariat to the FIFA Disciplinary Committee denying a request for reconsideration cannot be regarded as a “decision”. One cannot artificially extend the deadline to appeal a decision by continuously asking for reconsideration of such decision upon receipt of a rejection of the request for reconsideration. As argued by FIFA, if there was an appealable decision it was the first correspondence of FIFA after the FIFA DC Decision was issued, and not the one that is currently appealed against. As such, since such first correspondence (*i.e.* FIFA’s letter dated 14 December 2016) was never appealed, it became final and binding prior to the filing of the appeal in the matter at hand.
74. Consequently, the Panel finds that the Club’s appeal is not directed against an appealable decision, as a consequence of which the appeal is inadmissible.
75. Notwithstanding the above, the Panel wishes to add that even if the appeal were deemed admissible, *quod non*, the Club’s appeal would still have to be rejected.
76. It remained undisputed that the Club put the wheels in motion to settle its complete debt with the Player only on 22 December 2016, *i.e.* after the Player requested FIFA to implement point 4 of the FIFA DC Decision on 10 November 2016 and after the secretariat to the FIFA Disciplinary Committee requested the SAFF to implement the deduction of points on 14 December 2016.
77. The Panel finds that as soon as a creditor requests FIFA to implement a deduction of points on the basis of a decision of the FIFA Disciplinary Committee as in the matter at hand, and FIFA proceeded to instruct the national association concerned accordingly, such instruction cannot be undone upon the request of the creditor. In the matter at hand, the SAFF had already proceeded to deduct the three points from the Club’s ranking on 2 January 2017, while the Player only acknowledged receipt of the payment (and thus the debt was finally settled) and

withdrew his request to impose sporting sanctions on the Club on 4 January 2017. Under such circumstances, the Panel finds that the creditor's request not to impose sporting sanctions can no longer be taken into account, for this would lead to legal uncertainty, not only for the debtor in question, but particularly also for the clubs participating in the same competition as the debtor.

78. The fact that the Player's request to FIFA to implement the points deduction cannot be undone also derives from point 4 of the FIFA DC Decision insofar it states that “[o]nce the creditor has filed this request, the points will be deducted automatically without a further formal decision having to be taken by the FIFA Disciplinary Committee”. The leniency in the practice of the secretariat to the FIFA Disciplinary Committee in not proceeding with the points deduction in cases where the creditor originally requested points to be deducted, but evidence of payment is presented before the secretariat to the FIFA Disciplinary Committee instructed the national association to proceed with the points deduction, is of no avail to the Club in the matter at hand.

79. The Panel feels itself comforted in this respect by the reasoning of another CAS panel:

*“[T]he Panel agrees with [FIFA] and considers that section 4 of the operative part of the Appealed Decision shall be interpreted in the sense that, once the creditor has requested the implementation of the points deduction established therein, the execution of this measure can be only suspended in case the creditor (or the debtor with the agreement of the creditor) request so before the Deputy Secretary of the FIFA DC has ordered the deduction of points to the corresponding national association. On the contrary, once the implementation of the points deduction has been ordered by the Deputy Secretary of the FIFA DC, this measure has turned into a sanction which execution or enforcement do not depend at all on the creditor's or on the debtor's will. As a consequence, the Panel considers that, as a general rule, once the order of deduction of points has been requested by the creditor and has been already notified by the FIFA DC to the relevant association, such measure becomes a binding sanction that cannot be stayed, suspended or withdrawn, unless exceptional circumstances so justify”* (CAS 2016/A/4633, para. 132).

80. The Panel finds that, in the matter at hand, no exceptional circumstances are present. The only material argument advanced by the Club as to why no points should be deducted is that it allegedly thought that it had already paid the Player because a similar amount (CHF 9,594 instead of USD 9,279) was transferred by the Club in the relevant period, but that such understanding turned out to be incorrect as this payment concerned a wire transfer to the CAS in an unrelated matter, and not a payment to the Player. In this respect, the Club made the comparison with the situation in which a legal document is submitted to the wrong court but within the deadline. In such situation, the mistake is not detrimental to the deadline. The Club maintains that the same should apply to the payment of the amount of CHF 9,594 to CAS.

81. The Panel is glad that the new counsel for the Club that was appointed halfway during the proceedings clarified at the occasion of the hearing that the amount of CHF 9,594 was not paid to a wrong bank account because the Player instructed it to do so (as originally argued by the Club in its email to FIFA dated 21 December 2016), as the Panel finds that it clearly appears from the file that the bank details provided by the Player (in his letter dated 2 March 2015) do not coincide with the bank details used by the Club to transfer the amount of CHF 9,594.

82. The Club's argument that the deadline set out in the FIFA DC Decision was complied with because the Club mistakenly paid an amount to CAS is dismissed. The Club did not prove that such amount was not due to CAS. On the basis of the evidence on file, it rather appears that the Club had two debts; one towards CAS and one towards the Player. The fact that one of these two debts was paid can obviously not be used to argue that the other debt shall also be deemed paid. As such, the Club simply omitted to pay its debt towards the Player and the consequences of such failure are set out in the FIFA DC Decision, which was indeed duly executed by the secretariat to the FIFA Disciplinary Committee and the SAFF.
83. In the absence of any other arguments presented as to why the amount of USD 9,279 was not timely paid to the Player, the Panel finds that the administrative mistake is the sole responsibility of the Club and does not justify lifting the imposition of the points deduction. In addition, although continuously reminded of its payment obligations by FIFA, the Club opted not to enter into a dialogue with FIFA to resolve the perceived misunderstanding, while being aware that non-compliance with the FIFA DC Decision could well lead to the imposition of a points deduction, but only addressed FIFA after the SAFF was already instructed to deduct the three points.
84. The Panel therefore finds it is fully justified that the secretariat to the FIFA Disciplinary Committee requested the SAFF to deduct three points from the Club in the domestic league championship.
85. All other and further motions or prayers for relief are dismissed.

## ON THESE GROUNDS

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

1. The appeal filed on 31 March 2017 by Al-Ittihad Club FC against the letter issued on 17 March 2017 by the secretariat to the Disciplinary Committee of the *Fédération Internationale de Football Association* is inadmissible.
2. (...).
3. (...).
4. All other and further motions or prayers for relief are dismissed.