



Arbitration CAS 2018/A/5618 Shabab Al Ahli Dubai Club v. Shanghai SIPG Football Club, award of 10 October 2018

Panel: Mr Anthony Lo Surdo (Australia), Sole Arbitrator

Football

Succession of clubs

Standard of proof

Definition of “club”

Effects on the successor of a former club

Natural justice

1. Neither the FIFA Regulations on the Status and Transfer of Players nor the FIFA Rules Governing the Procedures of the Players’ Status Committee and Dispute Resolution Chamber prescribe a standard of proof. In the absence of a party stipulated standard of proof, the standard which applies is the balance of probabilities. The balance of probabilities standard has historically been considered to require that the CAS be satisfied that there is a 51% chance of a relevant scenario having had occurred or, put another way, that a matter is more likely to have occurred than not to have occurred.
2. On the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus, the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected. On the other side, the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognised, even when dealing with the change of management companies completely different from themselves.
3. The sporting successor of a former, no longer existing club can, as a matter of principle, be liable to meet the financial obligations of that former club notwithstanding that the successor is not a party to any agreement, arrangement or understanding pursuant to which the financial obligation arose or a privy of any of the parties to any such agreement, arrangement or understanding and regardless of whether there has been a change of management or corporate structure or ownership of the club in question.
4. Natural justice requires that a party be given a fair hearing and the opportunity to present their case. The twin planks of natural justice, *nemo iudex in causa sua* and *audi alteram partem*, should always be observed. Further, it is the duty of a first instance body to act fairly. Under Article R57 of the CAS Code, the CAS has full power to review the facts and the law. Consequently, issues of procedural fairness can be cured by the

entitlement of an appellant to an adjudication which is fair overall.

I. INTRODUCTION

1. Shabab Al Ahli Dubai Club (“Appellant”) brings an appeal against Shanghai SIPG Football Club (“Respondent”) challenging the decision of a Single Judge of the Players’ Status Committee (“PSC”) of the Federation Internationale de Football Association (“FIFA”) passed in Zurich, Switzerland, on 27 September 2017 (“PSC Decision”).
2. In that decision the PSC found, inter alia, that the Appellant was required to pay to the Respondent the amount of EUR 600,000 plus interest in respect of a Transfer on Loan Agreement, dated 31 August 2016 pursuant to which the Al Ahli Football Club Dubai agreed to the temporary transfer of player A. (“Player”) to the Respondent for the period 1 September 2016 to 30 June 2017 (“Transfer on Loan Agreement”).

II. THE PARTIES

3. The Appellant is a professional football club registered in Dubai, United Arab Emirates. It is affiliated to the United Arab Emirates Football Association (“UAEFA”) and to the Asian Football Confederation (“AFC”).
4. The Respondent is a professional football club registered in Shanghai, Peoples Republic of China. It is affiliated to the Chinese Football Association (“CFA”) and to the AFC.
5. Both the UAEFA and the CFA are associations which have been admitted to membership of FIFA.

III. FACTUAL BACKGROUND

6. 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 Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, the Award only refers to the submissions and evidence the Sole Arbitrator considers necessary to explain his reasoning.
7. On 31 August 2016, the Respondent, Al Ahli Football Club Dubai and the Player entered into the Transfer on Loan Agreement. The agreement recited that the Player was currently registered with the Respondent club, Al Ahli Football Club Dubai wished to acquire the Player’s

registration from the Respondent on a temporary basis in accordance with the terms of the agreement and that the Player had agreed to a temporary transfer of his registration.

8. The terms of the Transfer on Loan Agreement are not in dispute. In summary, the Player was loaned to the Al Ahli Football Club Dubai from 1 September 2016 until 30 June 2017 (a period of 10 months) in consideration for the payment to the Respondent of a loan fee in the amount of EUR 1,250,000 to be paid in two instalments; the first instalment of EUR 600,000 was to be paid before or on 1 November 2016 and the second instalment of EUR 650,000 was to be paid before or on 1 April 2017 (Clauses 3 & 4.1).
9. Al Ahli Football Club Dubai warranted, represented and undertook to the Respondent and the Player that it was legally entitled to enter into the agreement and perform its obligations under it and that it had the necessary capacity, power and authority to enter into the agreement, which was executed by an authorised signatory of that entity (Clause 8.1(a) & (b)).
10. Clause 13.4 of the Transfer on Loan Agreement provides that the agreement is subject to the FIFA Rules and that in the event of an unresolved dispute between the parties, the matter shall be referred to the “FIFA bodies”.
11. The Transfer on Loan Agreement was signed by Mr Sui Guoyang on behalf of the Respondent on 31 August 2016 and to which is affixed the Respondent’s corporate seal, by Mr Obaid Saeed on 1 September 2016 on behalf of the Al Ahli Football Club Dubai to which is also affixed the corporate seal of that entity, and by the Player on an unspecified date.
12. Al Ahli Football Club Dubai did not meet its obligations to the Respondent to pay the first instalment of EUR 600,000 under the Transfer on Loan Agreement with the consequence that on or about 23 March 2017, the Respondent lodged a complaint with FIFA in relation to the non-payment.
13. The PSC Decision was passed on 27 September 2017. In that decision, the PSC noted that the Al Ahli Football Club Dubai had not provided its position in relation to the claim “*in spite of having been invited to do so*”. The Single Judge concluded that the Al Ahli Football Club Dubai was required to pay to the “Claimant” (the Respondent in this Appeal) the amount of EUR 600,000 corresponding to the first instalment of the loan fee due under the Transfer on Loan Agreement, plus interest at a rate of 5% per year on the said amount from 2 November 2016, until the date of the effective payment.
14. The Appellant claims that it first became aware of the proceedings before the PSC when FIFA provided it with a copy of the PSC Decision by email on 15 February 2018. It contends that: the PSC Decision had been passed and/or is sought to be enforced against the wrong legal entity; it is the new denomination/entity of another Arab Emirates Football Club, Al Shabab Al Arabi Dubai FC and not of the entity known as “Al Ahli Football Club Dubai” which is one of the parties to the Transfer on Loan Agreement and, is therefore not a successor club to that entity; and the PSC Decision has been issued in violation of the principles of natural justice (*audi alteram partem* and due process).

15. The Respondent contends that there is a sporting succession between the Appellant and the Al Ahli Football Club Dubai and that it merged with Shabab Al Ahli-Dubai FC, on 15 May 2017 to form the Shabab Al Ahli Dubai Club. It does not specifically address the breach of natural justice claims made by the Appellant.

IV. SUMMARY OF THE PROCEEDINGS BEFORE THE CAS

16. On 7 March 2018, the Appellant filed a Statement of Appeal in accordance with Article R48 of the Code of Sports-related Arbitration (2017 Edition) (“CAS Code”) with respect to the decision passed by the PSC on 27 September 2017 and notified to the Appellant on 15 February 2018. In its Statement of Appeal, the Appellant, amongst other things, requested that a Sole Arbitrator be appointed to determine the appeal.
17. On 17 March 2018, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
18. On 14 April 2018, the Respondent filed its Answer with the CAS Court Office in accordance with Article R55 of the CAS Code.
19. On 17 April 2018, the CAS Court Office wrote to the parties acknowledging receipt of the Respondent’s Answer, informing them of the provisions of Article R56 of the CAS Code and inviting them to advise whether they preferred a hearing to be held in the matter or for the Panel or Sole Arbitrator to issue an award based solely on the parties’ written submissions, noting that Article R57 of the CAS Code provides that, after consulting the parties, the Panel or Sole Arbitrator shall decide whether to hold a hearing.
20. On 23 April 2018, the Appellant informed the CAS Court Office that it preferred the Panel or the Sole Arbitrator to issue an award based solely on the parties’ written submissions.
21. On 23 April 2018, the Respondent informed the CAS Court Office that it preferred the Panel or the Sole Arbitrator to issue an award based solely on the parties’ written submissions.
22. On 26 April 2018, the CAS Court Office wrote to the parties referring to its letter of 19 March 2018 and informing them that in the absence of an answer from the Respondent as to whether it agreed with the appointment of a Sole Arbitrator, the President of the CAS Appeals Arbitration Division, or her Deputy, would, taking into account the circumstances of the case, determine the issue pursuant to Article R50 of the CAS Code.
23. On 22 May 2018, the CAS Court Office informed the parties of the appointment of the Sole Arbitrator in this procedure and that the case file was being transferred to him by separate letter to be despatched that day.

24. On 15 June 2018, the CAS Court Office informed the parties that the Sole Arbitrator had determined, pursuant to Article R57 of the CAS Code, that he was, at that time, sufficiently well-informed to determine the appeal solely on the parties' written submissions.
25. However, on 19 June 2018, the Appellant requested a second and final round of submissions having regard to the fact that no hearing was to be held. That request was not accompanied by submissions as to the existence of any exceptional circumstances which would justify a departure from the usual rule that a party will not be permitted to, relevantly, supplement argument after provision of the appeal brief and of the answer (Article R56 of the CAS Code). Therefore, to consider this request further, on 20 June 2018, the Sole Arbitrator directed that the Appellant provide, by 22 June 2018, a short outline of the matters that it proposed to address in a second round of written submissions. A response was provided by the Appellant on 22 June 2018.
26. A copy of the response from the Appellant was provided to the Respondent on 25 June 2018 and it was invited to provide its comments on the Appellant's request for a second round of written submissions by 28 June 2018 and, in particular, as to whether it consented to a second round of written submissions. On 28 June 2018, the Respondent provided its comments to the Appellant's request for a second round of written submissions. It opposed the Appellant's request.
27. In the circumstances where the Appellant was not able to identify exceptional circumstances justifying the Sole Arbitrator ordering a second round of written submissions and where the Respondent did not consent to such a course, the Appellant's request was denied.
28. As a consequence of the consultation with the parties referred to in paragraphs 25 and 26 of this Award, on 2 July 2018, the Sole Arbitrator determined, pursuant to Article R57 of the CAS Code, that he was not now sufficiently well-informed to determine the appeal without a hearing.
29. On 31 July 2018, the CAS Court Office issued an order of procedure which was signed and returned by the parties to the CAS Court Office on 3 and 7 August 2018 by the Respondent and the Appellant respectively.
30. The hearing proceeded on 11 September 2018 at the CAS Alternative Hearing Centre in Shanghai. The Sole Arbitrator was assisted at the hearing by Mr Daniele Boccucci, counsel to the CAS, as well as the following representatives for the parties:

Applicants: Mr Salvatore Civale, Attorney, Studio Legale, Nocera Inferiore (Sa), Italy (who appeared, in accordance with his request, by video-conference);

Respondent: Mr Zongchen Ma, Attorney and Mr Zhe Zheng, Attorney, Dentons Law Office, Shanghai.
31. Following the hearing, the representatives for each of the parties confirmed that their respective rights to be heard had been fully respected by the Sole Arbitrator and that they had no issue

with respect to the way the CAS procedure or hearing was conducted. They also confirmed that they each had no objection to the composition of the Panel.

V. SUBMISSIONS OF THE PARTIES

32. What follows is a summary of the parties' submissions. To the extent that it omits any contentions, the Sole Arbitrator notes that he has considered all of the evidence and arguments submitted by the parties.

A. The Appellant's Submissions and request for relief

1. Overview

33. The Appellant advances two arguments on the merits of the appeal. First, it contends that it is a different entity to that described as "Al Ahli Football Club Dubai" in the PSC Decision and, more relevantly, that it is not a successor of that sporting club as understood in both the relevant jurisprudence of the FIFA decision-making bodies and CAS jurisprudence. Secondly, the Appellant claims that the PSC Decision has been issued in violation of the principles of natural justice. The Appellant's submissions in respect of each of these arguments are summarised separately below.

a) There is no sporting succession between the Al Ahli Football Club Dubai and the Appellant

34. The Appellant submits, by reference to two FIFA Dispute Resolution Decisions (10/4/2015, Decision n. 041512208 & 29/07/2016) and a number of CAS determinations (CAS 2007/A/1355, CAS 2011/A/1355, CAS 2011/A/2614, CAS 2011/A/2646 & CAS 2012/A/2778) that, in summary, a club is a sporting entity identifiable by itself which, as a general rule, transcends the legal entities which operate it.

35. Thus, the obligations acquired by any of the entities in charge of a club's administration in relation with its activity must be respected. The identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to be distinguished from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognised, even when dealing with a change of management companies completely different from themselves.

36. By reference to the aforementioned principles, the Appellant refers to the following matters which it asserts establishes that it is the successor to a club known as Shabab Al Arabi Dubai, that it and the former club should be considered as one and the same entity, and thus, that it does not have any connection with the entity known as Al Ahli Football Club Dubai:

- i. Nine professional football players formerly on the playing roster of the Shabab Al Arabi Dubai have, since the commencement of the Arabian Gulf League, season 2017/18, played for the Appellant;

- ii. The Appellant, until sporting season 2016/2017, competed in the Arabian Gulf League under the name Shabab Al Arabi Dubai and since the commencement of season 2017/2018, the Appellant competed in the same championship under its current name;
 - iii. The current name of the Appellant club and its former name is the same (or similar);
 - iv. The history of both clubs is the same. Shabab Al Arabi Dubai and the Appellant were each founded in 1958, as is evident, so it submits, from a comparison of the logos of each of the clubs;
 - v. The colour of the kit, green, is the same.
37. The Appellant accordingly submits that the only sporting succession is between Shabab Al Arabi Dubai and the Appellant.
38. The Appellant further submits that:
- i. The Commercial License issued by the Government of Dubai to the Appellant makes no reference to the entity known as Al Ahli Football Club Dubai. That document, identifies Alshabab Alahli Dubai Co. L.L.C, a company apparently incorporated in Dubai, trading as Shabab Alahli Dubai Co. L.L.C as being the holder of licence number 620102, issued on 15 December 2008, in relation to activities including “Sport clubs & facilities management” and makes no reference to the entity known as Al Ahli Football Club Dubai;
 - ii. It has never had a contractual relationship with the Respondent, has at no time executed a written agreement with the Respondent and nor has it accepted the financial commitments of the entity known as Al Ahli Football Club Dubai which it submits is the only entity obliged in respect of the Transfer on Loan Agreement.

In oral submissions, the Appellant called in aid of this argument Article 283 of the UAE Convention on Company Law, No.2, 1985, which the Appellant claimed provides that legal succession between corporate entities whereby one company assumes the obligations of another requires the execution of a contract with that effect and no such contract was executed.

Whilst reference was made to this provision of the domestic law of the UAE, no evidence of the law was adduced in evidence. Further, there was no evidence in support of the contention that no contract to the effect specified had been executed. Further, and in any event, the Appellant quite properly conceded in argument that the FIFA and CAS jurisprudence on sporting succession has “supremacy” or primacy and that the ultimate question in the appeal falls to be determined in accordance with those principles; and

- iii. It has an asset management completely separate and unrelated to the entity known as Al Ahli Football Club Dubai.
39. The Appellant concludes that in circumstances where Shabab Al Ahli Dubai is the new name of the old football club Shabab Al Arabi Dubai, it is a different entity from that known as Al Ahli Football Club Dubai and where it has never had a contractual relationship with the Respondent, the PSC Decision is of no legal effect in respect of the Appellant and it should be annulled.
- b) *Violation of the principle of natural justice: audi alteram partem and due process*
40. The Appellant claims that it had no knowledge of the Respondent's claim or procedure before the PSC prior to receipt of the PSC Decision on 15 February 2018. It was accordingly not a party to the proceedings, the only parties being the Respondent and an entity known as Al Ahli Football Club Dubai.
41. Accordingly, the Appellant submits that it has been denied the opportunity to understand and answer the case brought against it and the concomitant right to be afforded due process. It contends that the PSC Decision should therefore be annulled (and referred back to the PSC for determination) or, in the alternative, that the CAS should hear the case de novo and thereby cure any prejudice created by the alleged denial of natural justice (CAS 2011/A/2425).

2. Relief Sought

42. The Appellant requests the following relief:
- (a) To confirm that the CAS has jurisdiction over the present dispute;
 - (b) To admit the Appeal against the decision adopted by FIFA on 27 September 2017 (ref. No. 117-00567/ssa) and, therefore, the Appealed decision adopted by FIFA on 2 March 2017 (ref. 01842/gbo) must be set aside in full and not considered binding against the Appellant;
 - (c) To order the Respondent, to bear in full the costs of this arbitration proceeding;
 - (d) To order the Respondent, to bear the legal costs and expenses borne by the Appellant, in relation to this appeal, in an amount to be determined at the discretion of the Sole Arbitrator; and
 - (e) Grant any other relief or orders are deemed reasonable and fit to the case at stake.

B. The Respondent's Submissions and request for relief

43. The Respondent asserts that there is a sporting succession between the Appellant and the Al Ahli Football Club Dubai.

1. *There is a sporting succession between the Al Ahli Football Club Dubai and the Appellant*

44. The Respondent relies upon the following facts which it asserts establishes a sporting succession between the Appellant and the entity known as Al Ahli Football Club Dubai:

- i. A statement, which appears on the Appellant's website (https://www.shababalahli.ae/?page_id=5&lang=en) which, in part, reads as follows:

“About the Club

We are Shabab Alahli-Dubai FC, on 15 May 2017, His Highness Sheikh Mohamed Bin Rashid, Vice President & Prime Minister of the UAE & ruler of Dubai, decreed the merging of Al Shabab Al Arabi Club, Al Ahli Club & Dubai Club into one entity called ‘Shabab Alahli Dubai FC.’ The Club was Founded: 1958’ 59 years ago as AL AHLI club.’

In September 2017, The Professional League Committee ‘PLC’ agreed to grant Shabab Alahli-Dubai FC the right to place two stars over the club’s logo on the Jersey the team will wear, in this season’s matches after the adoption of the three tournaments achieved by Al Shabab Al Arabi Club to add to the seven championships achieved by Al Ahli Club to become the number of championships that achieved by Shabab Alahli-Dubai FC to 10”.

- ii. On 16 May 2017, the UAEFA published the following news item on its website (<https://www.uaefa.ae/mobile/news-details.php?newsid=26211>):

“UAE FA Board Welcomes Al Shabab, Dubai and Al Ahli Club Merge

16 May, 2017

Dubai Tuesday, May 16th, 2017: UAE FA Board of Directors welcomed the wise decree of His Highness Shaikh [sic] Mohammad Bin Rashid Al Maktoum, Vice President and Prime Minister and Ruler of Dubai on merging Al Shabab, Al Ahli and Dubai Club into one Entity called Shabab Al Ahli Dubai Club. The board will hold a meeting to discuss organisational matter arises as a result of the merger.

UAE FA President, Eng. Marwan bin Ghalita said ‘the vision of HH Dubai Ruler always takes us to a bright future. This decree will have positive impact on UAE football and I wish the success for Shabab Al Ahli Dubai Club under the chairmanship of HH Hamdan bin Mohamed bin Rashid Al Maktoum, Crown Prince of Dubai”.

- iii. The Commercial License number 620102 issued to the Appellant is identical to that of the Al Ahli Football Club as is the post-office box (PO Box 1551, Dubai, UAE) and facsimile number (+971 4 298 8878). The Respondent contends that this is evident from a comparison of the PO Box and facsimile number identified in the footer to the Transfer on Loan Agreement with those same details contained in the Commercial Licence number 620102 as registered with the Dubai Economic Development Department;

- iv. Fourteen professional football players from the Al Ahli Football Club players' roster for season 2016/2017 played for the Appellant in the 2017/2018 season;
 - v. All five coaching related staff of the Al Ahli Football Club for season 2016/2017 continued to work for the Appellant in the 2017/2018 season; and
 - vi. The name "Shabab Al Ahli Dubai FC" coincides with the old name before the merger "Al Ahli Dubai FC".
45. The Respondent accordingly contends that as there has been a sporting succession between the Appellant and Al Ahli Dubai Football Club Dubai in conformity with the applicable jurisprudence, the legal obligations and liabilities of the Al Ahli Dubai Football Club Dubai under the Transfer on Loan Agreement to meet the first instalment payment due under that agreement has been assumed by the Appellant.

2. Relief Sought

46. The Respondent requests the following relief:
- (a) To dismiss all claims of the Appellant; and
 - (b) To order the Appellant to bear in full the costs of this arbitration proceeding.

VI. JURISDICTION

47. The jurisdiction of the CAS in this procedure derives from Article R47 of the CAS Code, Article 58 of the FIFA Statutes (April 2016 Edition) ("FIFA Statutes"), Article 23.4 of the FIFA Regulations on the Status and Transfer of Players (promulgated pursuant to Article 5 of the FIFA Statutes) ("RSTP") and the Transfer on Loan Agreement.
48. According to Article R47 of the CAS Code, "[a]n appeal against the decision of the Federation, Association or sports-related body may be filed with CAS if the statute or regulations of the said body so provide, or if the parties have concluded a specific arbitration agreement and, if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statute or regulations of that body".
49. Article 58 of the FIFA Statutes, relevantly provides:
- 1. *Appeals 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.*
 - 2. *Recourse may only be made to CAS after all other internal channels have been exhausted".*

50. The PSC was established by FIFA pursuant to Article 23 of the RSTP to adjudicate on any of the cases described under Article 22 c) and f) as well as on all other disputes arising from the application of those regulations, subject to Article 24. Article 24 is of no present application. Though not defined in the FIFA Statutes, the PSC should be understood to be a FIFA “legal body” because it has been established to adjudicate on the cases referred to in Article 23.
51. Article 23.4 of the RSTP provides that decisions reached by the single judge or the PSC of the RSTP may be appealed before the CAS. There is no internal channel of appeal from such a decision.
52. Lastly, clause 13.4 of the Transfer on Loan Agreement provides that any dispute regarding the interpretation or execution of the obligations under the agreement, or the breach or failure to comply with any of its provisions, is to be referred to FIFA as the first instance body with the CAS to act as the appeals body. These contractual provisions are wholly consistent with and reflect the operation of Article 23 of the RSTP.
53. In circumstances where there is no internal channel of appeal from a decision of the PSC and where the CAS is specified in both Article 23.4 of the RSTP and in the Transfer on Loan Agreement as the relevant appeals body, the Sole Arbitrator holds that the CAS has jurisdiction to hear this appeal.
54. Further, neither party in their written submissions or otherwise contested the jurisdiction of the CAS. Indeed, by signing the Order of Procedure, each confirmed that the CAS has jurisdiction.

VII. ADMISSIBILITY

55. The PSC Decision was passed on 27 September 2017. However, the grounds of the PSC Decision were not notified to the parties until 15 February 2018. Accordingly, and having regard to Article 58.1 of the FIFA Statutes, any appeal against the PSC Decision was to be filed with CAS by 8 March 2018. The Statement of Appeal in this procedure was filed by the Appellant with the CAS Court Office on 7 March 2018.
56. Accordingly, the appeal is admissible. The Respondent has not contended to the contrary.

VIII. APPLICABLE LAW

57. Pursuant to Article R58 of the CAS Code, “[t]he 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”.

58. Article 50.2 of the FIFA Statutes states that the provisions of the CAS Code shall apply to any proceedings before the CAS and that it shall primarily apply the various regulations of FIFA and, additionally, Swiss Law.
59. These provisions are consistent with Article 187 para.1 of the *Swiss Private International Law Act*, which in its English translation states as follows:
- “The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected”.*
60. Having regard to the provisions of Article R58 of the CAS Code and Article 50.2 of the FIFA Statutes, the Sole Arbitrator holds that this procedure is to be determined in accordance with the various regulations of FIFA and, additionally, Swiss Law.

IX. MERITS

A. Overview – Issues for Determination

61. Having regard to the de novo nature of the appeal, the arguments advanced by the Appellant, the submissions made by the Respondent and the evidence upon which each of the parties rely, these proceedings give rise to the following broad questions:
- (a) Is there is a sporting succession between the Al Ahli Football Club Dubai and the Appellant? and
 - (b) Has the Appellant been denied natural justice in the proceedings before the FIFA PSC?
62. The Sole Arbitrator addresses each of these issues below. In doing so, he has had regard to the submissions made by each of the parties. The Sole Arbitrator will, however, refer to such of those submissions and supporting material as is necessary to dispose of the issues the subject of this appeal. Before embarking upon a consideration of the merits of the appeal, it is necessary to address, briefly, the standard of proof to be applied.

B. Standard of Proof

63. The relevant FIFA regulations appear to be the RSTP and the FIFA Rules Governing the Procedures of the Players’ Status Committee and Dispute Resolution Chamber pursuant to which the PSC Decision was rendered. Neither the RSTP nor the Rules enacted pursuant to those regulations prescribe a standard of proof.
64. In the absence of a party stipulated standard of proof, the standard which applies to this procedure and to which the Sole Arbitrator has had regard, is the balance of probabilities. The balance of probabilities standard has historically been considered to require that the CAS be satisfied that there is a 51% chance of a relevant scenario having had occurred or, put another

way, that a matter is more likely to have occurred than not to have occurred (CAS 2009/A/1926 & 1930; CAS 2012/A/2972).

C. Is there is a sporting succession between the Al Ahli Football Club Dubai and the Appellant?

65. The Appellant correctly submits, by reference to: (a) two FIFA Dispute Resolution Chamber decisions (10/4/2015, Decision n. 041512208 & 29/07/2016, Decision n. 0716717) to which may also be added 17/12/2015, Decision n. 12150569-E; and (b) a number of CAS determinations (CAS 2007/A/1355, CAS 2011/A/2614, CAS 2011/A/2646 & CAS 2012/A/2778) to which may also be added CAS 2013/A/3425, CAS 2016/A/4550 & 4576, that a club is a sporting entity identifiable by itself which, as a general rule, transcends the legal entities which operate it.

66. In CAS 2013/A/3425 (at par. 139), the Sole Arbitrator said the following:

“The Sole Arbitrator highlights that the decisions that had dealt with the question of the succession of a sporting club in front of the CAS (CAS 2007/A/1355; TAS 2011/A/2614; TAS 2011/A/2646; TAS 2012/A/2778) and in front of FIFA’s decision-making bodies (...), have established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus, the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected; and on the other side, that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognised, even when dealing with the change of management companies completely different from themselves” (original text in Spanish).

67. This approach has been subsequently approved and applied in a number of decisions of the CAS including CAS 2016/A/4550 & CAS 2016/A/4576. The effect of these decisions is that the sporting successor of a former, no longer existing club can, as a matter of principle, be liable to meet the financial obligations of that former club notwithstanding that the successor is not a party to any agreement, arrangement or understanding pursuant to which the financial obligation arose or a privy of any of the parties to any such agreement, arrangement or understanding and regardless of whether there has been a change of management or corporate structure or ownership of the club in question.

68. The Appellant points to the following matters which it claims establishes that it is the successor to a club known as Shabab Al Arabi Dubai and not a successor to Al Ahli Football Club Dubai:

(a) Nine professional football players formerly on the playing roster of the Shabab Al Arabi Dubai Club have, since the commencement of the Arabian Gulf League, season 2017/18, played for the Appellant;

- (b) The Appellant, until sporting season 2016-2017, competed in the Arabian Gulf League under the name Shabab Al Arabi Dubai and since the commencement of season 2017/2018, the Appellant competed in the same championship under its current name;
 - (c) The current name of the Appellant club and its former name is the same (or similar);
 - (d) The history of both clubs is the same. Shabab Al Arabi Dubai and the Appellant were each founded in 1958, as is evident, so it submits, from a comparison of the logos of each of the clubs;
 - (e) The colour of the kit, green, is the same.
69. It asserts, therefore, that the only relevant sporting succession is as between it and a club known as Shabab Al Arabi Dubai. However, in the opinion of the Sole Arbitrator, it does not necessarily by dint of logic or otherwise follow that the only relevant sporting succession is as the Appellant contends. Such a conclusion would require a consideration of all the relevant facts which are explored below.
70. The Sole Arbitrator is of the view that the following facts support the conclusion that there is a sporting succession between the club formerly known as Al Ahli Football Club Dubai and the Appellant which was the Respondent in the proceedings before the PSC and the subject of this appeal. That sporting succession was concluded upon the merging of the Al Shabab Al Arabi Club with the Al Ahli Football Club Dubai with effect from 15 May 2017 to form the Shabab Al Ahli Dubai FC:
- (a) As is evident from a statement which appears on the Appellant's own website (https://www.shababalahli.ae/?page_id=5&lang=en) on 15 May 2017, His Highness Sheikh Mohamed Bin Rashid, Vice President and Prime Minister of the UAE and Ruler of Dubai, decreed the merging of Al Shabab Al Arabi Club, Al Ahli Club & Dubai Club into one entity called 'Shabab Al Ahli Dubai FC'. This new club was, according to the website, originally founded in 1958 as the Al Ahli Club;
 - (b) The merger was confirmed in a press release issued by the UAEFA on 16 May 2017;
 - (c) The name of the merged entity incorporates parts of the names of each of the clubs the subject of the merger: "Shabab" from "Al Shabab Al Arabi Club" and "Al Ahli" from "Al Ahli Dubai FC";
 - (d) The Al Ahli Football Club Dubai was, prior to its merger, licensed by the Dubai Economic Development Department Licence No. 6201102, presumably to, amongst other things, operate a sports club. So much is apparent from the description of that entity on the Transfer on Loan Agreement. Following the merger, a licence bearing the same number, that is, 6201102, was issued by the Dubai Economic Development Department to Alshabab Al Ahli Dubai Co. LLC trading as Shabab Al Ahli Dubai Co. LLC. That licence, permits the holder to engage in a number of activities including but not

limited to “*Sport clubs & facilities management*”. Further, the PO Box and facsimile details recorded on the license issued to Alshabab Alahli Dubai Co. LLC trading as Shabab Alahli Dubai Co. LLC are identical to those recorded in the Transfer on Loan Agreement;

- (e) The Respondent contends that 14 professional football players from the Al Ahli Football Club Dubai players’ roster for season 2016/2017 played for the Appellant in the 2017/2018 season. Those players are not specifically identified in the Respondent’s submissions.

An examination of the evidence relied upon by the Respondent to support this contention reveals that 18 (not 14 as submitted by the Respondent) players listed on the players’ roster for the Al Ahli Dubai Club Dubai for the 2016/2017 season also appear on the players’ roster for the “Shabab Al-Ahli Dubai” Club for the 2017/2018 season: Saif Yousif Abdulla; Khamis Salmin; Eisa Ahmed Al Marzouqi; Waleed Abbas; Abdelaziz Hussain Al Balooshi; Walid Anber Esmail; Habib Fardan; Majed Hassan; Waleed Hussain; Mohamed Sabeel Obeid; Abdelaziz Sanqor; Khamis Ismael Zayed; Ismail Al Hammadi; Saeed Ahmed; Makhete Diop; Kalfan Hassan; Saeed Jassim Saleh; and Moussa Sow.

The Sole Arbitrator notes that the Appellant submitted that 9 of the players listed on the Appellant’s players’ roster for the 2017/2018 season played for the Al Shabab Al Arabi Club in the 2016/2017: Hassan Hamza Ali; Majid Nasir; Manei Mohamed Ali; Abdulla Mohammed Marzouq; Hassan Ibrahim; Jasim Saleh; Sebastian De Vincenti; Rashid Hassan; Mohammad Juma Eid and Henrique Luvannor.

A mix of players drawn from two clubs, as the evidence discloses, is wholly consistent with there having been a merger of those clubs. From a players’ roster for the 2017/2018 season of 36 players, one-half were supplied by the former Al Ahli Football Club Dubai, one quarter by the Al Shabab Al Arabi Club and the balance, it is assumed, were freshly recruited for the 2017/2018 season;

- (f) Five of the six named coaching and management staff that were engaged by the Al Ahli Football Club Dubai continued in their roles with the newly merged entity: the manager, Cosmin Olarolu; the assistant manager, Catalin Necula; head of youth development, Hassan Harmatallah; goalkeeping coach, Eugen Nae and the coordinauteur sportif, Jihad Muntasser;
- (g) The newly merged entity continued to play its home fixtures at the Al-Rashid Stadium, the identical venue from which the Al Ahli Football Club Dubai played its home fixtures; and
- (h) In September 2017, The Professional League Committee agreed to grant Shabab Alahli-Dubai FC the right to place two stars over the newly-formed club’s logo on the jersey the team then proposed to wear in the 2017/2018 season to reflect the three tournaments achieved by Al Shabab Al Arabi Club to add to the seven championships achieved by Al

Ahli Football Club Dubai to bring to ten the number of championships achieved by the newly-formed merged entity Shabab Alahi-Dubai FC. This is a further recognition of the historical continuity of the Al Ahli Football Club Dubai as part of the newly merged entity.

71. The Sole Arbitrator accordingly finds, having regard to the principles summarised at paragraphs 65 to 67 of this Award, that there has been a sporting succession between the Al Ahli Football Club Dubai and the Appellant when it merged with the Shabab Al-Ahli Dubai Club on or about 15 May 2017 to form the Appellant with the consequence that the Appellant is responsible for the financial obligations of the Al Ahli Football Club Dubai under the Transfer on Loan Agreement to meet the first instalment payment of EUR 600,000.

D. Has the Appellant been denied natural justice?

72. Natural justice requires that a party be given a fair hearing and the opportunity to present their case. As the Panel in CAS 2014/A/3630 observed (at para. 110), the “... *twin planks of natural justice, nemo iudex in causa sua and audi alteram partem, ... should always be observed*”. Further, it is the duty of a first instance body to act fairly (CAS 2010/A/2162).
73. The Appellant claims that it had no knowledge of the Respondent’s claim or procedure before the PSC prior to receipt of the PSC Decision on 15 February 2018 notwithstanding the statement in the PSC Decision that the Appellant had been “*invited*” to “*provide its position to the ... claim*”. The Appellant accordingly submits that it was not a party to the proceedings.
74. The Respondent, having been afforded an opportunity to respond to this claim in its Answer has not done so. Accordingly, the Sole Arbitrator proceeds on the assumption that the Respondent does not contest the accuracy or otherwise of the assertions made by the Appellant.
75. The Appellant submits that in circumstances where it has been denied natural justice, the PSC Decision should be annulled and remitted to the PSC for determination or, in the alternative, that the CAS should hear the case de novo and thereby cure any prejudice created by the alleged denial of natural justice.
76. Under Article R57 of the CAS Code, the CAS has full power to review the facts and the law. Consequently, issues of procedural fairness, such as those claimed by the Appellant in this procedure, can be cured by the entitlement of an appellant to an adjudication which is fair overall (CAS 2011/A/2425; CAS 2010/A/2612; CAS 2006/A/1177).
77. The primary ground relied upon by the Appellant to contest liability to the Respondent under the Transfer on Loan Agreement in relation to the payment of the first instalment of EUR 600,000 is that there is no sporting succession between the Al Ahli Football Club Dubai and the Appellant. The Sole Arbitrator has therefore proceeded on the assumption that had the Appellant appeared before and/or made submissions to the PSC, it would have relied upon the identical ground to contest liability as that agitated before the CAS.

78. The Sole Arbitrator has proceeded to consider that issue on its merits and, for the reasons articulated, finds that there is a sporting succession between the club formerly known as Al Ahli Football Club Dubai and the Appellant when the Al Ahli Football Club Dubai merged with the Shabab Al-Ahli Dubai Club on or about 15 May 2017 to form the Appellant.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Shabab Al Ahli Dubai Club on 7 March 2018 against the decision of the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association passed on 27 September 2017 is dismissed.
2. The decision of the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association passed on 27 September 2017 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.