



**Arbitration CAS 2019/A/6130 Cruzeiro E.C. v. Independiente del Valle, award of 19 December 2019**

Panel: Prof. Gustavo Albano Abreu (Argentina), Sole Arbitrator

*Football*

*Transfer*

*Notice of default in order for penalties to be applied*

**Article 102 of the Swiss Code of Obligations, second paragraph, states that where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline. Further, Article 12bis of the FIFA Regulations on the Status and Transfer of Players states that the creditor needs to give formal notice of default to the debtor in order to request FIFA's intervention to demand payment; however, that possibility is just an option that a creditor may make use of. Therefore, there is no legal obligation to give notice of default to the debtor in order to request the application of the penalties provided for in a contract in case of default of payment.**

**I. PARTIES**

1. Cruzeiro E.C. (hereinafter referred to as the “Appellant” or “Cruzeiro”) is a professional football club based in Belo Horizonte, Brazil, and a member of the Brazilian Football Confederation, which in turn is affiliated with the Fédération Internationale de Football Association (hereinafter referred to as “FIFA”).
2. Club de Alto Rendimiento Especializado Independiente del Valle (hereinafter referred to as the “Respondent” or “Independiente del Valle”) is a football club based in Sangolquí, Ecuador, and a member of the Ecuadorian Football Federation, which in turn is also affiliated with FIFA.

**II. FACTUAL BACKGROUND**

3. The following is a summary of the relevant facts and arguments based on the Parties' written submissions. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. Although the Sole Arbitrator has considered all the facts, legal arguments and evidence submitted by the Parties in the present case, he refers in this Award only to the submissions and evidence he considers necessary to explain in his reasoning.

4. On 17 October 2016, Cruzeiro and Independiente del Valle signed an agreement (hereinafter referred to as the “Contract”), regarding the permanent transfer of the player L. (hereinafter referred to as the “Player”) from the Respondent to the Appellant.
5. According to the Contract, Cruzeiro bought from Independiente del Valle, which had a valid labour contract with the Player at that time, 100% of the federative rights of the Player.
6. The economic terms of the transaction were contained in Clause 3 of the Contract, which reads, in its relevant part, as follows:

**“3. Condiciones de pago.**

**3.1.** *Como contraprestación a la cesión definitiva de los derechos federativos y de la participación del 60% (sesenta por ciento) de los derechos económicos del **ATLETA** el **CRUZEIRO** se obliga a pagarle al **INDEPENDIENTE** el valor total bruto, cierto y determinado de U\$D1.800.000 (un millón ochocientos mil dólares estadounidenses) de la siguiente forma:*

*Si al **ATLETA** lo transfiere el **INDEPENDIENTE** al **CRUZEIRO** hasta el 12.01.2017*

	VALOR	VENCIMIENTO
1	U\$D 600.000,00	25.01.2017
2	U\$D 600.000,00	25.01.2018
3	U\$D 600.000,00	25.07.2018

**3.2.** *El pago del valor arriba lo deberá realizar el **CRUZEIRO** mediante transferencia bancaria para la cuenta bancaria de titularidad del **INDEPENDIENTE** a ser oportunamente indicada.*

**3.3.** *La falta de pago del **CRUZEIRO** al **INDEPENDIENTE** de los valores debidos, en el plazo ahora estipulado, acarreará multa del 5% (cinco por ciento) sobre el montante debido y aumento de intereses de mora del 6% (seis por ciento) al año, contabilizados hasta la fecha del efectivo pago”.*

In English the same clause reads:

**“3. Payment conditions.**

**3.1.** *As a form of compensation for the definitive assignment of the federative rights and the share participation of 60% (sixty percent) of the economic rights of the **ATHLETE CRUZEIRO** agrees to pay **INDEPENDIENTE** the sure and well-determined total gross amount of U\$D1.800.000 (one million eight hundred thousand American dollars) in the following way:*

*In case the **ATHLETE** is transferred from **INDEPENDIENTE** to **CRUZEIRO** until 12 January 2017:*

	<i>AMOUNT</i>	<i>DUE DATE</i>
1	U\$D 600.000,00	25.01.2017
2	U\$D 600.000,00	25.01.2018
3	U\$D 600.000,00	25.07.2018

**3.2. CRUZEIRO** will pay the amount above through bank transfer to the account of **INDEPENDIENTE** which will be informed in due course.

**3.3.** In case **CRUZEIRO** fails to pay **INDEPENDIENTE** the amounts owed within the due date, it will incur on a 5% (five percent) fine on the amount and a 6% (six percent) interest rate per year until the date of the effective payment”.

7. The Contract also contains general terms.
8. It is undisputed, as stated by the appealed FIFA decision (described further below), that “*the first two instalments in the amount of U\$D 600.000 each due as per the transfer agreement have not yet been paid by the Respondent to the Claimant, the Single Judge resolved that the Respondent, in order to fulfil its obligations established in the document in question has to pay to the Claimant the outstanding amount of U\$D 1,200,00*” and that this, together with the application of a 5% fine and a 6% interest rate per year until the date of the effective payment, are the main problems that must be resolved in this arbitration, and will be further analyzed in the present award.

### III. PROCEDURE BEFORE FIFA

9. In a nutshell, the following is a description of what happened before FIFA that led to the decision issued by the Single Judge (hereinafter referred to as the “Single Judge”) of the Players’ Status Committee (hereinafter referred to as the “PSC”), which the Appellant has appealed.
10. On 21 August 2017, the Respondent lodged a claim before FIFA against Cruzeiro, requesting the following payments:
  - \* USD 1,800,000 corresponding to the entire transfer fee;
  - \* USD 120,000 as penalty in accordance with the third paragraph Article 1.3.1. of the Contract, corresponding to 80% of the transfer fee that the Respondent had allegedly received from the Ecuadorian football club Barcelona Sporting club (hereinafter Barcelona) for the subsequent transfer of the Player, i.e. USD 150,000;
  - \* USD 300.000 as compensation for the damages incurred for not having had the possibility to object to the transfer of the Player to Barcelona in accordance with Article 1.3.1. of the Contract;

- \* 5% penalty over the amounts due as per Article 3.3 of the Contract;
  - \* 6% interests p.a. in accordance with Article 3.3 of the Contract as of 25 January 2017;
  - \* USD 30.000 for the legal costs incurred.
11. According to Independiente del Valle, since Cruzeiro had failed to pay the first instalment due as the transfer fee for the Player, i.e. the sum of USD 600,000 payable on 25 January 2017, and had also failed to comply with the rest of the requirements of the Contract, the remaining two instalments of USD 600,000 each had also become due. In addition, Independiente del Valle clarified that the Player was transferred to Barcelona without its knowledge in a clear breach of Article 1.3.1 of the Contract. In view of the above, Independiente del Valle deemed itself entitled to receive from Cruzeiro all amounts claimed.
12. In reply to the claim, Cruzeiro contested the allegation that the entire transfer fee had become due as the agreement did not include an acceleration clause. Additionally, Cruzeiro claimed the inapplicability of “*a penalty and default interest of 6% p.a.*” over the amount of USD 600,000 for being “*excessive and as such*” an “*incontestable violation of the principle of proportionality as already established by the well-established jurisprudence issued by the decision making bodies of FIFA*”.
13. Finally, Cruzeiro contested Independiente del Valle’s claim for reimbursement of the sum of USD 30,000 for its legal expenses in accordance with “*art. 18 par. 4 of the FIFA Procedural Rules*”.
14. After analysing the arguments of the parties, the Single Judge issued his decision on 5 June 2018 (hereinafter referred to as the “*Appealed Decision*”), the grounds of which were notified on 10 January 2019 to the Parties.
15. The operative part of the *Appealed Decision* provides as follows:
- “1. *The claim of the Claimant, Independiente del Valle, is partially accepted.*
  - 2. *The Respondent, Cruzeiro Esporte Clube, has to pay to the Claimant, Independiente del Valle, within 30 days as from the date of notification of the present decision, the amount of USD 1,200,000 plus 6% interest p.a. as follows:*
    - a) *6% p.a. over the amount of U\$D 600,000 from 26 January 2017 until the date of the effective payment;*
    - b) *6% p.a. over the amount of U\$D 600,000 from 26 January 2018 until the date of the effective payment;*
  - 3. *If the aforementioned sum, plus interests as established 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.*
  - 4. *The Respondent, Cruzeiro Esporte Clube, has to pay to the Claimant Independiente del Valle, within 30 days as from the date of notification of the present decision, the amount of USD 60,000.*

5. *If the aforementioned sum as established in point 4 above, is not paid within the aforementioned deadline, interest of 5% p.a. will fall due as of expiry of the stipulated time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
6. *Any other claims lodged by the Claimant, Independiente del Valle, are rejected.*
7. *The final costs of the proceedings in the amount of CHF 20,000 are to be paid by the parties, within 30 days as from the date of notification of the present decision, as follows.*
  - 7.1. *The amount of CHF 5,000 has to be paid to the Claimant, Independiente del Valle. Considering that the latter already paid in advance of costs in the amount CHF 4,980 at the start of the present proceedings, the Claimant, Independiente del Valle, has to pay the remaining amount of CHF 20.*
  - 7.2. *The amount of CH 15,000 has to be paid by the Respondent, Cruzeiro Esporte Clube.*
  - 7.3. *Both amounts have to be paid directly to FIFA to the following bank account with reference to case nr 17-01392/lza: [...]*
8. *The Claimant, Independiente del Valle, is directed to inform the Respondent, Cruzeiro Esporte Clube immediately and directly of the account number to which the remittances under points 2. and 4. above are to be made and to notify the Player's Status Committee of every payment received".*

#### **IV. ARBITRAL PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

16. On 31 January 2019, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the "CAS"), pursuant to the Code of Sports-related Arbitration (2019 edition) (hereinafter referred to as the "Code"), challenging the Appealed Decision. In its Statement of Appeal, the Appellant proposed that a sole arbitrator be appointed to hear the appeal.
17. On 7 February 2019, the Respondent indicated that it disagreed with the Appellant's suggestion to appoint a sole arbitrator to hear this appeal, stating that it would prefer that a Panel composed of three arbitrators be appointed.
18. On 8 February 2019, the CAS Court Office informed the Parties that, pursuant to Article R50 of the Code, the President of the CAS Appeals Arbitration Division would decide on the number of arbitrators.
19. On 18 February 2019, the Appellant filed its Appeal Brief, together with supporting documents, in accordance with Article R51 of the Code.
20. On 25 February 2019, the Parties were informed that the President of the CAS Appeals Arbitration Division had decided to submit this case to a sole arbitrator, who would be appointed further to Article R54 of the Code.

21. On 22 March 2019, the Parties were informed that the Sole Arbitrator appointed to hear this dispute was Prof Gustavo Albano Abreu, Professor in Buenos Aires, Argentina.
22. On 10 April 2019, the Respondent filed its Answer to the Appeal Brief in accordance with Article R55 of the Code.
23. On 16 April 2019, FIFA communicated to the CAS Court Office that that it renounced its right to request to intervene in the present arbitration proceedings (Cf. Article R52 para 2 of the Code and Article R41.3 of the Code).
24. On 1 May 2019, after consultation with the Parties, the CAS Court Office informed the Parties of the Sole Arbitrator's decision to hold a hearing and that the hearing would take place on 21 or 24 June 2019 in Lima, Peru.
25. On 8 May 2019, the CAS Court Office confirmed that the hearing would be on 24 June 2019 in Lima, Peru.
26. On 20 June 2019, the CAS Court Office acknowledged receipt of the Order of Procedure, duly signed by the Appellant.
27. On 24 June 2019, the CAS Court Office acknowledge receipt of the Order of Procedure, duly signed by the Respondent.
28. A hearing was held on 24 June 2019 in Lima, Peru. The Sole Arbitrator was present throughout and was assisted by Mr Antonio de Quesada, CAS Counsel. The following persons attended the hearing:  
  
For the Appellant: Ms Apoorvi Jha (counsel);  
  
For the Respondent: Mr Andres Holguin Martinez (counsel).
29. At the hearing, the Parties made submissions in support of their respective cases.
30. The witnesses proposed by the Appellant, Mr Benecy Queiros and Mr Marcelo Dijian, were withdrawn by its counsel.
31. At the conclusion of the hearing, the Parties confirmed that they had no objections in respect to their right to be heard or the Sole Arbitrator, and that they had been given the opportunity to fully, equally and fairly present their cases.

## **V. SUMMARY OF THE PARTIES' POSITIONS**

32. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the Parties, even if there is no specific reference to those submissions

in the following summary.

**A. The Appellant's Position**

33. The Appellant's position and arguments can be summarized as follows:
34. *In casu*, the Contract's Penalty Clause consisted of a fixed amount of 5% over the already-determined transfer fee, which was to be paid by the Appellant. Such fixed Penalty Clause was based on estimated probable future damage which might accrue due to the non-payment of the transfer fees. It can be considered undisputed that when the Parties agreed to insert a Penalty Clause, their main objective was to trigger the said clause in case the Appellant failed to perform its obligations and the creditor Party displayed accrual of damages because of such non-compliance.
35. Hence, in conformity with Article 18 of the Swiss Code of Obligations ("SCO") and Article 160 (2) of SCO, it can be interpreted that the Penalty Clause was indeed a liquidated damages clause that can only be activated once the creditor has shown its accrued damages due to the Appellant's non-performance.
36. It is imperative for the Sole Arbitrator to note that the Respondent has communicated no notice of default or any communication expressing the delay in the payment of the amounts. The Respondent also neither mentioned the implication of Article 12 bis of the FIFA Regulations on the Status and Transfer of Players ("RSTP"), nor did it grant 10 days for the Appellant to complete the payment.
37. The lack of implication of RSTP Article 12 bis and the fact that no notice of default was ever forwarded to the Appellant further makes incontestably true that the Respondent waived its right to claim penalty.
38. Based on the arguments raised above, as an interim conclusion, it is undisputed that the Penalty Clause was a liquidated damages clause and it cannot be considered as a punitive clause; moreover, the Appellant cannot be held liable for the payment of the Penalty Clause considering that the Respondent has expressly waived its right to claim penalties by virtue of not providing a notice of default as well as by not mentioning RSTP Article 12 bis and its application of a grant of a 10-day grace period, in case of default.
39. In light of the above, the decision of the Single Judge of the FIFA PSC to not only apply 6% interest p.a. over the due amounts but also apply such from the actual contractual due date onwards is wrong. As such, the default interest shall accrue from the date on which the Respondent lodged its claim before FIFA, i.e. 21 August 2017.
40. The Appellant made the following requests for relief:

*"FIRST- To set aside the decision of the Single Judge of the FIFA PSC in its entirety;*

*SECOND- To confirm that no penalty shall be applied (whatsoever) over the due amounts, considering the*

*absence of notice of default;*

*THIRD- To confirm that any default interest eventually applied over the due instalments shall be 6% per annum as from the date of the decision of the Single Judge of the FIFA PSC, i.e. 5<sup>th</sup> June 2018.*

*FOURTH - To order the Respondent to pay all the arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs (if applicable) paid to the CAS; and*

*FIFTH - To order the Respondent to pay to the appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings amounting CHF 5,000”.*

## **B. The Respondent’s Position**

41. The Respondent’s position and arguments can be summarized as follows:
42. The grounds of the appeal are based on the Appellant’s refusal of a penalty that was duly accepted by the Appellant who, when signing the contract, did not oppose the penalty. Additionally, notwithstanding the penalty, the Appellant has not made the payment from January 2017, which denotes that this appeal is aimed at delaying the payment of what is owed to the Respondent.
43. When the Appellant mentions the SCO, it does not mention Article 163, which clearly states that parties are “free to determine the amount of the contractual penalty” and also fails to mention Article 161 which states “The penalty is payable even if the creditor has not suffered any loss or damage”. As a consequence, there is no valid argument against the application of the 5% penalty and the decision shall be confirmed in this regard. These delay tactics to delay payment have already been used by the Appellant in similar cases such as *CAS 2018/A/5697* with a higher penalty than the one in this proceeding.
44. The Appellant claims that the Respondent did not communicate any notice of default or any communication expressing the delay in payment. However, the Appellant is reminded that Article 102 of the SCO states that when a deadline for performance has been set in the agreement, the obligor is automatically in default on expiry of the deadline. SCO Article 103 states that an obligor is liable in damages for late performance.
45. The above-mentioned articles clearly release the Respondent from an obligation to put the Appellant on notice of their own debt. Regardless, SCO Article 108 states that no time limit will be set where it is evident from the conduct of the obligor that a time limit would serve no purpose.
46. The Respondent also alleges that it has been demonstrated that it did not have any obligation to put the Appellant on notice of default or to remind the Appellant of the amount owed; it has further been demonstrated that the Respondent did try to collect payment through the intermediary who failed to get a proposal from the Appellant on how they wished to pay Independiente, so the Respondent’s conduct demonstrates that a time limit would serve no

purpose according to SCO Article 108.

47. It is also true – regarding the last payment due on 25 July 2018 – that the Respondent sent an email on 18 August 2018 giving the Appellant 10 days to pay; such email remains unanswered and Independiente had to file another claim at FIFA.
48. Finally, the Respondent points out that Independiente performed its main obligation, i.e. the transfer of the player, while the main obligation of Cruzeiro (the Appellant) was to make the agreed payments. Any additional obligation of Independiente would be in any event secondary and not a valid excuse for the non-performance of Cruzeiro’s main obligation.
49. The Respondent made the following requests for relief:  
  
*“1o) To reject the appeal against FIFA’s decision, confirming the Players’ Status Committee ruling in its entirety.*  
  
*2o) To order Cruzeiro to pay all costs and expenses relating to the FIFA and the CAS arbitration proceedings, estimated in CHF 15.000”.*

## **VI. JURISDICTION**

50. Article R47 of the Code reads as follows:  
  
*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.*
51. The jurisdiction of the CAS, which has not been disputed by the Parties, derives from Article R47 of the Code and from Article 58 of the FIFA Statutes.
52. The jurisdiction of the CAS is further confirmed in the Order of Procedure, which was duly signed by the Parties.
53. It follows that CAS has jurisdiction to rule on this dispute.

## **VII. ADMISSIBILITY**

54. Article R49 of the Code provides as follows:  
  
*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

55. In addition, Article 58 paragraph 1 of the FIFA Statutes states that *“appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, members or leagues shall be lodged with CAS within 21 days of receipt of the decision in question”*.
56. Therefore, pursuant to Article 58, paragraph 1 of the FIFA Statutes, in connection with Article R49 of the Code, the Appellant had 21 days from the notification of the Appealed Decision to file its Statement of Appeal before the CAS.
57. The Appealed Decision was notified to the Appellant on 10 January 2019 and the Statement of Appeal was filed on 31 January 2019, within the above-mentioned 21-day deadline. No further stages of appeal against the Appealed Decision were available at the FIFA level. The appeal therefore complies with the requirements of Article R48 of the Code.
58. Accordingly, the appeal is admissible.

#### VIII. APPLICABLE LAW

59. According to Article R58 of the Code:

*“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”*.

60. Article 57, paragraph 2 of the FIFA Statutes establishes 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”*.

61. Moreover, Clause 9.1 of the Contract provides as follows:

*“Las partes eligen el foro internacional de la FIFA, y, en grado de apelación, el Tribunal Arbitral del Deporte (TAS-CAS), rigiéndose el presente instrumento por las normas editadas por la FIFA, notoriamente, pero no exclusivamente, por el Reglamento sobre el Estatuto y la Transferencia de Jugadores, y, subsidiariamente, por la ley Suíza, como los únicos foros competentes para dirimir cualquier controversia oriunda del presente contrato, renunciando las partes a cualquier otro, por más privilegiado que sea”*.

In English:

*“The parties choose the FIFA International Court and, in case of appeal, the Court of Arbitration for Sport (TAS-CAS), ruling this instrument in accordance with the norms governed by FIFA, notoriously yet not exclusively, the Regulations on the Status and Transfer of Players and, alternatively, by the Swiss legislation, as the sole jurisdiction for ruling on any dispute arising from this agreement, renouncing any other, no matter how privileged it may be”*.

62. Taking into account the aforementioned provisions, the Sole Arbitrator concludes that the

applicable law to the present dispute is the FIFA rules and regulations primarily, and Swiss law subsidiarily.

## **IX. THE MERITS OF THE DISPUTE**

63. According to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the Sole Arbitrator may issue a new decision which replaces the Appealed Decision, or may annul the decision and refer the case back to the previous instance.

64. Taking into account the facts of the case and the Parties' submissions, the Sole Arbitrator considers that the following issues shall be addressed to settle the dispute:

A. Did the Respondent have the obligation to give notice of default to the Appellant in order to ask for the penalty to be applied?

B. When did the default interest start to accrue?

65. The Sole Arbitrator will address each of the above-mentioned issues in turn.

### **A. Did the Respondent have the obligation to give notice of default to the Appellant in order to be able to ask for the penalty to be applied?**

66. This is the main and most important issue to be solved in the present arbitration procedure. To get to the final answer to that question, the Parties' arguments in relation to this main issue must be analysed.

#### *1. Parties' General Arguments*

67. On one side, the Appellant argues that as the Respondent did not comply with Article 12 bis of the FIFA RSTP – that is the Respondent neither notified the Appellant of the delay in the payment nor granted the Appellant ten days to pay – then no penalty should be applied.

68. In response, the Respondent submits a) that SCO Article 102 states that when a deadline for performance has been set in the agreement, the obligor is automatically in default on expiry of the deadline and b) that SCO Article 103 states that an obligor is liable in damages for late performance.

69. In order to solve the case, first it will be recalled which facts are undisputed by the Parties.

#### *2. The Undisputed*

70. Both Parties agree that the Contract exists. They also concur with the existence of Clause 3.3 and that in the said clause they agreed that in case Cruzeiro failed to pay Independiente the amounts owed within the due date, Cruzeiro would incur a 5% (five percent) fine on the

amount and a 6% (six percent) interest rate per year until the date of the effective payment.

71. They also agreed on the amounts to be paid on the following due dates:

(I) USD 600.000 (six hundred thousand US dollars) no later than 01 January 2017.

(II) USD 600.000 (six hundred thousand US dollars) no later than 01 January 2018.

(III) USD 600.000 (six hundred thousand US dollars) no later than 07 July 2018.

### 3. *Preliminary Conclusions*

72. In a nutshell, before going forward with the final conclusions, the Sole Arbitrator has found, on one side, that it can be concluded from the facts that, firstly there is no doubt about the existence of the debt and secondly, that two instalments are due.

73. Taking all the previously expressed facts, arguments and analysis into account, what is left to solve is whether the Respondent had the obligation of giving notice of default to Cruzeiro in order to be able to ask for the penalty to be applied and when the default interest started to accrue.

### 4. *Conclusions*

74. The final conclusion in this case requires an examination of Clause 3.3 of the Contract.

75. After carefully analysing the Contract, the Sole Arbitrator has found that the main obligations of the Parties are, in the case of Independiente, to transfer the federative and the economic rights of the Player to the Appellant, and, in the case of Cruzeiro, to pay a specific amount of money in different instalments to the Respondent. If Cruzeiro did not comply with its obligation, the Contract states:

*“3.3. In case CRUZEIRO fails to pay INDEPENDIENTE the amounts owed within the due date, it will incur on a 5% (five percent) fine on the amount and a 6% (six percent) interest rate per year until the date of the effective payment”.*

76. The Contract makes no mention of any obligation to give notice of default in order for penalties to be applied.

77. To solve this, and taking into consideration that Swiss Law is subsidiarily applicable in this dispute, Clause 3.3 must be analysed in light of the SCO and in light of the entire Contract. SCO Article 102 second paragraph states:

*“2. Where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline”.*

78. Further, Article 12 bis of the FIFA RSTP states that the creditor needs to give formal notice of default to the debtor in order to request FIFA's intervention to demand payment; however, that possibility is just an option that a creditor may make use of.
79. For all the reasons mentioned above, the Sole Arbitrator concludes that the Respondent did not have the obligation to give notice of default to Cruzeiro in order to ask for the penalty.

**B. When did the default interest start to accrue?**

80. The Appellant asked *"To confirm that any default interest eventually applied over the due instalments shall be 6% per annum as from the date of the decision of the Single Judge of the FIFA PSC, i.e. 5th June 2018"*.
81. However, if the Respondent did not have the obligation to notify the Appellant of the default and the default interest starts to accrue on the due date of expiry of the payment deadline, the Sole Arbitrator concludes that in this case, the default interest started to accrue on 26 January 2017 for the first outstanding instalment and on 26 January 2018 for the second outstanding instalment.

**C. Final conclusion**

82. Taking into account that the Sole Arbitrator's general conclusions in relation to the case-at-hand are the same that those of the FIFA PSC Single Judge, the Sole Arbitrator has decided to confirm the Appealed Decision.

## ON THESE GROUNDS

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

1. The appeal filed by Cruzeiro E.C. against the decision issued on 5 June 2018 by the Single Judge of the FIFA Players' Status Committee is dismissed.
2. The decision issued on 5 June 2018 by the Single Judge of the FIFA Players' Status Committee is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.