Arbitration CAS 2021/A/7680 Ittihad FC v. Aleksander Prijovic, award of 11 April 2022

Panel: Mr Frans de Weger (The Netherlands), Sole Arbitrator

Football
Contractual dispute – outstanding remuneration
Applicable law – conflict of law
Status of the FIFA Guidelines on COVID-19 Regulatory Issues
Mechnism of use of the FIFA Guidelines on COVID-19 Regulatory issues
Attempt to reach a mutual agreement and salary reductions under the FIFA Guidelines on COVID-19 Regulatory issues
Applicability of national law to justify unilateral salary reductions

1. **The starting point to determine the applicable law is Article 187(1) of Switzerland's Private International Law Act (PILA). By submitting their dispute to CAS, parties have implicitly and indirectly chosen for the application of the conflict-of-law rule in Article R58 of the CAS Code, which gives precedence to the applicable regulations over the law chosen by parties. If the federation rules provide that Swiss law is to be applied additionally (to the rules and regulations of FIFA) then this must be complied with by CAS panels.**

2. **By means of the FIFA Guidelines, FIFA laid down standards for the industry in light of the COVID-19 pandemic, in particular providing the steps that FIFA believes should be taken when dealing with unilateral variation to contracts. Although the FIFA Guidelines are not regulations *stricto sensu*, CAS panels have given much importance to the fact that the relevant stakeholders in the football industry were actively involved in the process of creation and that these principles "were adopted unanimously". As such, parallels can be drawn with collective bargaining agreements (CBA), as it makes sense to say that the FIFA guidelines can *de facto* be considered as such and those can therefore can be considered as part of the "applicable regulations" under Article R58 of the CAS Code.**

3. **The principles set out in relation to the contractual issues mentioned in the FIFA Guidelines are to be considered by FIFA as general interpretative guidelines to the FIFA Regulations on the Status and Transfer of Players. The criteria as listed in the FIFA Guidelines will only come into play where clubs and employees (a) cannot reach an agreement and (b) national law does not address the situation or collective agreements with a players' union are not an option or not applicable. If the parties did reach an agreement or national law does address the situation or collective bargaining agreements are an option or applicable, the FIFA Guidelines will not be the appropriate source of law.**

4. Although strongly recommended, the attempt to reach a mutual agreement as provided in the FIFA Guidelines, is not to be considered a mandatory step, the absence of should not be considered fatal and should not automatically lead to the outcome that a reduction applied by a club in an individual case is unacceptable, *per se*. This has to be a case-by-case analysis.

5. Even if the agreement in question refers to national law, the burden of proof lies on the club to subsequently demonstrate that any unilateral variation was a valid exercise of the national law referred to in such agreement, a CBA or any other collective agreement mechanism. In its guidelines, FIFA provides as an example, the possibility for parties to provide an expert report with independent legal advice from a qualified legal practitioner in the relevant jurisdiction which confirms such valid exercise. Although other means of proof can exist, this does clearly point out that a simple reference to the national law, even if applicable, to justify the unilateral reduction is not sufficient.

I. INTRODUCTION

1. This appeal is brought by Ittihad FC (the "Club" or the "Appellant") against the decision rendered by the Dispute Resolution Chamber (the "DRC") of the Fédération Internationale de Football Association ("FIFA") on 18 January 2021 (the "Appealed Decision"), regarding an employment-related dispute between the Appellant and Aleksander Prijovic (the "Player" or the "Respondent").

II. PARTIES

2. The Appellant is a professional football club, with its registered office in Jeddah, Kingdom of Saudi Arabia. It is affiliated to the Saudi Arabian Football Federation ("SAFF"), which in turn is a member of FIFA.

3. The Respondent is a professional football player, with dual nationality of both Switzerland and Serbia.

4. The Appellant and the Respondent are referred to together as the "Parties", where applicable.

III. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions on the file, the virtual hearing and relevant documentation produced in this appeal. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further 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 considered necessary to explain its reasoning.

A. Background facts

6. On 10 January 2019, the Parties concluded an employment agreement, valid as from 10 January 2019 until 30 June 2023 (the "Employment Agreement").

7. Clause 4.1 of the Employment Agreement stipulates the following:

"The [Club] shall comply with the following:

1- Salary:

For the period 10/01/2019 to 30/06/2019:

- *EUR 2,079,500, payable as follows: EUR 614,000 by no later than 15/01/2019; the remaining amount is payable in 6 equal monthly salaries of EUR 244,250 by the end of each month (January to June).*

For the season 2019/2020:

- *EUR 4,159,000, payable as follows: EUR 805,000 by no later than 15/07/2019; the remaining amount is payable in 12 equal monthly salaries of EUR 279,500 by the end of each month (July to June).*

For the season 2020/2021:

- *EUR 4,159,000, payable as follows: EUR 805,000 by no later than 15/07/2020; the remaining amount is payable in 12 equal monthly salaries of EUR 279,500 by the end of each month (July to June).*

For the season 2021/2022:

- *EUR 4,275,000, payable as follows: EUR 652,000 by no later than 15/07/2021; the remaining amount is payable in 12 equal monthly salaries of EUR 301,100 by the end of each month (July to June).*

For the season 2022/2023:

- *EUR 4,275,000, payable as follows: EUR 652,000 by no later than 15/07/2021; the remaining amount is payable in 12 equal monthly salaries of EUR 301,100 by the end of each month (July to June).*

2- Bonus payments:

- *If the first team of the Club wins the Saudi Professional League Championship: Bonus Payment of EUR 350,000;*

- *If the first team of the Club wins the Kings Cup: Bonus Payment of EUR 150,000;*

Both of these payments are only due if the Player participates in at least 70% of all matches of the respective competition (League and, respectively, Kings Cup).

Goals and Assists Bonus:

- *Bonus per goal scored in the Saudi Professional League (seasons from 2019/2020 to* 2022/2023):
  - *As from 12 goals scored (up to 14): EUR 125,000;*
  - *As from 15 goals scored (up to 19): EUR 125,000 additional bonus;*
  - *20 goals scored: EUR 150,000 additional bonus;*
  - *For every goal above 20 goals: EUR 15,000 per additional goal.*

  Calculation example: 15 goals = total bonus of EUR 250,000; 20 goals

  = total bonus of EUR 400,000; 21 goals = total bonus of EUR 415,000)

- *Bonus per goal scored in the Saudi Professional League (season 2018/2019*):
  - *As from 6 goals scored (up to 7): EUR 62,500;*
  - *As from 8 goals scored (up to 9): EUR 62,500 additional bonus;*
  - *10 goals scored: EUR 100,000 additional bonus;*
  - *For every goal above 10 goals: EUR 15,000 per additional goal.*

  Calculation example: 8 goals = total bonus of EUR 125,000; 10 goals

  = total bonus of EUR 225,000; 11 goals = total bonus of EUR 240,000)

- *Bonus per goal scored in the Kings Cup or the AFC Champions League*:
  - *Bonus per goal: EUR 5,000*

- *Bonus per assist*:

- *Bonus per assist in the Saudi Professional League Championship: EUR 3,000 per assist;*

- *Bonus per assist in the Kings Cup or the AFC Champions League: EUR 1,500 per assist.*

Bonus for Game Win

- *Bonus per game win is paid in accordance with the standard policy.*

The goal/assist bonus is calculated as per the official scorer list of the Saudi Professional League and payable within 30 (thirty) days starting to count from the moment when the respective objective is fulfilled. If the Player permanently leaves the Club before the end of a season, all goal/assist bonus payments achieved so far in that seasons become due at the moment the Player leaves the Club".

8. Clause 3 of the Employment Agreement reads as follows:

"The [Club] herewith guarantees that all amounts to be paid to the [Player] and all benefits in kind, are net amounts, meaning that any and all taxes owed by the [Player] in Saudi Arabia will be paid by the [Club] within 30 days after any such tax claims arise. In case of any claim made by the tax authorities in Saudi Arabia, the [Club] shall indemnify the player for all claims arising out of any tax matter arising in Saudi Arabia, including penalties and interest and legal costs".

9. Moreover, paragraph 1 of Clause 5 of the Employment Agreement provides:

"The [Player] shall:

1. Comply with the laws, regulations, decisions and circulars issued by SAFF and FIFA and sports traditions & provisions of these regulations, whereby FIFA rules will have a prevailing effect over other sets of regulations".

10. Paragraph 2 of Clause 9 of the Employment Agreement stipulates the following:

"This [Employment Agreement] shall be governed by, and construed and interpreted in accordance with the FIFA regulations.

Disputes arising out of this [Employment Agreement] shall be subject to the exclusive jurisdiction of the FIFA Dispute Resolution Chamber, pursuant to the relevant provisions of the FIFA Regulations on the Status and Transfer of Players".

11. Furthermore, Clause 14 of the Employment Agreement reads:

"1- The [Parties] declare that they have taken note of SAFF, AFC and FIFA regulations and circulars before signing this [Employment Agreement] and that they are obliged to implement them. The parties acknowledge and accept that in case of deviations between these sets of rules, the FIFA Regulations and Circulars shall always prevail.

2- Any provision conflicting with the mandatory provisions of the regulations, laws and circulars issued by the SAFF, FIFA and Saudi Professional League, shall not be valid.

3- The provisions of the SAFF Professional Players' status and transfer regulations shall apply to all matters not provided for in this [Employment Agreement]. In case the SAFF Professional Players' status and transfer regulations do not contain an applicable rule, any gap in this [Employment Agreement] shall be filled [sic] by applying the FIFA Regulations on the Status and Transfer of Players.

[….]".

12. On 2 August 2019, the Player sent a default notice to the Club in relation to a total outstanding amount of EUR 1,415,750, corresponding to outstanding payments in relation to salaries, the Saudi Professional League Bonus and the Kings Cup Bonus.

13. After part of the outstanding amount was paid by the Club, the Player sent another default notice to the Club claiming the remaining outstanding amount of EUR 1,171,500.

14. After several partial payments and replies from the side of the Club on 9, 14, 19 and 22 August 2019, by means of his counsel and per letter of 8, 14, 19 and 21 August 2019, the Player reiterated his request as he argued that amounts were still outstanding.

15. On 31 January 2020, the Parties made an amendment to the Employment Agreement (the "Amended Agreement"). By means of the Amended Agreement, the Club signed another foreign player and the Player was removed from the list of foreign players for the remainder of the 2019/2020 season. During the period of non-registration, the Player was authorised to negotiate an employment contract with a third club and it was, *inter alia*, expressly agreed that the Club would continue to pay all amounts due under the Employment Agreement, irrespective of whether the Player was loaned.

16. On 14 March 2020, the Ministry of Sports had announced that all sports activities in the Kingdom of Saudi Arabia would be suspended until further notice due to the COVID-19 pandemic. On that same day, the Saudi Professional Football League was suspended.

17. On 10 April 2020 and in reply to a letter of the Club concerning the situation related to the COVID-19 pandemic, the Player sent another default letter to the Club and requested the Club to pay the outstanding amount due of in total EUR 938,000.

18. On 13 April 2020, the Club sent a letter to the Player, along with a circular, informing the Player that the Club was unable to continue the payments under the Employment Agreement due to COVID-19.

19. On 20 April 2020, the Club sent another letter to the Player informing the latter that it would revert to the Player in the near future to address the actions which the Club may have to take to take to address this difficult situation that had arisen.

20. By letter of 29 April 2020, the Club further informed the Player that a reduction of the salaries of all professional players and the managing staff of the Club was necessary. Whilst for all

employees a basic amount of SAR 20,000 per month remained guaranteed, the part of the contractually agreed monthly salary exceeding SAR 20,000 would be reduced by 50%, which would apply as from 15 March 2020 until the resumption of the sportive activities, club training and disappearance of the COVID-19 pandemic.

21. On 8 and 19 May, and 3 June 2020, the Player informed the Club that he did not agree and, consequently, reiterated his request for outstanding payments.

22. On 12 and 14 June 2020, the Player was informed by the Club that the latter continued to make its best efforts to pay all outstanding salaries and that a substantial payment would be made in the coming days.

23. By means of his letter of 25 June 2020, the Player reiterated his request for outstanding payments arguing that amounts remained outstanding.

24. On 29 June 2020, the Club informed the Player that a further payment of EUR 142,076 had been executed, however subject to the deduction as was communicated before.

25. On 16 July 2020, the Player reiterated his request for outstanding payments as he argued that amounts still remained outstanding, and further, requested clarifications on his professional situation, and, in particular, of whether he had been included into the list for the remainder of the 2019/2020 season, and also asked for confirmation in relation to his inclusion into the list for the 2020/2021 season.

26. On 19 August 2020, the Player reiterated his request for further clarification and informed the Club that a claim for outstanding payments had been lodged before FIFA.

27. On 7 September 2020 and in reply to an email of the Club of 24 August 2020 in which the Club announced that a substantial amount would be paid shortly, the Player, again, requested the outstanding amounts and asked the Club to comply with its obligations under the Employment Agreement. The Player reiterated such request by means of his letter of 28 September 2020.

B. Proceedings before the FIFA Dispute Resolution Chamber

28. On 31 July 2020, the Player lodged a claim against the Club in front of the FIFA Dispute Resolution Chamber (the "FIFA DRC") requesting payment of the total amount of EUR 1,950.859 arguing that the Club applied certain unilateral reductions in a manner that was not in line with the directions given by FIFA in the FIFA Covid-19 Football Regulatory Issues.

29. On 16 December 2020, the FIFA DRC rendered the Appealed Decision with the following operative part:

> *"1. The claim of the Claimant, Aleksander Prijovic, is accepted.*
>
> *2. The Respondent, Ittihad FC, has to pay to the Claimant, the amount of EUR 1,666,787 as outstanding remuneration plus 5% interest p.a. as from 31 July 2020 until the date of effective payment.*

3. The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.

4. The Respondent shall provide evidence of payment of the due amount in accordance with this decision to psdfifa@fifa.org, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).

5. In the event that the amount due, plus interest as established above is not paid by the Respondent within 45 days, as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

2. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee".

30. On 18 January 2021, the grounds of the Appealed Decision were communicated to the Parties determining, *inter alia,* the following:

- With regard to the uncontested part of the claim, *"the Chamber wished to underline, at this stage, that it could only accept the player's requests for the outstanding payments arisen before March 2020, since said part of the claim remained fundamentally uncontested".*

- As to the disputed part, the FIFA DRC referred *"to the fact that, in light of the worldwide COVID-19 outbreak, FIFA issued a set of guidelines, the COVID-19 Guidelines, which aim at providing appropriate guidance and recommendations to member associations and their stakeholders, to both mitigate the consequences of disruptions caused by COVID-19 and ensure that any response is harmonised in the common interest. Moreover, on 11 June 2020, FIFA issued an additional document, referred to as FIFA COVID-19 FAQ, which provides clarification about the most relevant questions in connection with the regulatory consequences of the COVID-19 outbreak and identifies solutions for new regulatory matters".*

- *"In this respect, the Chamber underlined that, according to the COVID-19 Guidelines, Clubs and employees (players and coaches) are strongly encouraged to work together to find appropriate collective agreements on a club or league basis regarding employment conditions for any period where the competition is suspended due to the COVID-19 outbreak".*

- *"In addition, the Chamber observed that, following said document, where (a) clubs and employees cannot reach an agreement, and (b) national law does not address the situation or collective agreements with a players' union are not an option or not applicable, unilateral decisions to vary terms and conditions of*

contracts will only be recognized by FIFA's Dispute Resolution Chamber (DRC) or Players' Status Committee (PSC) where they were made in good faith, are reasonable and proportionate".

- As to the applicable law, the FIFA DRC noted that *"it is beyond any doubt that the parties agreed that the FIFA Regulations, namely the Regulations on the Status and Transfer of Player, are the primary source of law that is applicable to the contract at stake".*

- As to the question of whether the deduction was permitted, the FIFA DRC *"underlined once again that, following the COVID-19 Guidelines, unilateral decisions to vary agreements will only be recognised where they were made in good faith and that, when assessing said decision, the DRC may consider, without limitation, the following elements: a. whether the club had attempted to reach a mutual agreement with its employee(s); b. the economic situation of the club; c. the proportionality of any contract amendment; d. the net income of the employee after contract amendment; e. whether the decision applied to the entire squad or only specific employees".*

- In this regard, and after *"duly taking note of all of the aforementioned criteria, the Chamber focused its attention to the principle of good faith when it comes to unilateral decisions to vary contractual terms. Indeed, the members of the Chamber concurred that this principle is of paramount importance when it comes to recognize a decision of this nature".* As such, the FIFA DRC considered that the Club *"failed to prove that it attempted to conduct a negotiation with the player in good faith, and in addition, the FIFA DRC observed that the Club already had outstanding remuneration towards the Player that was already long overdue before the outbreak of the COVID-19 pandemic".*

- As a result, *"a majority of the Chamber was of the opinion that it could not recognize the salary deductions performed by the Respondent and that, consequently, the player is entitled to his remuneration as contractually agreed".*

- As to the outstanding amount to be paid by the Club to the Player, the FIFA DRC decided to deduct certain partial payments, *i.e.* payments that were made by the Club during the FIFA proceedings, *"leading to a total due amount of EUR 1,666,787 (i.e. 1,950,859-142,036-142,036)".*

- As a result, the FIFA DRC *"established that, in accordance with the principle of pacta sunt servanda, that [sic] the Respondent shall pay to the Claimant, the total outstanding amount of EUR 1,666,787".* Further to this, the FIFA DRC decided to award 5% interest *p.a.* over said amount as from the date of the claim.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

31. On 8 February 2021, the Club filed a Statement of Appeal with the CAS in accordance with Article 58 of the FIFA Statutes and Articles R47 and R48 of the Code of Sports-related Arbitration (2020 edition) (the "CAS Code"). In its Statement of Appeal, the Appellant requested the appointment of a sole arbitrator.

32. On 10 February 2021, the CAS Court Office initiated this arbitration proceeding, acknowledged the filing of the Statement of Appeal and invited the Respondent to state whether he consented with the Appellant's extension requestion of twenty days to file its Appeal Brief.

33. On 12 February 2021, the Respondent informed the CAS Court Office that he could agree with a fifteen-days extension of the time limit to file the Appeal Brief.

34. On the same day, the CAS Court Office informed the Parties that the Appellant's request for extension was going to be decided by the President of the Appeals Arbitration Division, or her Deputy, pursuant to Article R32(2) of the CAS Code.

35. On 17 February 2021, the CAS Court Office informed the Parties that the Appellant's request had been granted and that such deadline was extended by twenty days.

36. On 4 March 2021, after a short extension, which was granted by the CAS Court Office, the Respondent informed the CAS Court Office that he agreed with the appointment of a sole arbitrator.

37. On 10 March 2021, the Club submitted its Appeal Brief.

38. On 11 March 2021, the CAS Court Office, pursuant to Article R55 of the CAS Code, invited the Player to submit his Answer within twenty days.

39. On 11 March 2021, the Respondent requested that the time limit to file his Answer be fixed after payment by the Appellant of its share of the advance of costs pursuant to Article R55(3) of the CAS Code.

40. On 12 March 2021, the Respondent was advised by the CAS Court Office that the Appellant had paid the advance of costs and informed the Parties that the Respondent should submit to the CAS its Answer within twenty days upon receipt of that letter.

41. On 31 May 2021, after an extension of time requested by the Respondent, to which no objection was raised by the Appellant, the CAS Court Office confirmed to the Parties that the Respondent's deadline to submit his Answer was extended by twenty days.

42. On 21 June 2021, the Respondent submitted his Answer.

43. On 22 June 2021, the CAS Court Office informed the Parties that, unless the Parties agreed or the Sole Arbitrator orders otherwise on the basis of exceptional circumstances, Article R56 of the CAS Code provides that the Parties were not authorised anymore to supplement or amend their request or their argument, not to produce new exhibits, nor to specify further evidence on which they would intend to rely, after the submission of the Appeal and the Answer. In this letter, the Parties were also invited to inform the CAS Court Office whether they preferred a hearing to be held in this matter.

44. Per the same letter, the Parties were also informed, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the Arbitral Tribunal appointed to decide in this case was constituted as follows:

Sole Arbitrator: Mr Frans de Weger, Attorney-at-Law in Haarlem, The Netherlands

45. On 29 June 2021, the Respondent informed the CAS Court Office that a hearing was not deemed *"strictly necessary"*.

46. On 7 July 2021, the CAS Court Office invited the Appellant to file its position towards the holding of a hearing in this matter. In the same letter, the Parties were informed that the Respondent called up two witnesses: Mr Lesniewski and Mr Milcanovic and, should a hearing not be held, whether he maintained or withdrew such witnesses. Should the Respondent maintain this evidence, per the same letter the Respondent was invited to file witness statements no later than 14 July 2021.

47. On 9 July 2021, the Respondent informed the CAS Court Office that he maintained the witnesses.

48. Per the same date, the Appellant informed the CAS Court Office that it wishes to hold a hearing in this matter.

49. On 21 July 2021, the Respondent submitted to the CAS Court Office witness statements of Mr Lesniewski and Mr Milcanovic.

50. On 2 August 2021, the Parties were informed by the CAS Court Office that a hearing would be held on Friday, 27 August 2021, which would be conducted by video-conference.

51. On 27 August 2021, a hearing by videoconference was held. At the outset of the hearing, the Parties confirmed not to have any objection as to the appointment of the Sole Arbitrator.

52. In addition to the Sole Arbitrator and Mr Fabien Cagneux, CAS Counsel, the following persons attended the hearing by video-conference on 27 August 2021:

a) For the Appellant:

1) Mr Jan Kleiner, Counsel;

2) Ms Vanessa Plavjanikova, Counsel.

b) For the Respondent:

1) Mr Stefano Malvestio, Counsel;

2) Mr Rodrigo Morais; Counsel;

3) Mr Pedro Souza; Counsel;

4) Mr Francisco Camazon, legal intern;

5) Mr Aleksander Prijovic, Respondent.

53. Mr Filip Lesniewski and Mr Petar Milcanovic were announced as witnesses to be heard during the hearing. However, at the outset of the hearing and further to discussions held between the Parties, the Appellant informed the Sole Arbitrator that both witnesses were not going to be heard.

54. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and confirmed that their right to be heard had been respected.

55. On 14 September 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had recently been appointed as the new Chairman of the FIFA DRC and that his functions would start as of 1 October 2021. Per the same letter, the Parties were informed that the Sole Arbitrator was willing to continue to act as a Sole Arbitrator in this matter and intended to complete the drafting of the arbitral award before 30 September 2021 or very shortly thereafter. Per the same letter, the Parties were invited to submit any comment on such disclosure no later than 16 September 2021.

56. On 15 September 2021, the Appellant informed the CAS Court Office that it had no objections against the Sole Arbitrator to continue to act in this matter *"since we have full trust in his high qualities as well as his independence and impartiality"*.

57. On the same day, also the Respondent informed the CAS Court Office that it had no objections *"towards the appointment of Mr. De Weger as Sole Arbitrator to the present matter"*.

58. On 8 and 11 October 2020, the Club and the Player respectively sent the signed Order of Procedure to the CAS Court Office.

59. The Sole Arbitrator confirms that he carefully heard and took into account in his decision 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 arbitral award.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

60. 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 all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. Appellant's Position

61. The Club's submissions, in essence, may be summarised as follows:

- The Club regrets that, apart from the salaries reduced based on applicable regulations and guidelines, there were some salary payments that had fallen due before March 2020. It is not contested that these payments are still due, but due to the extremely challenging financial situation these payments could not be made. The Club trusts that in relation to those, in principle undisputed, overdue salary payments, an amicable solution can swiftly be found.

- Nonetheless, with regard to the salaries as of March 2020, there is no basis at all on which the Respondent could be awarded the requested "remainder" in salary payments, given that the applied reductions were made in full compliance with all international and national standards.

- In this regard, the FIFA Guidelines provide for principles on how clubs and their employees can amend their employment relationship during any period when a competition is suspended. As a principle, clubs and employees shall first try to undertake good-faith efforts to negotiate collective agreements on a league or a club basis before following any other guiding principle. The principles of non-discrimination and equal treatment must be respected when considering variations to employment agreements.

- Unilateral variations to an employment agreement will be recognized, if they are compliant with the national law referred to in the agreement, a collective bargaining agreement, or another collective agreement.

- Furthermore, a valid unilateral variation shall comply with the following: (a) *"(…) clubs and employees cannot reach an agreement; and (b) national law does not address the situation or collective agreements with a players' union are not an option or not applicable, unilateral decisions to vary terms and conditions of contracts will only be recognized by the FIFA judicial bodies where they were made in good faith, and are reasonable and proportionate"*.

- In conclusion, *"FIFA does not per se prohibit unilateral changes to a contract. Quite to the contrary: The possibility to impose unilateral salary reductions is expressly provided in the COVID-19 Guidelines"*.

- Further to this, also the guidelines of the Saudi Arabian Football Federation provide for the possibility to take a unilateral decision. Also from these guidelines it follows that unilateral salary reductions are not prohibited. Much rather, they are expressly foreseen as a valid way to react to the financial crisis in football.

- It is also important to mention that the Saudi Pro League took a further, formal decision on the consequences of COVID-19. Also this decision re-confirms what was stated repeatedly above: unilateral salary reductions were not prohibited. In reality, they were now even mandated under this directive.

- Moreover, Swiss law recognizes the principle of *clausula rebus sic stantibus*, which gives to the competent judge the possibility to adapt a contract to new circumstances and

conditions, which is also considered as a fundamental principle of law in the jurisprudence of the Swiss Federal Tribunal (the "SFT"; see SFT 138 V 366 E.5.1, p. 371).

- Accordingly, the following preconditions have to be met to adapt an employment agreement to changed circumstances: i) there must be a subsequent change in circumstances (after the conclusion of the contract); ii) there must be a serious disruption of contractual balance; iii) there must be a lack of predictability.

- As to the first criterion, there are obvious and fundamental changes in circumstances, compared to the original circumstances at the time of conclusion of the contract: when the contract was concluded, no one knew of COVID-19. When the contract was concluded, no one knew that all sporting competitions would be suspended, that there would be a worldwide financial crisis, that governmental funding would stop altogether, etc. Therefore, the first criterion to apply the *clausula rebus sic stantibus* was clearly met.

- Also the second criterion to apply the *clausula rebus sic stantibus* was clearly met. There was a clear and serious disruption in contractual balance between the two obligations under the amended employment contract.

- As to the third criterion, in all these circumstances, it cannot be disputed that there was a fundamental change in circumstances, which was not predictable at all, for neither party. Therefore, also the third criterion to apply the *clausula rebus sic stantibus* was met.

- Given that the *clausula rebus sic stantibus* applies, a judicial amendment of the agreement in question, and of the mutual contractual obligations, is evidently justified. In other words, one must take into consideration how drastically the football market changed under the influence of COVID-19. The Appellant submits that the modest salary reductions it applied are fully in line with the *clausula rebus sic stantibus*. If the Parties had known about the very serious financial difficulties of Appellant, had the Parties known that at the same time, Respondent would not have to render any work for Appellant, and had the Parties known that still, Respondent would receive no less than EUR 140,000 per month, they would have certainly accepted to modify the salary payments exactly as it was done by Ittihad FC.

- The Appealed Decision, for some reason, only addressed the first prerequisite, i.e. the attempt to reach a mutual agreement, and did not deal with the other conditions, i.e. i) the economic situation of the club; ii) the proportionality of any contract amendment; iii) the net income of the employee after contract amendment; and iv) whether the decision applied to the entire squad or only specific employee.

- The Appealed Decision is therefore unfortunately too superficial. It completely disregards not only all other elements and evidence provided by Appellant, but it even disregards FIFA's own other criteria. In this regard, one member out of three of the FIFA DRC did not agree with the outcome of the case and indeed agreed with Ittihad's position, which is a highly unusal aspect.

- It is particularly remarkable that the Appealed Decision does not elaborate on the topic in more depth, nor takes into account the applicable Regulations of the SAFF, the Saudi Pro League nor the established principles of Swiss law.

- The Appellant complied with the regulatory framework.

- From the very beginning, communications were sent by Appellant in order to guide its employees in this unprecedented situation. Numerous correspondence on file proves that Appellant had attempted very hard to find a mutual agreement with the Respondent, which is fair, ensures equal treatment and guarantees a minimal salary to everybody.

- Further to this, the Appealed Decision omits to consider, for example, any of the correspondence that was sent to the Player, the fact that such solution was accepted by the majority of players as well as the fact that the SPL directive prescribed such a measure. In this regard, any outstanding salaries prior to the COVID-19 pandemic are not pertinent at all to assess the legality of the COVID-19 reductions applied to other salaries. The Appealed Decision simply rushed to a simplistic conclusion: *"Ittihad already owed other payments to the player, so we will not recognize the salary reduction…"*.

- Another crucial element that was not addressed by the Appealed Decision is the economic situation of the Appellant. There was a complete governmental lockdown, the entire Saudi Professional League season was suspended, and all governmental funding to sports was stopped. It simply cannot be disputed that the Appellant suffered an extreme and unprecedented financial hardship. The impact of the pandemic thus cannot be questioned. It is a crucial factor in the assessment of the validity of salary reductions.

- Furthermore, the proportionality of a possible salary reduction is one of the key factors when assessing its validity. It is thus again very unfortunate that this aspect was not at all discussed in the Appealed Decision. Due to the fact that the reduction was designed to guarantee a basic salary to everyone and only the amounts in excess of this basic salary were reduced by 50% for less than four months of the suspension of the competition, the reductions were clearly proportionate.

- Another crucial aspect to determine the validity of a salary reduction is the remaining net income of a player. Unfortunately, this was again completely ignored by the Appealed Decision. The net income of Respondent remained extremely high: He continued to receive no less than a monthly salary of around EUR 140,000 and he did not even have to work for this money.

- A further criterion to assess the validity of a salary reduction is whether the reduction applies to an entire squad, or the majority of players, or whether it was applied – for example – only against one player in discriminatory way. As demonstrated, the same reduction applied to the whole Ittihad family and the majority of Ittihad employees agreed to the applied mechanism.

- Therefore, the Appealed Decision erred when it rejected the validity of the very modest salary reduction imposed on the Respondent.

62. On this basis, the Club submits the following prayers for relief:

"Based on the above, on behalf of Ittihad FC, we respectfully submit the following Request for Relief:

1. *To accept the present Appeal against the Decision issued by the FIFA Dispute Resolution Chamber (Ref. Nr. 20-01102) on 16 December 2020.*

2. *To set aside the Decision issued by the FIFA Dispute Resolution Chamber (Ref. Nr. 20-01102) on 16 December 2020.*

3. *To charge all costs of these proceedings to MR. Aleksander Prijovic and to grant a contribution to the legal fees of Appellant of CHF 30'000.00".*

B. Respondent's Position

63. The Player's submissions, in essence, may be summarised as follows:

- The present matter relates to an appeal filed by the Club against a decision issued by the FIFA DRC, which condemned the Saudi club to pay to the Player EUR 1,666,787 (one million six hundred sixty six thousand seven hundred and eighty seven Euros), as outstanding remuneration plus 5% interest p.a. as from 31 July 2020 until the date of effective payment. The Club recognizes owing a vast part of this amount, i.e. EUR 1,184,480 (one million one hundred eighty four thousand four hundred and eighty Euros).

- The present dispute therefore effectively concerns only the remaining part of the amounts claimed by the Player, equal to EUR 482,307 (four hundred eighty two thousand three hundred and seven Euros), corresponding to the salaries of March, April, May and June 2020 – a total of EUR 482,307 (four hundred eighty two thousand three hundred and seven Euros).

- The Player objects to the Club's position that part of the outstanding salaries for March, April, May and June are not due because of the economic consequences of the COVID-19 pandemic.

- The starting point is that an employer is not entitled to unilaterally amend the terms of an employment contract with its employee without the consent of the latter. This reflects the fundamental principle *"pacta sunt servanda"*.

- FIFA issued guiding principles in the FIFA COVID-19 Football Regulatory Issues. None of said criteria as mentioned are met. There is a well-established and consolidated jurisprudence of the FIFA DRC which concludes that unilateral reductions of 50% of the player's salary done by the Club or other Saudi Arabian clubs is illicit. Within this context,

it is submitted that the FIFA DRC in four cases of Prijovic, Jonas, Pešić and Senogo correctly ruled the unilateral reduction imposed by the Club as illegitimate.

- The COVID-19 Football Regulatory Issues are clear in establishing that the possibility for a club to resort to a unilateral reduction of a player's salary is subject and conditioned to a prior attempt to find a mutual agreement in good-faith. Missing such a good-faith attempt, no unilateral reduction is admissible at all, irrespective of whether the remaining criteria established by the COVID-19 Football Regulatory Issues (i.e. the economic situation of the club; the proportionality of any contract amendment; the net income of the employee after contract amendment; whether the decision applied to the entire squad or only specific employees) are met or not. As a matter of fact, unilateral decisions to vary terms and conditions of contracts will only be recognized by the FIFA judicial bodies where they were made in good faith, and are reasonable and proportionate and where clubs and employees cannot reach an agreement.

- Only where clubs and employees cannot reach an agreement, unilateral decisions to vary terms and conditions of contracts will be recognized, provided that they are made in good faith and are reasonable and proportionate. Good-faith efforts to negotiate collective agreements on a league or a club basis is therefore a mandatory requirement for the application of any unilateral reduction. In the present case, it is manifest that Ittihad did not entertain any such good-efforts at all, of which the Appellant, in any case, has not provided any evidence. It is evident that none of the letters that were sent by the Club to the Player constitute or represents an "effort" to find a mutual solution in good-faith, but rather a sort of communication that such negotiations would follow shortly.

- The Club simply imposed the unilateral reduction which it applied and the fact that, in the Appeal Brief and/or in other communications sent to the Player, the Club declares its "abstract" availability for a discussion in good-faith, does not change the fact that the reduction at stake was never negotiated and rather unilaterally imposed. Even more so, the Player notes that, not only Ittihad did not entertain any good-faith effort to negotiate a settlement agreement with him, but, he was even excluded by any such discussions. Since the Club did not undertake any good-faith efforts to negotiate collective agreements, the salary reduction unilaterally imposed by the Club does not comply with the COVID-19 Football Regulatory Issues and is therefore inapplicable.

- Subsidiary, in the highly unlikely event that the Sole Arbitrator deems that good-faith negotiations indeed took place, the criteria listed by the FIFA guidelines for the assessment of whether a decision is reasonable, are not met.

- The Respondent submits that the Sole Arbitrator shall give a certain level of deference to the decisions of the FIFA DRC and only intervene if the assessment of said body would be "evidently and grossly" mistaken, which is, *mutatis mutandis*, the understanding of the CAS in the case of disciplinary sanctions (see, e.g. the awards of: 24 March 2005, CAS 2004/A/690, § 86; 15 July 2007, CAS 2005/A/830, § 10.26; 26 June 2007, 2006/A/1175, § 90; and the advisory opinion of 21 April 2006, CAS 2005/C/976 & 986, § 143) (CAS 2009/A/1817 & 1844).

- While the Club declares to be in good-faith and that it was available to discussions, the reality is that it has imposed a unilateral reduction without prior consulting with the Player or trying to reach a solution by mutual consent.

- The Club never provided the Player with any concrete evidence of its current economic situation and never engaged into real attempts to find an agreement in good-faith; as such, the Player was incapable of assessing the real situation of the club and thus proceed in a concrete manner towards a mutually agreed solution.

- As to the financial situation of the Club, it is striking, to say the least, the lack of any concrete evidence or reliable information provided by the Club with respect to its own economic situation following the COVID-19 crisis. What is more, the Club seeks to finance its expensive international transfer policy by applying unilateral salary reductions to its current employees, which is manifestly unacceptable and inadmissible. Not only has, therefore, the Club failed to bring any evidence regarding its financial situation but, to the contrary, all points towards the fact that said situation is not as drastic as the Appellant depicts it and relates more to mismanagement than to the actual consequences of the pandemic. Generic references to the worldwide effects of the pandemic do not prove and cannot prove how the economic consequences of the pandemic affected the Appellant. The Appellant has failed to prove any financial decrease of its revenues as a consequence of the Covid-19 pandemic.

- As to the criterion of the proportionality, the Club provided no information whatsoever on any alleged financial loss. As a consequence, it is simply impossible to assess the proportionality of the imposed measure. Furthermore, an employer is not entitled to retroactively apply a salary deduction to its employee. The unilateral reduction imposed in the amount of 50% (fifty percent) seems manifestly abusive and unjustified and shall therefore not to be taken into account by the FIFA DRC.

- The fourth criterion listed by COVID-19 Football Regulatory Issues is "the net income of the Player". However, it is manifest that the net income of the Player bears no relevance whatsoever with the unilateral reduction applied by the Club. As a matter of fact, the Club was already delaying payments well before the inception of the coronavirus crisis. Furthermore, in accordance with the well-established jurisprudence of the CAS, the risk of financial difficulties cannot justify a club's breach of its obligations (CAS 2017/A/5496 and CAS 2020/A/6755).

- Also, the Appellant is seeking to turn the Amended Agreement *"to its own advantage"*, although the Club was well aware of the fact that the Amended Agreement was only agreed between the Parties following the Player's deregistration from the list of eligible players, which, caused severe harm to the Player during the last months of his career.

- The fifth and last criterion listed by COVID-19 Football Regulatory Issues is *"the applicability to the entire squad"*, but is also not met. The Player once more underlines how he was excluded from any discussion allegedly entertained by the Club with its players.

Furthermore, the policy applied by the Club is per se discriminatory since it manifestly aims at targeting the *"foreign players"* of the Club.

- There are also additional factors. As a consequence of the Player's deregistration from the list of eligible players and following the signature of the Amended Agreement, the Club already knew and accepted that it would not field the Player in any official match for the remainder of the 2019/2020 season.

- Besides, the fact that the Covid-19 crises had no impact on the performances that Ittihad expected to receive from the Player, the latter also intends to stress that, at all time, he fully respected all of its contractual obligations towards the Club. In this respect, the Player always maintained the highest standards of professionalism for an athlete, with a constant daily routine training, under the supervision of Mr Milcanovic, whom he hired and paid at his personal expenses.

- Further to this, contrary to what alleged by the Club in its Appeal Brief, the reality is that the Club's incapacity to comply with its financial obligations is due to its own mismanagement and financial irresponsibility, rather than to any external circumstances.

64. On this basis, the Player submits the following prayers for relief:

"In light of all the above, the Respondent respectfully requests this honourable Panel to:

a) Dismiss the appeal filed by Ittihad;

b) Uphold the Appealed Decision and consequently condemn Ittihad to pay the Player 1,666,787,00 (one million six hundred sixty six thousand seven hundred and eighty seven Euros), as outstanding remuneration plus 5% interest p.a. as from 31 July 2020 until the date of effective payment.

c) Order Ittihad to pay any legal expenses or costs faced by the Player in an amount prudently estimated in the excess of EUR 30,000.00 (thirty thousand Euros);

d) Order Ittihad to bear any and all administrative and procedural costs, which have already been incurred or may eventually be incurred in connection with these or future proceedings".

VI. JURISDICTION

65. Article R47 of the CAS Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".

66. The jurisdiction of CAS derives from Article 58(1) of the FIFA Statutes (2019 edition) which reads:

"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 receipt of the decision in question".

67. The jurisdiction of CAS is not contested by the Parties and further confirmed by the Orders of Procedure.

68. It follows that CAS has jurisdiction to decide on the present dispute.

VII. ADMISSIBILITY

69. Article R49 of the CAS 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has already been constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

70. The Sole Arbitrator notes that pursuant to Article 58(1) of the FIFA Statutes, the time limit to file an appeal is 21 days from receipt of the Appealed Decision.

71. The grounds of the Appealed Decision were communicated to the Parties on 18 January 2021. The Appellant filed the Statement of Appeal with CAS on 8 February 2021 and filed the Appeal Brief on 10 March 2021, i.e. within the granted extension of the time limit. The Statement of Appeal further complied with the other conditions set out in Article R48 of the CAS Code.

72. Therefore, the appeal was timely submitted and is admissible.

VIII. APPLICABLE LAW

73. As to the applicable law, the Sole Arbitrator observes that the Parties are not in dispute that FIFA's guidelines in relation to COVID-19 apply to the case by virtue of Article R58 of the CAS Code. In this regard, so the Sole Arbitrator notes, FIFA issued the document called "*COVID-19 Football Regulatory Issues"* (the "CFRI Document") and, subsequently, the *"Frequently Asked Questions"* document (the "CFAQ Document"), which are both (and together referred as the "FIFA Guidelines") applicable to the case.

74. However, the Sole Arbitrator notes that the Parties are in dispute as to the applicability of a directive issued by the SPL on 13 April 2020 (the "SPL Directive"), the national guidelines at SAFF level (the "SAFF COVID-19 Guidelines I" and the "SAFF COVID-19 Guidelines II";

together referred to as the "SAFF Guidelines") as well as Swiss law, more specifically the principle of *clausula rebus sic stantibus*, to the present dispute.

75. Therefore, the Sole Arbitrator will enter into more detail as to the applicable law, more specifically in relation to the applicability of the above sources of law that are in dispute between the Parties. Moreover, although the Parties both closely follow the FIFA Guidelines, the Sole Arbitrator also finds it important to examine in more detail the status of the FIFA Guidelines which is also relevant for the applicability of Swiss law.

A. Legal framework

76. Article R58 of the CAS Code provides more specifically the following:

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

77. Article 57(2) of the FIFA Statutes reads as follows:

"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the dispute has the closest connection".

78. Clause 3 of the Employment Agreement reads:

"The two Parties shall comply with and implement the laws, circulars and regulations issued by SAFF, FIFA, the Confederation and the Saudi Professional League".

79. Clause 9 of the Employment Agreement provides as follows:

"1. The two parties shall seek to resolve their disputes on the enforcement of the contract by amicable ways.

2. This Contract shall be governed by, and construed and interpreted in accordance with the FIFA regulations.

Disputes arising out of this Employment contract shall be subject to the exclusive jurisdiction of the FIFA Dispute Resolution Chamber, pursuant to the relevant provisions of the FIFA Regulations on the Status and Transfer of Players".

B. Positions of the Parties

80. In its Appeal Brief, the Club, pursuant to Article R58 of the CAS Code in conjunction with Article 57(2) of the FIFA Statutes, as well as Article 9 of the Employment Agreement, as all cited above, contends that the regulations of FIFA apply primarily, and Swiss law subsidiarily, thereby referring to the *clausula rebus sic stantibus* doctrine.

81. With further reference to Article 3 of the Employment Agreement, the Club also argues that all the respective national regulations and circulars that deal with the pertinent issues of this case must be applied, as well as that the FIFA COVID-19 guidelines are equally applicable by virtue of Article R58 of the CAS Code. Also, the Club argues that *"the Directive of the Saudi Arabian Pro League"* of 7 September 2020, *"the SAFF COVID-19 Guidelines I",* and *"the SAFF COVID-19 Guidelines II"* apply, based on Article R58 CAS Code and in accordance with Clause 3 of the Employment Agreement.

82. The Player, on the other hand, requests the Sole Arbitrator, in accordance with Article R58 of the CAS Code and with reference to Clause 9 of the Employment Agreement, to decide the present dispute according to the applicable regulations, i.e. the June 2020 edition of the FIFA RSTP, on a primary and subisidiary basis. In particular, the Player argues that the COVID-19 Football Regulatory Issues and the COVID-19 FAQ are the applicable regulations to determine the matter. As to the applicability of the *"decisions"* of the Saudi Professional League, the Player contends that such reference is misplaced, as the Employment Agreement refers to the FIFA regulations and such league has no authority to amend the terms of an employment contract between two other parties.

83. In summary, the Player argues that the SPL determinations are i) inapplicable; ii) in any event, non-mandatory; iii) not in compliance with what is required by FIFA; and iv) taken in manifest conflict of interest. The Player further argues that the principle of *"clausula rebus sic stantibus"* under Swiss law is also inapplicable to the present matter. It is clear that the case must be construed and adjudicated in accordance with the FIFA Statutes and various applicable regulations; in particular, the FIFA RSTP and the FIFA COVID-19 guidelines. The application of principles deriving from Swiss law is only subsidiary. CAS' practice is that Swiss law only applies *"to fill in any gaps or lacuna, when appropriate"*. However in this case, it is evident that no such gaps or lacuna exist.

C. Findings of the Sole Arbitrator

84. Having considered the above positions, the starting point to determine the applicable law is Article 187(1) of Switzerland's Private International Law Act ("PILA"):

"The arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected".

85. By submitting their dispute to CAS, the Parties have implicitly and indirectly chosen for the application of the conflict-of-law rule in Article R58 CAS Code, leading to the primary application of the regulations of FIFA. The second alternative referred to in Article 187(1) PILA is therefore not applicable.

86. Article R58 CAS Code gives precedence to the applicable regulations over the law chosen by the Parties.

87. In this regard, the Sole Arbitrator wishes to emphasise that, following the so-called "Haas-doctrine", *"in appeal arbitration proceedings [Article R58 of the CAS Code] assumes that the federation*

regulations take precedence. Consequently, the rules and regulations of a federation also take precedence over any legal framework chosen by the parties […]. If, therefore, the federation rules provide that Swiss law is to be applied additionally (to the rules and regulations of FIFA) then this must be complied with by the Panel. […] Where [Article 57(2) FIFA Statutes] 'additionally' refers to Swiss law, such a reference only serves the purpose of making the RSTP more specific. In no way is the reference to Swiss law intended to mean that in the event of a conflict between the RSTP and Swiss law, priority must be given to the latter. […] Consequently the purpose of the reference to Swiss law in [Article 57(2) FIFA Statutes] is to ensure the uniform interpretation of the standards of the industry. Under [Article 57(2) FIFA Statutes], however, issues that are not governed by the RSTP should not be subject to Swiss law" (HAAS U., Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law –, Bulletin TAS / CAS Bulletin, 2015/2, p. 14-15).

88. While the "Haas-doctrine" is not binding on the Sole Arbitrator, it is persuasive in its approach, and it will, therefore, be followed (see also, *inter alia*, CAS 2016/A/4846).

89. In view of the above legal background, the Sole Arbitrator finds that the applicable regulations are the regulations of FIFA, including Article 57(2) FIFA Statutes, providing for the primary application of the various regulations of FIFA and, additionally, Swiss law. However, at the same time the Sole Arbitrator notes that the applicable FIFA RSTP does not substantially govern the issue of salary reductions in relation to COVID-19, which is the heart of the present dispute. As set out above, FIFA did issue the FIFA Guidelines that deal with such matters that relate to COVID-19.

90. Although the Sole Arbitrator is mindful that the FIFA Guidelines are not regulations *stricto sensu* and are not literally concurrent to official FIFA regulations, heavy weight must still be attached to such guidelines. In this regard, the Sole Arbitrator notes that in the CFRI Document, it is explicitly stated that it concerns *"general (non-binding) interpretative guidelines to the RSTP"*. Furthermore, it is also stated in the CFRI Document that *"FIFA expects the necessary level of cooperation and compliance with this document"*. In fact, by means of these guidelines, FIFA laid down standards for the industry in light of the COVID-19 pandemic, particularly noting that the relevant stakeholders and representatives of players and clubs, such as the European Club Association (ECA), FIFPRO and the World Leagues Forum, were also actively involved in the process that led to the establishment of the FIFA Guidelines and *"were adopted unanimously"* in order to provide the football industry with clear pointers of direction in relation to the COVID-19 pandemic.

91. More specifically, the FIFA Guidelines lay down, *inter alia*, uniform standards on how to deal with contractual issues in the age of COVID-19 and, in particular, provide the steps that FIFA believes should be taken when dealing with unilateral variation to contracts, such as salary reductions. The Sole Arbitrator notes that the FIFA Guidelines aim to avoid drastically different treatment or resolution on a global basis, whether from national courts, employment tribunals, or the FIFA judicial bodies. In this regard, the FIFA Guidelines are self-classified *"guiding principles which find a fair solution for clubs and employees, while protecting jobs as much as possible"*.

92. In this regard, the Sole Arbitrator also notes that both Parties attach heavy weight to the FIFA Guidelines, additionally in light of Article R58 CAS Code, as they lay particular emphasis to the FIFA Guidelines throughout their submissions and specifically deal with the listed criteria.

93. As to the status of the FIFA Guidelines, the Sole Arbitrator will not let himself be influenced by only the title of such document and the reference to "guidelines", but considers much importance to the fact that the relevant stakeholders in the football industry were actively involved in the process of creation and that these principles *"were adopted unanimously"*, as set set out above. Consequently, dealing here with an international dispute between a player and a club, parallels can even be drawn with collective bargaining agreements, as it makes sense to say that the FIFA guidelines can *de facto* be considered as such, recalling that these guidelines are established with the support and approval of the relevant organisations representing players and clubs, such as the European Club Association (ECA), FIFPRO and the World Leagues Forum.

94. The Sole Arbitrator also draws a parallel with the status of the FIFA Commentary on the Regulations for the Status and Transfer of Players (the "FIFA Commentary"), which is also considered to be a guideline for the interpretation of the FIFA regulations and provides a degree of certainty amongst sports professionals, which is also discussed in CAS jurisprudence (see, *inter alia*, CAS 2007/A/1369; CAS 2008/A/1469; CAS 2012/A/2908 and CAS 2012/A/2698). As set out above, it also follows from the CFRI Document that such guidelines are to be considered *"general (non-binding) interpretative guidelines to the RSTP"*. However, the FIFA Guidelines have more status, simply because they are carried by the relevant stakeholders, as set out above.

95. Be that as it may, the Sole Arbitrator feels comfortably satisfied to rely on the FIFA Guidelines. The FIFA Guidelines will be considered as part of the *"applicable regulations"* under Article R58 of the CAS Code, as they have in terms of hierarchy more or less the same status. Furthermore, uniform standards for the football industry stem therefrom, which is relevant in light of the *rationale* of the Haas-doctrine and the applicability of any national law, such as Swiss law, in the present dispute.

96. Considering that the present case concerns an appeal in an international football-related dispute before CAS against a FIFA decision, Swiss law may be applicable to the case at hand. As such, Swiss law can be relevant if it concerns an issue that is not addressed in the regulations of FIFA, including the FIFA Guidelines, and the Parties specifically applied such law to the case. In fact, also in light of the Haas-doctrine, issues are left to the parties' autonomy in choosing a specific set of national rules if they do not require a uniform application in international football and, accordingly, are not addressed in the FIFA regulations; in other words, if the issues are not part of the industry standards set by FIFA. However, the Sole Arbitrator brings in mind that the Parties did not apply Swiss law to the case. Instead, by means of their Employment Agreement, they agreed upon the application of the FIFA regulations, as set out above.

97. At the same time, the Sole Arbitrator finds that there is room to justify the application of the "additional" Swiss law, but only to the extent that it serves the purpose of making the FIFA regulations, here the FIFA Guidelines, more specific, and to ensure the uniform interpretation of the industry standards. As the FIFA Guidelines are relatively clear as to how to deal with

salary reductions, this means that there is not much room for the applicability of Swiss law, more specifically the *clausula rebus sic stantibus* principle. However, considering that the FIFA Guidelines are construed in the context of Swiss law and the FIFA Guidelines, at certain points, leave some room for interpretation, as will be discussed below, the Sole Arbitrator will consider Swiss law, in particular the *clausula rebus sic stantibus* principle, insofar as it serves the purpose of making the FIFA Guidelines more specific and to ensure the uniform interpretation of the industry standards, as set out above.

98. In relation to the applicability of the SAFF Guidelines, the Sole Arbitrator finds that there is also some room to take into account such guidelines in light of the *"applicable regulations"* under Article R58 of the CAS Code, as reference is made to *"the laws, circulars and regulations issued by SAFF"* in Clause 3 of the Employment Agreement. However, these national guidelines are only applicable to a small extent and will, in any event, not have more importance than the FIFA Guidelines, as Clause 3 is also clear that *"all applicable FIFA rules will prevail"* in case any of the provisions that apply at national level, such as the SAFF Guidelines, are not in line with FIFA rules. Moreover, Clause 3 merely indicates that during the Employment Agreement, the Parties shall *"comply with and implement the laws, circulars and regulations issued by SAFF, FIFA, the Confederation and the Saudi Professional League",* but is does not say anything about the applicable regulations in case of disputes. In case of disputes, Clause 9 of the Employment Agreement comes into play, and this provision (*"Item 9: Settlement of Disputes"*) clearly provides that the Employment Agreement is governed by, and construed and interpreted in accordance with the FIFA regulations.

99. As to the SPL Directive, the Sole Arbitrator notes that such directive is not of much importance as it concerns a unilateral decision made by the SPL, which is an association comprised of all clubs participating to the first division of Saudi Arabian Professional football. Therefore, this directive will have very limited value to the Sole Arbitrator.

100. In conclusion, the Sole Arbitrator finds that the applicable law is to be determined against the background of Article R58 CAS Code and Article 57(2) FIFA Statutes and the goal envisioned thereby of ensuring a uniform application of the industry standards, thus leading to the result whereby the Sole Arbitrator remarks that the *"applicable regulations"* are the FIFA statutes and regulations, in particular the FIFA RSTP (edition June 2020) and the FIFA Guidelines, and the SAFF Guidelines, with Swiss law applying on a subsidiary basis, but limited to filling in any gaps or *lacuna* within those regulations.

IX. PRELIMINARY ISSUES

101. Before turning to the examination of the substantive issues, the Sole Arbitrator has to address two preliminary issues that were raised by the Player in the course of the arbitration, which include i) a request to admit several exhibits into the file, pursuant to Article R56 of the CAS Code, in light of the existence of "exceptional circumstances", as well as ii) a request that the Sole Arbitrator orders the Club to produce several documents pursuant to Article R44.3 of the CAS Code.

A. Request to admit exhibits

102. On 25 July 2021, the Player informed the CAS Court Office that it had become aware that the Club, around 12 July 2021, signed the Brazilian football star Igor Coronado for the outstanding and record-breaking amount of USD 12,000,000 from the Emirati club Al Sharjah. In this regard, the Player submitted 4 new exhibits and requested the Sole Arbitrator to admit such exhibits into the file, pursuant to Article R56 of the CAS Code in light of the existence of "exceptional circumstances".

103. As the Club did not object to the Player's request as communicated in its letter of 9 August 2021, arguing that the respective evidence was found to be irrelevant to the present proceedings, on 13 August 2021, the CAS Court Office informed the Parties that, considering this absence of objection, the Sole Arbitrator had decided to admit such new evidence into the file, which is now confirmed by means of this award.

B. Request for the production of documents

104. Furthermore, per the same letter of 25 July 2021, and pursuant to Article R44.3 of the CAS Code, the Player requested the Sole Arbitrator to order the Player to produce the following documents: i) copy of the transfer agreement between the Appellant and Al Sharjah for the transfer of the player Coronado; ii) copy of the employment agreement between the Appellant and the player Coronado; iii) copy of any image rights, agency intermediation or other contracts related to the transfer of the player Coronado, iv) information contained in the FIFA TMS related to the transfer of the player Coronado from the club Sharjah to the Appellant, including instructions entered into the FIFA TMS by any of those or their respective national associations, and/or documents or other information uploaded into the FIFA TMS. The Respondent argues that all requirements under Article R44.3 of the CAS Code are met and the requested documents *"will once more show how, the Appellant has failed to prove any financial decrease of its revenues as a consequence of the Covid-19 pandemic"*.

105. On 26 July 2021, the CAS Court Office invited the Club to file its comments on the Player's letter of 25 July 2021 by no later than 2 August 2021.

106. In its same letter of 9 August 2021, after a granted short extension, the Club provided its position that it did object to the Player's document production request as the documents were completely irrelevant because *"this dispute concerns salary reductions for a period more than a year ago, mores [sic] specifically for the months of March 2020 until June 2020"*. In the same letter, the Club informed the CAS Court Office that the requirement under Article R44.3 of the CAS Code, i.e. *"relevance of the documents for the proceedings"*, is clearly not fulfilled and the documentary request must, therefore, be rejected.

107. In the same letter of 13 August 2021, the CAS Court Office informed the Parties that the Sole Arbitrator had considered that the documents requested by the Player were not relevant for the resolution of the matter at stake and, therefore, denied the Player's request, and that the grounds of the Sole Arbitrator's decision would be set forth in the final arbitral award.

108. As a point of departure, the Sole Arbitrator refers to Article R44.3 of the CAS Code, from which it follows that: *"[a] party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant"*, which provision is applicable to the present appeals proceedings via Article R57 of the CAS Code.

109. Against this background, the Sole Arbitrator agrees with the Club that the requested documents are not relevant for the case at hand. In fact, the requested documents relate to a transfer that took place in July 2021, more than one year after the unilateral reductions were applied by the Club for reason of its financial position due to COVID-19. As such, the Club's financial position in July 2021, so finds the Sole Arbitrator, bears no relevance as to the question whether the Club was entitled to unilaterally reduce the salary of the Player for the months March, April, May and June in year 2020.

110. Therefore, the requirements under Article R44.3 of the CAS Code are not met and, consequently, the Player's request must be rejected.

111. Having dispended with the above preliminary issues, the Sole Arbitrator will now turn to the examination of the main issue in dispute.

X. MERITS

A. Introduction

112. In the present appeal proceedings, the Player contends that an amount of EUR 1,666,787, as was also awarded by the FIFA DRC in the Appealed Decision, is outstanding. However, the Sole Arbitrator notes, and wishes to clarify in this introduction, that part of this amount, i.e. an amount of EUR 1,184,480, is acknowledged by the Club to be due, which was also confirmed during the hearing.

113. Consequently, the amount essentially in dispute is EUR 482,307.

114. The disputed amount relates to the application by the Club to unilaterally reduce the salaries of the Player due to the consequences of the COVID-19 pandemic it had on the economic situation of the Club. More specifically, the Club applied a unilateral reduction of 50% of the Player's salaries (exceeding SAR 20,000) for the months March, April, May and June 2020, which would apply as from 15 March 2020 until the resumption of the sportive activities, club training and disappearance of COVID-19.

115. On the one hand, the Club argues that it concerns a necessary, proportionate and justified reduction, triggered by the COVID-19 pandemic and the suspension of the competition in Saudi Arabia. On the other hand, the Player argues that the unilateral reduction applied by the Club was not made in good faith, is not reasonable and proportionate and is therefore inapplicable. Both the Parties heavily weight on the FIFA Guidelines, as stated above. Moreover, as set out above, the Club also supports its decision by referring to national decisions,

such as the SPL Directive and the SAFF Guidelines as well as Swiss law, in particular the *clausula rebus sic stantibus* principle.

116. Therefore, the essence of this appeal relates to the question whether the Club was entitled to apply the above unilateral reduction for the period March until June 2020.

B. The Main Issue

1. FIFA Guidelines

a) Preliminary remarks

117. As noted above, the Sole Arbitrator is aware of, and has taken into account, the SAFF Guidelines, but the Sole Arbitrator will not further refer to these national guidelines, noting that they are inspired by, in line with the FIFA Guidelines and practically identical to the FIFA Guidelines following the same criteria. Insofar as there are differences that are considered to be in favour of the Club, noting that this is not demonstrated by the latter, such differences will not be decisive for the case as it clearly follows from Clause 3 of the Employment Agreement, as referred to above, that *"all applicable FIFA rules will prevail"* in case any of such national rules are not in agreement with FIFA rules. Moreover, as set out above, Clause 3 does not say anything about the applicable regulations in case of disputes as opposed to Clause 9 of the Employment Agreement which refers to the FIFA regulations in case of any disputes.

118. The Sole Arbitrator recalls that both the Player and the Club strongly rely on the FIFA Guidelines, more specifically the criteria as listed in the CFRI Document, however both have a different interpretation of such guidelines, in particular in whose favour the listed elements are met. As the FIFA Guidelines have a very important status, as extensively discussed above, the Sole Arbitrator will now have a closer look at the FIFA Guidelines.

119. In order to provide appropriate guidance and recommendations to its member associations and their stakeholders to both mitigate the consequences of disruptions caused by COVID-19 and ensure that any response was harmonised in the common interest, FIFA issued guidelines. More specifically, on 7 April 2020, FIFA issued the first document, i.e. the CFRI Document. Subsequently, on 11 June 2020, FIFA issued the CFAQ Document. These FIFA Guidelines lay down, *inter alia*, uniform standards on how to deal with contractual issues in relation to COVID-19 and, more specifically, provide for steps that FIFA believes should be taken dealing with unilateral decisions to amend agreements. Although the Sole Arbitrator is not bound by these steps as this is a different matter in terms of assessment, it makes sense to the Sole Arbitrator to closely follow the steps of the FIFA Guidelines, being applicable to the case, in light of the assessment whether the unilateral reduction can be accepted in the present case.

120. In particular – quoting the relevant passages – it follows from the CFRI Document:

"In order to guarantee some form of salary payment to players and coaches, avoid litigation, protect contractual stability, and ensure clubs do not go bankrupt, while considering the financial impact of COVID-19 on clubs, it is proposed that:

(i) Clubs and employees (players and coaches) be strongly encouraged to work together to find appropriate collective agreements on a club or league basis regarding employment conditions for any period where the competition is suspended due to the COVID-19 outbreak.

Such agreements should address, without limitation: remuneration (where applicable salary deferrals and/or limitation, protection mechanisms, etc.) and other benefits, government aid programmes, conditions during contract extensions, etc.

Where the relevant social partners exist, agreement should be reached within CBA structures or another collective agreement mechanism.

(ii) Unilateral decisions to vary agreements will only be recognised where they are made in accordance with national law or are permissible within CBA structures or another collective agreement mechanism.

(iii) Where:

a. clubs and employees cannot reach an agreement, and

b. national law does not address the situation or collective agreements with a players' union are not an option or not applicable,

Unilateral decisions to vary terms and conditions of contracts will only be recognised by FIFA's Dispute Resolution Chamber (DRC) or Players' Status Committee (PSC) where they were made in good faith, are reasonable and proportionate.

When assessing whether a decision is reasonable, the DRC or the PSC may consider, without limitation:

a. whether the club had attempted to reach a mutual agreement with its employee(s);

b. the economic situation of the club;

c. the proportionality of any contract amendment;

d. the net income of the employee after contract amendment;

e. whether the decision applied to the entire squad or only specific employees.

(iv) Alternatively, all agreements between clubs and employees should be "suspended" during any suspension of competitions (i.e. suspension of football activities), provided proper insurance coverage is maintained, and adequate alternative income support arrangements can be found for employees during the period in question".

121. The CFAQ Document provides for further clarifications, in particular:

"The guiding principles are listed in the preferred order (original emphasis) in which FIFA believes clubs and employees should address variations to an employment agreement during any period when a competition is suspended. FIFA strongly recommends that clubs and employees make their best efforts to find collective agreements before following any other guiding principle.

The guiding principles should be read in conjunction with the principles of non-discrimination and equal treatment. Employees (players or coaches) should be treated as equally as possible when considering variations to employment agreements.

(i) Clubs and employees (players and coaches) should first (original emphasis) undertake good-faith efforts to negotiate collective agreements on a league basis (i.e. between an MA or league and the local social partners) or a club basis (i.e. between an individual club and its employees (players and coaches)) where the suspension of a competition requires the amendment of existing employment agreements.

(ii) The FIFA judicial bodies will only recognise a unilateral variation to an employment agreement where such variation complies with the national law referred to in the agreement, a CBA, or another collective agreement mechanism.

(iii) Where:

a. clubs and employees cannot reach an agreement; and

b. national law does not address the situation or collective agreements with a players' union are not an option or not applicable,

unilateral decisions to vary terms and conditions of contracts will only be recognised by the FIFA judicial bodies where they were made in good faith, and are reasonable and proportionate".

b) Preferred order to assess the salary reduction

122. Before dealing with the separate criteria, the Sole Arbitrator notes that the principles set out in relation to the contractual issues mentioned in the FIFA Guidelines are to be considered by FIFA as general interpretative guidelines to the FIFA RSTP, as also follows from the documents itself. In this regard, the Sole Arbitrator further notes, as also derives from the CFAQ Document, that *"[t]he guiding principles are listed in the preferred order in which FIFA believes clubs and employees should address variations to an employment agreement during any period when a competition is suspended".*

123. In this regard, the Sole Arbitrator understands from the FIFA Guidelines that the criteria as listed under (iii) of the CFRI Document (under the Section "Proposed Guiding Principles") will only come into play where clubs and employees **(a)** cannot reach an agreement and **(b)** national law does not address the situation or collective agreements with a players' union are not an option or not applicable. Only then unilateral decisions to vary terms and conditions of contracts will be recognised by the FIFA judicial bodies where these unilateral decisions were made in good faith, and are reasonable and proportionate. Although not entirely clear to the Sole Arbitrator, the reference under point (a) seems to refer to the previous points i) as

mentioned in the CFRI Document as well as the CFAQ Document, and the reference under point (b) seems to refer to the previous point ii) as mentioned in the CFRI Document as well as the CFAQ Document.

124. In other words, and in view of the above background, if the parties did reach an agreement or national law does address the situation or collective bargaining agreements are an option or applicable, the FIFA Guidelines will not be the appropriate source of law to solve the case, and such national law or collective bargaining agreement, if the parties did not reach an agreement, will then be leading. Therefore, before assessing the criteria under (iii) of the CFRI Document (under the Section "Proposed Guiding Principles"), such examination will be made first by the Sole Arbitrator, i.e. (a) whether an agreement was reached and whether (b) any national law or collective bargaining agreement addresses the situation. As mentioned before, in light of his assessment, it makes sense to the Sole Arbitrator to closely follow the steps of the FIFA Guidelines.

c) The reaching of an agreement (sub a)

125. Looking at the specific circumstances of the case, the Sole Arbitrator notes that there is no doubt that the Parties did not reach an agreement (sub a). The Sole Arbitrator, however, observes that the Parties have different interpretations as to the good faith efforts referred to under point (i) of the CFAQ Document, also in relation to the criteria as listed in point (iii) of the CFRI Document (under the Section "Proposed Guiding Principles"), in particular under (a), where the attempt to reach a mutual agreement will be tested. To avoid any misunderstanding, not least as to the interpretation by the Sole Arbitrator of the FIFA Guidelines, the Sole Arbitrator prefers to provide clarity first.

126. The Sole Arbitrator observes that points (i) as mentioned in both the CFRI Document and the CFAQ Document, as cited above, refer to collective agreements on a league or club basis and that clubs and employees are strongly encouraged to work together to find such appropriate collective agreements. In this regard, as further detailed and clarified in the CFAQ Document, more specifically point (i), good-faith efforts must have been undertaken. The Sole Arbitrator understands this to be a more general, but strong, recommendation in order to encourage clubs and employees to work together to find appropriate collective agreements and that good-faith efforts must be undertaken.

127. Only if, for whatever reason, such step will not be succesfull and sub a under point (iii) of the QFAQ Document is met (and national law does also not address the issue or any collective bargaining agreements with a players' union are not an option or not applicable as mentioned under sub b) of point (iii) of the CFAQ Document, as will be further discussed below), the criteria as listed under (iii) of the CFRI Document (under the Section "Proposed Guiding Principles") will come into play to assess whether or not the unilateral decision of the club, at an individual level, was made in good faith, is reasonable and proportionate. Under these criteria, then the (degree of) attempt to reach a mutual agreement in an individual case with an employee will be considered.

128. Put differently, the recommendation under point (i) of the CFRI Document and the CFAQ Document is of a more general nature and strongly calls upon clubs and players to deal with contractual issues at a collective level and that good-faith efforts are undertaken first. However, the Sole Arbitrator does not agree with the Player that failing to undertake good-faith efforts to negotiate a collective agreement on a league basis or a club basis makes the unilateral reduction in an individual matter inadmissible, *per se*. Although it makes sense that the proposed principles will be followed in the preferred order and efforts to find such a collective agreement should preferably be entertained first as FIFA believes this is the correct order to follow, for the sake of clarity, the Sole Arbitrator finds that the Player's interpretation is too strict as *"preferred order"*, as stated in the CFAQ Document, merely indicates FIFA's preference to handle as such.

129. In this regard, the Sole Arbitrator wishes to stress that the FIFA Guidelines do not say, as the Player argues, that when missing such an attempt, no unilateral reduction is admissible at all, or that such step is mandatory, all the more so because *"the attempt to reach a mutual agreement"* (emphasis made by the Sole Arbitrator) at individual level, as set out above, and so the degree of efforts by the club and to what exact extent it attempted to reach a mutual agreement with its employee(s), is a different matter, at least at this stage of review, as the latter element is explicitly listed under the criteria when deciding whether or not the unilateral decision by a club to amend the contract has been made in good faith, is reasonable and proportionate, as mentioned before.

130. This view is also supported by the fact that member associations and leagues, in particular with respect to the third guiding principle, as also explicitly follows from the CFAQ Document (under point 14), were reminded that a determination of what is *"reasonable and proportionate"* must be undertaken on a club-by-club basis (i.e. a subjective basis), as opposed to a league basis (i.e. an objective, universal basis). Further to this, which the Sole Arbitrator also wishes to clarify, the word "should" as referred to in point i) of the above quoted CFAQ Document is generally used as to denote recommendations or advice. In fact, if this was a mandatroy step and the parties were compelled to do something or an obligation was meant, FIFA would have used the word "must", which is different from "should", bringing forward a strong recommendation.

131. In further support of this line of reasoning, the Sole Arbitrator also refers to the fact that FIFA via its FIFA Guidelines also *"strongly recommends"* – the CFAQ Document literally say and so even seem to tighten this up as opposed to the CFRI Document as it now clarifies that: *"FIFA strongly recommends that clubs and employees make their best efforts to find collective agreements before following any other guiding principle"*; emphasis made by the Sole Arbitrator) – to first undertake efforts to negotiate collective agreements on a league basis or a club basis where the suspension of a competition requires the amendment of existing employment agreement, which make perfect sense to the Sole Arbitrator as well as that such efforts by the parties are made in good faith.

132. However, and so recalling, missing such an attempt to negotiate collective agreements, for whatever reason, so finds the Sole Arbitrator, should not be considered fatal and should not automatically lead to the outcome that a reduction applied by a club in an individual case is unacceptable, *per se*. The Sole Arbitrator so disagrees with the Player.

133. The Sole Arbitrator also finds the above approach fair and reasonable as scenarios are possible whereby a club is not in the position to undertake efforts to negotiate a collective agreement, for whatever reasons, whilst all the other criteria, as cited above under (iii) of the CFRI Document (under the Section "Proposed Guiding Principles"), are in its favour, such as a very urgent economic situation (proven by the club), a very small reduction in terms of the percentage which makes the contract amendment proportional, whereby the reduction is applied to the entire squad players, still receiving reasonable net amounts. If the step under i) as referred to in the FIFA Guidelines is mandatory, this would automatically lead to an invalid reduction when a club was not in the position to take such first step, which is, so finds the Sole Arbitrator, not fair.

134. Therefore, at this stage of the assessment, it suffices to say that the Parties did not reach an agreement and so sub a) under (iii) of the CFAQ Document is met. As set out above, whether the Club had attempted to reach a mutual agreement with the Player, and to what extend such efforts were undertaken in good faith, will be considered under the criteria, as cited above under (iii) of the CFRI Document (Section "Proposed Guiding Principles"), where this is explicitly mentioned under point b) among the list of criteria.

d) Applicability of national law (sub b)

135. As to the national law or collective agreements with a player's union (sub b), which is the second step that must be taken before dealing with the separate criteria, the Sole Arbitrator is mindful that it follows from the FIFA Guidelines, in particular the CFRI Document, that national employment and/or insolvency laws (or a collective bargaining agreement ("CBA"), where in force) will answer immediate questions regarding the viability of a football employment agreement that can no longer be performed. As such, the Sole Arbitrator notes that FIFA lays strong emphasis on national laws and collective bargaining agreements as these must be respected. In this regard, the CFAQ Document also clarifies and provides as answer to the question *"[w]hat type of national law is being referred to in this section?"*, that *"[t]he parties to an agreement should always take heed of the choice of law which has been made in any agreement; this may differ from the national law in the territory where the club is domiciled"*. Therefore, the choice of law agreed upon between the parties in the agreement must be established.

136. Further to this and even if the agreement refers to national law, the Sole Arbitrator wishes to emphasise that the burden of proof also lies on the club to subsequently demonstrate that any unilateral variation was a valid exercise of the national law referred to in such agreement, a CBA or any other collective agreement mechanism, as follows from the CFAQ Document. In this regard, which is provided as an example by FIFA in the same document, a party should provide independent legal advice from a qualified legal practitioner in the relevant jurisdiction which confirms such valid exercise. The Sole Arbitrator is aware that this is only an example and other means are possible to meet this burden of proof, but it does clearly point out that a simple reference to the national law, even if applicable, to justify the unilateral reduction will not be sufficient.

137. Against the above background, the Sole Arbitrator brings in mind that the Parties did not apply any national law to the case at hand by means of the Employment Agreement, but instead the

Parties agreed upon the application of the FIFA regulations. Further to this, the Sole Arbitrator also notes that no CBA, or any another collective agreement mechanism, applies to the case at hand, which is also not demonstrated by the Club.

138. Consequently, as no national law, CBA or other collective agreement mechanism is applicable to the case at hand, any reference made by the Club to the law of Saudi Arabia is not decisive in light of the assessment whether or not the unilateral reduction is valid.

e) The criteria under (iii) CFRI Document (Section "Proposed Guiding Principles")

139. Having now considered that the Parties did not reach an agreement and no national law, collective bargaining agreement or any other collective agreement mechanism is leading and so stands in the way to addres the criteria that are listed under (iii) of the CFRI Document (under Section "Proposed Guiding Principles"), as extensively discussed above, the Sole Arbitrator will now have a more detailed look at the listed criteria to consider whether the unilateral decision by the Club to vary the terms and conditions of the Employment Agreement was made in good faith, is reasonable and proportionate.

140. It is, however, not entirely clear to the Sole Arbitrator why the criteria are only mentioned in the CFRI Document and no further reference is made in the CFAQ Document itself. By the same token, it is also not entirely clear whether the principles of good faith and proportionateness must be separately assessed as no reference is made to these principles. In fact, it follows from the CFAQ Document that *"[w]hen assessing whether a decision is reasonable, the DRC or the PSC may consider, with limitation"*. However, as the proportionateness is also mentioned under point (c) of the criteria, the Sole Arbitrator understands that the principles of good faith and proportionateness will not have to be assessed independepently and will be considered in light of the criteria.

141. By that as it may, to avoid misunderstanding, the Sole Arbitrator also wishes to stress in advance that the listed criteria are not exhaustive, which also follows from the fact that they are listed *"without limitation"*. By means of the CFRI Document, FIFA summed up relevant criteria that play an important role as to the assessment of unilateral variations whereby, at the end, the overall package of elements is decisive, and also other, not listed, elements, can be of relevance. However, what the Sole Arbitrator wishes to stress before now discussing the criteria, is that certain criteria will have more (decisive) value in light of the assessment of the validity of the unilateral reduction.

i. Whether the club attempted to reach a mutual agreement with its employee(s)

142. Having already considered that the Parties did not reach a collective agreement and, consequently, sub a) under (iii) CFAQ Document is met, it will now be considered, at an individual level, whether the Club made any attempt to reach a mutual agreement with the Player, and also to what extend such efforts were undertaken in good faith.

143. As to this first criterion and as a starting point, the Sole Arbitrator finds that this criterion should weight heavy in light of the assessment as unilateral variations, such as unilateral salary reductions, have serious consequences for employees and, for this reason alone, require good-faith efforts to find a mutual agreement. In other words, missing such an attempt should weight heavy, but at the same time, however, does not mean *per se*, also not in light of the assessment of the below mentioned criteria, that a club cannot still succesfully demonstrate that the unilateral variation is made in good faith, is reasonable and proportionate, but it does put the club in a difficult position in terms of succesfully defending its position that the unilateral decision should still be accepted. It is, however, a too short-sighted approach not to deal with the other criteria if the club fails to meet the first criterion, all the more so because it is a non-exhaustive list, as mentioned before.

144. The Sole Arbitrator observes, as was also underlined by the Player, that the Club sent two letters to the Player prior to applying the unilateral reduction. The Sole Arbitrator refers to the letters of the Club of 13 and 20 April 2020. As set out above, from the letter of 13 April 2020 it follows that the Club was not able to continue its payments under the Employment Agreement due to COVID-19; and the letter of 20 April 2020 refers to any future actions which the Club may have to take to address the difficult situation.

145. However, in the next letter of 29 April 2020 from the Club to the Player, without any further attempts to reach a mutual agreement, which is not demonstrated by the Club, the latter informed the Player that a reduction of the salaries of all professional players and the managing staff of the Club was necessary and that, considering that for all employees a basic amount of SAR 20,000 per month remained guaranteed, the part of the contractually agreed monthly salary exceeding SAR 20,000 would be reduced by 50%, which reduction would apply as from 15 March 2020 until the resumption of the sportive activities, club training and disappearance of the COVID-19 pandemic.

146. Apart from the fact that it concerns a unilateral reduction with retroactive effect (the letter of 29 April speaks of a reduction as from 15 March), which is also considered, as will be further discussed below, as a relevant element – although not listed – in light of the criteria whether the unilateral decision was made in good faith, is reasonable and proportionate, by means of the letter of 29 April 2020 the Club unilaterally decided to apply the reduction. It does not follow from any evidence on file, including the letters of 13 and 20 April 2020, as referred to above, that the Club actually attempted to reach a mutual agreement. It was a unilateral decision taken by the Club to reduce salaries, let alone that it can be established that the such unilateral decision was made in good faith.

147. In order to support its position, the Club refers to the SPL Directive which prescribed the unilateral measure to apply the reduction. As set out above, the Sole Arbitrator already noted that such directive is not of much relevance as it concerns a unilateral decision made by the SPL, which is an association comprised of all clubs participating to the first division of Saudi Arabian Professional football. Therefore, the SPL Directive cannot justify, so finds the Sole Arbitrator, that the unilateral reduction is permitted.

148. Therefore, the Sole Arbitrator is not comfortably satisfied that the Club attempted to reach a mutual agreement and so the first criterion does not speak in favour of the Club, to which the Sole Arbitrator will attach heavy weight in light of his assessment as it is of much importance that any good-faith attempts are made to find a mutual agreement.

ii. Economic situation of the Club

149. As a first general comment in relation to this criterion, i.e. the economic situation of the Club, the Sole Arbitrator does not want to leave unmentioned that a club must, at the least, provide concrete evidence in order to succesfully demonstrate that it was not able to comply with its financial obligations due to the COVID-19 pandemic. In other words, meeting such burden is of the essence and cannot be considered lightly. In fact, if a club cannot demonstrate this, for this reason alone, so finds the Sole Arbitrator, a club will place itself in an extremely difficult situation to have the unilateral reduction accepted.

150. The Sole Arbitrator observes that the Club, in order to support its position that this criterion is met in its favour, only refers to more general situations, such as a complete governmental lockdown, the FIFA COVID-19 Relief Plan, the suspension of the Saudi Professional League season and that all governmental funding to sports was stopped.

151. Although the Sole Arbitrator does not question the affects of the pandemic and that it also had consequences on the Club, what is put in doubt by the Sole Arbitrator is the exact degree of impact it had on the Club and, in particular and more importantly, the *logical nexus* with the disability to pay the salaries for its employees, such as the Player.

152. The Sole Arbitrator is not comfortably satisfied that the Club was forced to apply a unilateral reduction of 50% due to the impact of the COVID-19 pandemic, all the more so because this is not demonstrated by the Club, which is of the essence as mentioned before, for example by means of submitting financial figures in order to show any substantial decrease in terms of revenues. No such documents are, however, on file.

153. In this regard, the Sole Arbitrator also wishes to refer to Article 8 of the Swiss Civil Code ("SCC"), according to which *"[u]nless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*. It is clear to the Sole Arbitrator that the burden of proof in the present arbitration clearly falls on the Club and that the Club failed to comply with such burden.

154. Therefore, and without any further analysis as concrete evidence is missing, the Sole Arbitrator concludes that this second criterion also does not rest in favour of the Club.

iii. Proportionality of contract amendment

155. As to the next criterion, i.e. the *"proportionality of any contract amendment"*, the Sole Arbitrator recalls that it concerns here a salary reduction of 50% considering that for all employees a basic amount of SAR 20,000 per month remained guaranteed, and so the part of the contractually agreed monthly salary exceeding SAR 20,000 would be reduced by 50%, which would be applicable

from 15 March 2020 until the resumption of the sportive activities, club training and disappearance of the COVID-19 pandemic.

156. It is rather difficult for the Sole Arbitrator to see how this criterion is in favour of the Club as it did not demonstrate why a reduction of 50% was required to apply. In the absence of any financial figures in relation to the necessity of the application of 50%, it is unfeasible for the Sole Arbitrator to use this criterion not to the detriment of the Club.

157. The Sole Arbitrator also agrees with the Player that the 50% figure seems highly arbitrary. Let alone, as said before, that it is not demonstrated by the Club that a reduction of 50% was required to apply in the present case, it is also not clear to the Sole Arbitrator why a smaller percentage would not have sufficed, for example 20%, 10% or even 5%. In light of the first two criteria that did not speak in favour of the Club either, as set out before, i.e. that the Club did not attempt to reach a mutual agreement and that there is no proof about the economic situation of the Club and that it was forced to apply a unilateral reduction of 50% due to the impact of the COVID-19 pandemic, it does not seem to be proportional to the Sole Arbitrator to apply the reduction of 50%.

158. The Sole Arbitrator is mindful of the "Besiktas-case" (FIFA DRC 24 November 2020, ref 20-01176), to which the Club (and also the Player) referred to. However, the Sole Arbitrator does not see how to interpret this decision in favour to the Club, all the more so because it clearly follows from such decision that it was established by the DRC that, contrary to the case at hand, offers were made by Besiktas in good faith. Moreover, it did not concern a salary reduction of 50%, but it was decided that a salary reduction of 15% would be justified, bearing in mind the principles of good faith, proportionality and reasonableness as mentioned in the FIFA Guidelines as well as the specificities of that case. In the present matter, the specificities of the case do not justify, so the Sole Arbitrator finds, the reduction of 50% and so the contract amendment is not proportional. Therefore, also this third element does not speak in favour of the Club.

iv. Net income of the Player after contract amendment

159. As to the fourth criterion, the Sole Arbitrator wishes to recall that it concerns a salary reduction of 50% considering that for all employees a basic amount of SAR 20,000 per month remained guaranteed. As such, the reduction of 50% to the Player would only apply to the part of the contractually agreed monthly salary exceeding SAR 20,000.

160. Taking into account that the net income of the Player, also considering that a basic amount of SAR 20,000 remained guaranteed, was still substantial after the application of the unilateral reduction, this criterion, as opposed to the criteria as set out before, is not to the Club's detriment. However, at the same time, it is difficult to put too much weight to this criterion in favour of the Club noting that the Player earned significant amounts of money. In fact, had the Club even applied a more substantial reduction, the remaining net income of the Player might still be sufficient in terms of this criterion.

v. Applicability to the entire squad

161. As to this fifth and final criterion that is listed among the criteria deriving from the FIFA Guidelines, the Sole Arbitrator notes that the Player argues that he was excluded from any discussion allegedly entertained by the Club with its players. In this regard, the Club and the Player both refer to a list of players that all agreed with the salary reduction.

162. The Sole Arbitrator emphasises that a reduction of salary was applied on all players, and not just on the Player. In this regard, the Sole Arbitrator furthermore notes that, indeed, the players mentioned on this list, all seem to have agreed with the applied reduction, as set out above. However, it is rather difficult for the Sole Arbitrator to draw any noteworthy conclusions thereto as it is also clear that certain players did not agree with this reduction, such as the Player and other foreign players that were not on the list. In this regard, it also follows from the enclosed statement attached to the list of players that local players agreed to make a smaller contribution as compared to the foreign players, however it is not demonstrated by the Club what these differences are, but it does indicate that distinctions were made between the foreign and local players, which means that not the same unilateral reduction was applied to the entire squad.

163. Be that as it may, it is however not necessary to further analyse this criterion as many relevant criteria, as mentioned before, have already clearly directed in favour of the Player. Even if this fifth criterion was in favour of the Club, this would not have made the outcome any different as also the following, not listed, criteria support this view.

vi. Additional criteria

164. As the list of the criteria is not exhaustive, and having carefully analysed all the arguments that were presented by the Parties and the respective documents, the Sole Arbitrator finds that also other – not listed – criteria do not speak in favour of the Club.

165. In fact, although it is already clear to the Sole Arbitrator that the overall package of listed criteria does not support the position of the Club, as discussed above, the Sole Arbitrator also does not want to leave unmentioned that the Club informed the Player of the unilateral reduction by means of its letter of 29 April 2020 that the imposed unilateral reduction would apply as from 15 March 2020. In other words, it concerns a reduction to be applied with retroactive effect, at least for the period between 15 March and 29 April 2020. The Sole Arbitrator also finds this to be an important factor, although not mentioned in the list of criteria referred to in the CFRI Document, to consider as an additional factor in his decision not to accept the reduction. It does not speak in favour of a club when a reduction is applied with retroactive effect, also not in the light of a due care process which is to be expected from a club dealing with such delicate matters.

166. Moreover, what the Sole Arbitrator also finds to be to the detriment of the Club, and is at the least also not speaking in its favour, is that salaries were already outstanding to the Player long before the COVID-19 pandemic broke out, which was also underlined in the Appealed Decision as an important circumstance. The Parties had a long history of unpaid salaries, which

also follows from the enormous amount of default letters sent by the Player to the Club, also reflected in the fact that an amount of EUR 1,184,480, is acknowledged by the Club to be due, which was also confirmed during the hearing.

167. The Sole Arbitrator is aware that this does not mean that any later reductions are invalid *per se*, but this simply does not speak in favour of the Club either. In other words, now that the Club already defaulted on its financial obligations long before the COVID-19 outbreak, it will be more difficult for this party, so the Sole Arbitrator finds, in light of the burden of proof that lies on the party that defaulted, i.e. the Club, to demonstrate that it should benefit from a later situation that occurred after its default (see, *inter alia*, CAS 2018/A/5779). The pattern of unpaid salaries before COVID-19, for which also no specific reason was presented during the proceedings by the Club to justify these non-payments, does not convince the Sole Arbitrator, also not in terms of good faith, that the unilateral reduction applied by the Club was solely due to the COVID-19 pandemic.

168. What is more, the COVID-19 pandemic did not lead to any permanent inactivity of the Club on the transfer market during the pandemic, at least not in October 2020 when the transfer of Bruno Henrique Corsini from the Brazilian club Palmeiras to the Club for approximately EUR 4,000,000 took place, which was not disputed by the Club. Those activities that took place almost half year after the COVID-19 outbreak which merely show that the Club was not dramatically affected, at least not in relation to its transfer activities, also noting that the COVID-19 pandemic was not over yet during that period.

169. Under all these circumstances, the Sole Arbitrator finds that the Club cannot successfully use COVID-19 as a ground for defense. It cannot be ruled out that if no COVID-19 had taken place the same pattern of unpaid salaries would have continued, also noting that the Club did not count on the Player anymore as the Player was removed from the list of foreign players for the remainder of the 2019/2020 season which also clearly follows from the Amended Agreement that was concluded between the Parties.

2. Swiss law: clausula rebus sic stantibus

170. Considering that the FIFA Guidelines are construed in the context of Swiss law and leave some room for interpretation at certain points, as set out, the Sole Arbitrator will consider Swiss law, in particular the *clausula rebus sic stantibus* principle, as was referred to by the Club, in light of the purpose of making the FIFA Guidelines more specific and also to ensure the uniform interpretation of the standards of the industry.

171. The Sole Arbitrator is mindful that Swiss law recognizes the principle of *clausula rebus sic stantibus*, which gives to the competent judge the possibility to adapt a contract to new circumstances and conditions. In this regard, to adapt an employment agreement to changed circumstances: i) there must be a subsequent change in circumstances (after the conclusion of the contract); ii) there must be a serious disruption of contractual balance; iii) there must be a lack of predictability. These conditions have to be met.

172. Considering that the above criteria have to be cumulatively met, it is not necessary to discuss all the above three criteria as the Sole Arbitrator is, in any event, not convinced that there is a serious disruption of contractual balance. In fact, it is not demonstrated by the Club, as set out above, what the exact impact was that COVID-19 had on the Club, and in particular, the *logical nexus* with the disability to pay the salaries to the Player. It is not demonstrated by means of any financial figures by the Club that there was a serious disruption of contractual balance due to COVID-19 pandemic and that a substantial decrease in terms of revenues had taken place. No such evidence is on file.

173. In this regard, the Sole Arbtirator also notes that he Club does refer to decisions of the SFT throughout its submissions, but these are decisions in which references are made to the principle of *clausula rebus sic stantibus*. These decisions, however, do not support the position of the Club that such principle justifies the reduction in the present case.

174. Bringing in mind that the burden of proof rests on the Club, the Sole Arbitrator notes that the Club failed to comply with such burden in light of Article 8 SCC. Therefore, and without further analysis, as concrete evidence is missing, the Sole Arbitrator finds that the Club cannot succesfully invoke the principle of *clausula rebus sic stantibus*.

C. Conclusion

175. Based on the foregoing, and after having taken into due consideration the relevant regulations, in particular the FIFA Guidelines, the evidence produced, and the oral and written arguments submitted by the Parties, the Sole Arbitrator dismisses the appeal by the Club in its entirety and upholds the Appealed Decision as issued by the FIFA DRC.

176. The Sole Arbitrator concludes that the Club was not entitled to apply a unilateral reduction of 50% of the Player's salaries (above SAR 20,000) for the months March, April, May and June 2020 and that the unilateral reduction applied by the Club was not made in good faith, is not reasonable and proportionate and therefore inapplicable.

177. Consequently, the Sole Arbitrator concludes that the Player is entitled to outstanding remuneration of EUR 1,666,787, with interest at a rate of 5% *p.a.* as from 31 July 2020 until the date of effective payment, as was also awarded in the Appealed Decision.

178. 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 8 February 2021 by Ittihad FC against Aleksander Prijovic with respect to the decision issued on 16 December 2020 by the FIFA Dispute Resolution Chamber is dismissed.

2. The decision issued on 16 December 2020 by the FIFA Dispute Resolution Chamber is confirmed.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.