



Arbitration CAS 2011/A/2646 Club Rangers de Talca v. Fédération Internationale de Football Association (FIFA), award of 30 April 2012

Panel: Mr José Juan Pintó Sala (Spain), President; Mr Hernán Jorge Ferrari (Argentina); Mr Rui Botica Santos (Portugal)

Football

Bankruptcy of a club

Succession of the club

Inequity in the football market due to the bankruptcy proceedings

Inactivity of the player in the bankruptcy proceedings

1. If an entity purchases in a public auction the assets of a bankrupt club, continues the activity formerly developed by the bankrupt club with the same image, badge, hymn, representative colours, emblems and placement, and is on the basis of the federative rights acquired in the auction participating in the national competitions, replacing the former club with the consent and approval of the national football federation, it is to be understood as the legal successor of the bankrupt club.
2. In most bankruptcy legal systems worldwide, a bankrupt entity, while the bankruptcy proceedings are still going on, cannot freely pay the debts accrued before the declaration of bankruptcy, this mainly as regards the general principle of *par conditio creditorum*. This situation is provoking undesired inequities in the market of football at international level, where clubs in bankruptcy enjoy the privileges of the bankruptcy proceedings while the other clubs are forced to honour their commitments in full and timely manner, all of them playing in the same competitions. Such inequity of treatment and opportunities is clearly against the essential principles of the so-called “*lex sportiva*”.
3. If a player has not claimed his outstanding salaries in the bankruptcy proceedings, he is not allowed to request that disciplinary sanctions be imposed on this specific ground to the new club that took over from the bankrupt club, as there is at least a theoretical possibility that he could have recovered his claim in the bankruptcy proceedings and the FIFA sanction would have become groundless.

Club Rangers de Talca (the “Appellant”) is a professional football club with seat in Talca (Chile), affiliated to the Chilean Football Federation.

The Fédération Internationale de Football Association (FIFA; the “Respondent”) is an association submitted to Swiss Law governing the sport of football worldwide with seat in Zurich, Switzerland.

On 8 May 2009, the Courts of Talca (Chile) declared the football club “Club Social y Deportivo Rangers de Talca” in bankruptcy.

On 18 June 2009, the FIFA Dispute Resolution Chamber (DRC) rendered a decision ordering Club Social y Deportivo Rangers de Talca to pay to its former player H. (the “Player”) the amount of USD 21.000 plus interest.

On 10 September 2009, the Player sent a letter to FIFA requesting the application of disciplinary measures against Club Social y Deportivo Rangers de Talca in light of the failure of such club to pay the amount due within the given deadline. The relevant part of this letter reads as follows:

Ponemos en conocimiento de FIFA que esta parte ha notificado al club demandado, y el mismo nos ha manifestado la imposibilidad de pago ya que se encuentra en quiebra ante los Tribunales Ordinarios de Talca.

Esta manifestación, nos lleva a solicitarles que la presente sea tratada ante el Tribunal de Disciplina.

Asimismo y de no tener efecto las solicitudes o sanciones del tribunal de disciplina, solicitamos que se nos acompañe en papel, con apostillado de la Haya y vía correo tradicional a Sarmiento 1574, piso 3° of “D” (CP 1042) de la Ciudad Autónoma de Buenos Aires Argentina, la resolución del tribunal de disputas a efectos de que este jugador (independientemente de las acciones que FIFA estime corresponder) presente su reclamo en el tribunal de la quiebra del club condenado. (...).

In English (informal translation):

We hereby inform FIFA that this party has notified the Respondent and this Respondent has informed us about its inability to pay the amounts due as it is under bankruptcy proceedings before the Ordinary Courts of Talca.

This statement leads us to request that this issue is dealt with in the Disciplinary Committee.

Furthermore, should these requests or sanctions of the Disciplinary Committee have no effect, we request to be provided with the decision of the Dispute Resolution Chamber in writing, with the apostille of The Hague, by regular post to Sarmiento 1574, piso 3° of “D” (CP 1042) of Buenos Aires in order to allow this player (regardless the actions that FIFA could take) to file its claim before the Court dealing with the bankruptcy of the condemned club.

On 4 August 2010, the Player claimed again that FIFA disciplinary bodies opened proceedings against Club Social y Deportivo Rangers de Talca, in the following terms:

Ponemos en conocimiento de FIFA, que hasta la fecha el club condenado no pagó la deuda con el jugador H., a pesar de que dicho jugador tiene sentencia del tribunal de FIFA a su favor y que dicho club ha iniciado normalmente sus actividades después de que este sea adquirido por nuevos propietarios.

Asimismo recordamos que esta parte ha notificado al club demandado.

Esta manifestación y a pedido de mi poderdante, nos lleva a solicitarles que la presente sea tratada en el tribunal de disciplina. (...)

In English (informal translation):

We hereby inform FIFA that at today's date, the Respondent did not pay the amount due to the player H. in spite of the FIFA's decision in his favour, and that this club has normally started its activities after being acquired by new owners.

Furthermore, we remind you that this party has notified the Respondent.

This statement leads us to request this issue is dealt with in the Disciplinary Committee.

On 10 August 2010, within the referred bankruptcy proceedings followed before the Courts of Talca, the Extraordinary Assembly of Creditors of Club Social y Deportivo Rangers de Talca agreed on the terms for sale, in public auction, of the economic unit composed of the assets of the referred club (the "Terms").

Among these Terms, the following are to be highlighted in light of the object of the dispute having given rise to these arbitration proceedings:

Bases Generales:

Las presentes bases se aplicarán a la venta en subasta pública y al mejor postor de la unidad económica constituida por todo el activo incautado en la quiebra de CLUB DE DEPORTES RANGERS DE TALCA

(...)

1.2 De la Quiebra

Club de Deportes Rangers de Talca, solicitó su propia quiebra por acuerdo de su asamblea de socios.

La sentencia de quiebra fue dictada por el 3° Juzgado de letras de Talca, en autos Rol N° 840-2009, con fecha 8 de mayo de 2009, que rola a fojas 167 de dichos autos. Su publicación en el Diario Oficial se efectuó el 27 de mayo de 2009 y consta a fojas 236.

A la fecha, la sentencia que declaró la quiebra se encuentra firme y ejecutoriada.

II DEL REMATE PÚBLICO

2.1. La Unidad económica comprende:

- Derechos federativos en la Asociación Nacional de Fútbol Profesional*
- Pases de Jugadores*
- Trofeos*
- Equipamiento deportivo y;*
- La totalidad de los bienes muebles inventariados en el proceso de la quiebra y hasta la fecha de adjudicación y que no hayan sido excluidos por causa legal durante la continuidad de giro fallido. Se hace presente que los activos en comento han estado sujetos al natural desgaste y/o consumo derivado de las actividades propias de la continuidad efectiva del giro singularizada precedentemente.*

A este respecto cabe hacer especial mención al hecho de que los activos a licitar dicen relación con el Club de Deportes Rangers de Talca, cuyos estatutos vigentes fueron otorgados mediante escritura pública de fecha 28 de diciembre de 1955, con el objeto de desarrollar la práctica y fomento del deporte en general y el fútbol en particular, proyectándose hacia la comunidad, promoviendo el mejoramiento moral e intelectual

de sus miembros, procurar el desarrollo de un espíritu de comunidad y solidaridad social entre sus integrantes, observando la más estricta imparcialidad política y religiosa.

(...)

- 2.2 *El adquirente deberá utilizar el activo subastado correspondiente al Club Deportivo Rangers de Talca, para desarrollar actividades deportivas.*
- 2.3 *Asimismo, el adquirente se obliga a cumplir con la Asociación Nacional de Fútbol Profesional, todas las obligaciones pecuniarias, administrativas, deportivas y de cualquier otra naturaleza que en la actualidad tenga la fallida y el Fondo del Deporte Profesional de Club de Deportes Rangers de Talca, y que digan relación directa o indirecta con su afiliación a dicho organismo y la práctica de deporte profesional.*
- 2.4 *Son elementos esenciales de la subasta pública, y por lo tanto, el adjudicatario está obligado a mantenerlos como inalterables e indivisibles, los siguientes:*
 - *La imagen del Club de Deportes Rangers de Talca, su nombre, escudos, himnos, emblemas, la camiseta y los colores rojo y negro.*
 - *El Club de Deportes Rangers deberá permanecer en la ciudad de Talca, como es tradicional, debiendo mantener su domicilio, además de la localía para eventos deportivos en dicha ciudad, salvo impedimento temporal por caso fortuito o fuerza mayor, y sólo por el término que dure dicho impedimento.*
 - *El adjudicatario deberá respetar el nombre de la institución, no pudiendo utilizar con fines políticos al Club de Deportes Rangers de Talca.*

(...)

- 3.1 *(...) Asimismo la ley 20.019 establece que son continuadores legales de los actuales clubes, fundaciones o corporaciones, las personas jurídicas que por cualquier acto, contrato o hecho jurídico, adquieran o gocen de igual derecho federativo o cupo y el lugar en la asociación deportiva profesional que corresponda.*

(...)

- 3.5. *La sola participación en la subasta importa para él o los oferentes la expresa aceptación y conocimiento de estas Bases, así como la obligación legal y comercial de someterse a las condiciones, requisitos y obligaciones que en ellas se establecen.*

In English (informal translation):

General Terms:

These terms shall apply to the sale, in public auction to the highest bidder, of the economic unit composed of all the assets seized under the bankruptcy proceedings of CLUB DEPORTES RANGERS DE TALCA.

(...)

1.2 *Bankruptcy*

Club de Deportes Rangers de Talca requested the declaration of bankruptcy by virtue of an agreement taken by its General Assembly.

The bankruptcy decision was issued by the 3rd Court of Talca, in the proceedings 840-2009, on 8 May 2009, folio 167, and was published in the Official Gazette on 27 May 2009, folio 236.

Nowadays the decision declaring the bankruptcy is final and binding.

II PUBLIC AUCTION

2.1 *The economic unit is composed of:*

- *Federative Rights at the National Association of Professional Football.*
- *Player's transfers*
- *Trophies*
- *Sporting equipment, and*
- *All the goods inventoried in the bankruptcy proceedings until the award's date which are not excluded due to legal reasons during the usual activity of the bankrupt entity. It shall be noted that these assets have been subject to regular use and/or consumption derived from the continuity of the ordinary activities of the bankrupt entity.*

In this regard, it shall be noted that all the assets to be auctioned are related to Club de Deportes Rangers de Talca, which articles of association still in force were granted in public document dated 28 December 1955, with the purpose of developing and fostering the practice of sport in general and football in particular, promoting the moral and intellectual improvement of the members of the community, looking for the development of the community and the social solidarity among its members, observing the strictest political and religious impartiality.

(...)

2.2 *The purchaser shall devote the auctioned assets corresponding to Club Deportivo Rangers Talca to the development of sporting activities.*

2.3 *Furthermore, the purchaser undertakes to fulfil with the National Association of Professional Football all the pecuniary, administrative, sporting and any other kind of obligations which are currently held by the bankrupt entity and the Professional Sport Fund of Club de Deportes Rangers de Talca and which are in relation, directly or indirectly, to its affiliation to the referred body and the practice of professional sport.*

2.4 *The following elements are essential, and therefore, the purchaser is obliged to maintain them unaltered and indivisible:*

- *The image of Club de Deportes Rangers de Talca, its names, badges, hymns, emblems, t-shirts and colours red and black.*
- *Club de Deportes Rangers shall remain in the city of Talca, as it is traditional, and shall maintain its domicile for sporting events in this city, unless temporary impediment due to act of god or force majeure takes place and only during the period of time in which the impediment exists.*
- *The purchaser shall respect the name of the institution and shall not use it for political purposes.*

(...)

3.1 *(...) Furthermore, Act 20.019 stipulates that the foundations, corporations or legal entities which by means of any act, agreement or legal fact acquire or enjoy the same federative right and place in the sporting professional association, are considered as legal successors of the current clubs.*

(...)

- 3.5. *The participation in the auction implies the express consent and knowledge of these terms as well as the legal and commercial obligation to be submitted to the conditions, requirements and obligations stipulated therein.*

On 19 August 2010, the company Piduco S.A.D.P. (“Piduco”) was set up in accordance with Chilean Law, with the following corporate purpose as per article 4 of its articles of association:

La sociedad tendrá por objeto exclusivo organizar, producir, comercializar y participar en actividades deportivas de carácter profesional y en otras derivadas o relacionadas o derivadas de éstas, en los términos dispuestos por la ley número 20019 y su Reglamento. Para tales efectos, y de conformidad a lo establecido en el artículo 17 de la ley 20019, los activos esenciales de la sociedad corresponderán a los siguientes, con el objeto de desarrollar, específicamente, el proyecto deportivo para el club de fútbol profesional Club de Deportes Rangers de Talca: (a) Los derechos federativos y de asociación del Club de Deportes Rangers de Talca en la Asociación Nacional de Fútbol Profesional de Chile; (b) La imagen del Club de Deportes Rangers de Talca, su nombre, escudos, himnos, emblemas, la camiseta y los colores rojo y negro. (c) Los complejos deportivos que la sociedad construyere para la ejecución del referido proyecto o de los que usare o gozare, a título de concesión, para el desarrollo de las actividades del Club de Deportes Rangers de Talca.

In English (informal translation):

The company shall have as exclusive purpose the organization, production, commercialization and participation in professional sporting activities or others related to or deriving from them, in the terms stipulated in Act 20019 and its Regulations. To such effects and in accordance with article 17 of Act 20019, the essential assets of the company for the purpose of developing the sporting project of Club de Deportes Rangers de Talca are the following: (a) the federative and association rights of Club de Deportes Rangers de Talca at the Chilean National Association of Professional Football; (b) The image of Club de Deportes Rangers de Talca, its names, badges, hymns, t-shirts and the colours red and black; (c) The sporting premises that the company would build for the execution of the referred project or premises that would use or enjoy for the development of the activities related to Club de Deportes Rangers de Talca.

On 26 August 2010, the public auction of Club Social y Deportivo Rangers de Talca’s assets took place. Piduco became the awardee in such auction, offering a price of 550.000.000 Chilean Pesos.

On 25 November 2010, the above-mentioned acquisition of assets was formalized in public document granted before a Notary of Talca.

On 14 June 2011, the Appellant sent a letter to FIFA in the following terms:

En respuesta a carta del 10 de junio de 2011, referente a oficio FIFA de fecha 07 del mismo mes, que guarda relación con el jugador H., Ref. no. 07-00483/cn. informamos a usted de lo siguiente:

1. *El Club Social y Deportivo Rangers de Talca fue declarado en quiebra según la legislación chilena, por ello, el síndico de quiebras liquidó los bienes de dicha corporación y Piduco S.A.P.D. ha adquirido en pública subasta la unidad económica que contempla el derecho a la participación en el torneo profesional de fútbol chileno, al uso del nombre Rangers de Talca y el uso de los colores tradicionales, los cuales son Rojo y Negro, adjudicado con fecha 15 de noviembre de 2010.*

2. *El síndico quien era responsable de liquidar los bienes del Club Social y Deportivo Rangers de Talca, además fue el encargado de verificar e impugnar las deudas que esa institución tenía, para lo cual, estableció una fecha de acreditación de deuda y procedió a cancelar a los acreedores con los montos recaudados por la venta de bienes y derechos que dicha organización tenía.*
3. *Por tanto, Piduco S.A.D.P., como propietario de los derechos federativos, los que fueron adquiridos en pública subasta, no ha asumido deuda anterior correspondiente al Club Social y Deportivo Rangers de Talca y alguna distinta de las que específicamente se hacen constar en la escritura de adquisición de la unidad económica.*

Por lo expuesto anteriormente solicito a ustedes informar a FIFA que el Club Social y Deportivo Rangers de Talca no tienen ninguna relación societaria con Piduco S.A.D.P. y que solo esta última adquirió en subasta pública los derechos explicados en el punto 1 anterior.

This letter may be informally translated into English as follows:

In response to the letter dated 10 June 2011, referred to FIFA's communication of 7th June, regarding the player H., we hereby inform you of the following:

1. *Club Social y Deportivo Rangers de Talca was declared bankrupt in accordance with Chilean Law. Therefore the bankruptcy receiver sold off all the assets of the entity and PIDUCO S.A.P.D. acquired in public auction the economic unit comprising the participation rights in the Chilean football championship, the use of the name Rangers de Talca and the use of the traditional colors, which are red and white, this being executed on 15 November 2010.*
2. *The receiver was in charge of selling off the assets of Club Social y Deportivo Rangers de Talca and was also in charge of verifying and challenging the debts that this entity had. As a result, the receiver established a deadline to accredit debts and paid the creditors with the amounts collected in the sale of assets of the entity.*
3. *Therefore, PIDUCO SADP, as the owner of the federative rights which were acquired in public auction, has not assumed any prior debt corresponding to Club Social y Deportivo Rangers de Talca or any other debt which is not foreseen in the document of acquisition of the economic unit.*

For the above mentioned reasons, I hereby inform FIFA that Club Social y Deportivo Rangers de Talca has no corporate relationship with PIDUCO SADP and the latter has only acquired in public auction the rights mentioned in point 1.

On 15 August 2011, FIFA, in accordance with article 64 of the its Disciplinary Code, opened disciplinary proceedings against Club Social y Deportivo Rangers de Talca as regards the failure of such club to comply with the terms of the FIFA DRC's decision dated 18 June 2009 mentioned above.

On 26 August 2011, FIFA informed Club Social y Deportivo Rangers de Talca and the Player that the case would be submitted to the Disciplinary Committee on 13 September 2011 and also granted a final deadline to Club Social y Deportivo Rangers de Talca for the payment of the amount due as regards the DRC's decision dated 18 June 2009.

On 1 September 2011, the Appellant sent a letter to FIFA in the following pertinent terms:

En respuesta a carta del 26 de agosto de 2011 (...), informamos a usted lo siguiente:

1. *El Club Social y Deportivo Rangers de Talca fue declarado en quiebra según la legislación chilena y como tal no existe. Para los efectos, PIDUCO S.A.D.P sólo se ha hecho acreedora de los Derechos Federativos del Club en cuestión para participar como tal en los campeonatos organizados por la Asociación Nacional de Fútbol ANFP de Chile.*
2. *Por tanto, PIDUCO SADP no ha asumido deuda anterior correspondiente al Club Social y Deportivo Rangers de Talca y alguna distinta de las que específicamente se hacen constar en la escritura de adquisición de la unidad económica.*

The above-mentioned letter can be informally translated into English as follows:

In response to your letter dated 26 August 2011 (...), we hereby you inform you that:

1. *Club Social y Deportivo Rangers de Talca was declared bankrupt in accordance with Chilean Law and as such, it does not exist anymore. For your reference, PIDUCO SADP has only acquired the federative rights of the relevant club for competing as such in the championships organized by the Chilean National Association of Professional Football.*
2. *Therefore, PIDUCO SADP has not assumed any prior debt corresponding to Club Social y Deportivo Rangers de Talca or any other debt that is not provided for in the document of acquisition of the economic unit.*

On 6 September 2011, FIFA sent a letter to the Chilean Football Federation asking for some information on the situation of Club Social y Deportivo Rangers de Talca, this request being answered by the referred federation on 12th October 2011 in the following terms:

1. *¿Se encuentra el Club Social y Deportivo Rangers de Talca aún afiliado a su Federación?*

A fin de evitar confusiones terminológicas o semánticas debe aclararse que la Corporación Civil Club Social y Deportivo Rangers de Talca, parte en el proceso en el que se libra el oficio en respuesta ya no se encuentra afiliada a esta Asociación, en virtud de habersele decretado la quiebra o procedimiento concursal en que en virtud del cual se adquirió por los nuevos dueños.

2. *¿Reconoce la Federación de Fútbol de Chile al club Rangers De Talca como acreedora de los Derechos Federativos del Club Social Rangers de Talca?*

Me remito a lo anterior.

3. *Una vez finalizado el proceso de liquidación del Club Social Rangers de Talca, ¿permaneció el club Rangers de Talca en la misma categoría a la que pertenecía el club liquidado?*

Aún no concluye el proceso de quiebra o liquidatorio. Rangers de Talca hoy es una nueva entidad (PIDUCO SADP), que participa en la misma categoría que el club quebrado.

Asimismo, no es continuadora ni ha asumido pasivo o reclamo alguno que corresponda el Club Social Rangers de Talca hoy quebrado, siendo todas estas cuestiones objeto del proceso de quiebra mencionado por lo que no tiene vinculación ni relación institucional, económica, deportiva ni disciplinaria. Ambas son corporaciones o personas jurídicas distintas

4. *¿Mantuvo el club Rangers de Talca el mismo nombre, colores y derechos deportivos de los jugadores que previamente pertenecían al Club Social Rangers de Talca?*

PIDUCO S.A.D.P. mantuvo a los fines deportivos el mismo nombre y colores que el club quebrado pero no asumió los derechos deportivos de los jugadores que finalizaron su relación de trabajo con la declaración de quiebra del club anterior.

Según nuestros registros el actual Club Deportivo no tuvo ni tiene relación alguna con el reclamante en este proceso.

In English (free translation):

1. *Is Club Social y Deportivo Rangers de Talca still affiliated to your Federation?*

In order to avoid any terminological or semantic confusion, it shall be clarified that Corporación Civil Club Social y Deportivo Rangers de Talca, to which this answer refers to, is not affiliated to this Association anymore as it was declared bankrupt, being it acquired by new owners.

2. *Does the Chilean Football Federation recognize Club Rangers de Talca as the owner of the Federative Rights of the Club Social Rangers de Talca?*

I refer to my precedent answer.

3. *Once the winding up proceedings of the Club Social Rangers de Talca have ended, does Club Rangers de Talca remain in the same division than the winded-up club?*

The bankruptcy proceedings are still ongoing. Rangers de Talca is nowadays a new entity (PIDUCO SADP) that competes in the same category of the bankrupt club.

Furthermore, PIDUCO SADP is not a successor and it did not assume any liability or claim which corresponds to the bankrupt entity Club Social Rangers de Talca, being all those issues object of the referred bankruptcy proceedings and, thus, it has no link or corporate, economic, sporting or disciplinary relationship with such entity. Both are different legal entities.

4. *Did Club Rangers de Talca maintain the same name, colors and sporting rights of the players that previously belonged to Club Social Rangers de Talca?*

PIDUCO S.A.D.P. maintained the same sporting purposes, name and colours of the bankrupt club but it did not assume the sporting right of the players, who terminated their labour relationship due to the bankruptcy of the precedent club.

In accordance with our records, the current Club Deportivo has no relationship of any kind with the claimant in these proceedings.

On 13 October 2011, the FIFA Disciplinary Committee passed the following decision (the "Decision") in the proceedings opened on the basis of article 64 of the FIFA Disciplinary Code:

1. *El Club Rangers de Talca es hallado culpable de incumplimiento de la decisión de un órgano de la FIFA de acuerdo con el art. 64 del CDF.*
2. *Se condena al Club Rangers de Talca a pagar una multa de 2,000 CHF (francos suizos). La multa deberá abonarse en los treinta (30) días siguientes a la notificación de la presente decisión.*
3. *El deudor tiene un último plazo de 30 días a partir de la notificación de la decisión para saldar su deuda con el acreedor.*

4. *Si el pago no se efectúa dentro de este plazo, el acreedor podrá solicitar por escrito a la Comisión Disciplinaria de la FIFA la deducción de tres (3) puntos al primer equipo del club deudor en el campeonato nacional. Una vez que esta solicitud haya sido realizada, los puntos deberán obligatoriamente ser deducidos automáticamente, sin que la Comisión Disciplinaria de la FIFA tenga que tomar una decisión formal. La secretaría de la Comisión Disciplinaria de la FIFA dará a la asociación en cuestión la orden de ejecución de la deducción de puntos.*
5. *Si, tras la deducción de los puntos conforme a lo estipulado en el punto III/4., el club deudor sigue sin saldar su deuda, la Comisión Disciplinaria de la FIFA decidirá sobre una posible relegación del primer equipo del club deudor a la categoría inmediatamente inferior.*
6. *Se recuerda a la Federación de Fútbol de Chile que está a cargo de la correcta ejecución de la presente decisión y de suministrar a la FIFA los documentos que confirmen que ha procedido a la deducción de puntos en caso de solicitársele el particular. En el caso de que exista una ejecución incorrecta o la omisión de la ejecución por parte de la Federación Chilena de Fútbol, la Comisión Disciplinaria de la FIFA adoptará las sanciones disciplinarias apropiadas que incluso pueden conllevar la exclusión de toda competición de la FIFA.*
7. *La Comisión decide fijar las costas y gastos en CHF 500, mismas que en aplicación de lo establecido en el art. 105, apdo. 1 del CDF quedan a cargo del deudor. Este monto se deberá pagar observando las modalidades de pago establecidas en el punto III./2. ut supra.*
8. *El acreedor se compromete a informar a la secretaría de la Comisión Disciplinaria de la FIFA sobre los pagos efectuados por el club deudor.*

In English (informal translation)

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

7. *The costs of these proceedings amounting to CHF 500 are to be borne by the debtor. The costs shall be paid according to modalities established under point III./2. above.*
8. *The creditor is directed to notify the secretariat to the FIFA Disciplinary Committee of every payment received.*

FIFA mainly grounds this Decision in the fact that even if Club Social y Deportivo Rangers de Talca became bankrupt, the sanction based on article 64 of the FIFA Disciplinary Code is extendable to the Appellant as sporting successor of the former entity, given that it (i) has recognized being the owner of the federative rights of the former club, (ii) competes in the same category of the former club, (iii) maintains the name, badge, and colours of the former club and (iv) assumes as its own history the one of the former club.

On 23 November 2011, the Appellant filed the relevant Statement of Appeal against the Decision before the CAS, and a request for provisional measures (stay of execution of the Decision), which afterwards was withdrawn given that the Respondent did not oppose to the referred stay.

On 5 December 2011, the Appellant filed its Appeal Brief before the CAS, in which it requested the CAS:

1. *Que la decisión de la Comisión Disciplinaria de FIFA en el caso de referencia es dejada sin efecto.*
2. *Que PIDUCO S.A., CLUB RANGERS DE TALCA no es responsable por el pago de la deuda laboral del jugador H.*
3. *Que no existe fundamento legal a la luz del derecho suizo aplicable (art 333 CO) para extender a PIDUCO S.A. la responsabilidad por las deudas laborales anteriores a la quiebra de la Asociación Civil Rangers.*
4. *Que PIDUCO S.A., CLUB RANGERS DE TALCA adquirió el registro federativo del club, quedando obligado al uso de su nombre, palmares y colores, en una subasta judicial efectuada en el marco de un proceso de quiebra, en el que se determinó –con carácter de res judicata- que PIDUCO S.A. no asumía ninguna de las deudas anteriores a la adquisición por subasta.*
5. *Que en consecuencia, también la multa de CHF 2.000 (punto 2 de la decisión apelada) es dejada sin efecto.*
6. *Que en consecuencia, la sanción de deducción de 3 puntos, si el pago a H. no se verifica en 30 días (punto 4 de la decisión apelada) es dejada si efecto.*
7. *Que toda otra sanción prevista y/ o anticipada en la decisión apelada (puntos 5 y 6 de la decisión apelada) es dejada sin efecto.*
8. *Que los costos del procedimiento disciplinario (CHF 500, punto 7 de la decisión apelada) son dejados sin efecto.*
9. *Que los costos del presente procedimiento serán a cargo de FIFA íntegramente, así como una suma en contribución a los costos del apelante, que esta parte estima en CHF 10.000.-*

The above-mentioned requests can be informally translated into English as follows:

1. *The decision of the FIFA Disciplinary Committee is left without effect.*

2. *PIDUCO S.A., CLUB RANGERS DE TALCA is not liable for the payment of the labour debt to the player H.*
3. *There is no legal ground under Swiss Law (art 333. CO) for extending to PIDUCO S.A. the liability for the labour debts accrued before the bankruptcy of the Asociación Civil Rangers.*
4. *PIDUCO S.A., CLUB RANGERS DE TALCA acquired the federative registry of the club, being obliged to use the name, records and colours, in a public auction celebrated within the frame of bankruptcy proceedings, in which it was established -with res judicata nature- that PIDUCO SA would not assume any of the debts prior to the acquisition in auction.*
5. *Therefore, the fine of CHF 2.000 is also left without effect (point 2 of the appealed decision).*
6. *Therefore, the sanction of 3 points deduction if the payment to H. is not verified within 30 days (point 4 of the appealed decision), is left without effect.*
7. *All other sanctions provided for and/or envisaged by the appealed decision (points 5 and 6 of the appealed decision) are left without effect.*
8. *The costs of the disciplinary proceedings (CHF 500, point 7 of the appealed decision) are left without effect.*
9. *The costs of the present proceedings shall be borne by FIFA in its entirety, as well as an amount of CHF 10.000 as contribution for the costs incurred by the Appellant.*

On 9 January 2012, FIFA filed its answer to the Appeal Brief, in which it requested the CAS to render an award in the following terms:

1. *To reject the Appellant's requests' for relief in their entirety.*
2. *To confirm the decision hereby appealed.*
3. *To order the Appellant to bear all costs incurred with the present procedure and to cover all legal expenses of the Respondent related to the present procedure.*

A hearing took place in Lausanne on 20 March 2012. Both at the beginning and at the end of the hearing, the parties expressly declared that they were satisfied with the way in which the proceedings had been conducted.

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS to decide on the present case arises out of Articles 62 and 63 of the FIFA Statutes, article 64 of the FIFA Disciplinary Code and Article R47 of the code of Sport-related arbitration (hereinafter referred to as the "CAS Code"). In addition CAS jurisdiction has

been expressly accepted by the parties, which signed the Order of Procedure of the present case.

2. Therefore, the Panel considers that CAS is competent to decide on this case.

Applicable law

3. Article R58 of the CAS Code reads as follows:

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

4. Article 62.2 of the FIFA Statutes states the following:

The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.

5. In accordance with these provisions the Panel understands that the present dispute shall be resolved according to the FIFA Regulations and additionally Swiss Law, without detriment to the effects that Chilean Law may have on Chilean bankrupt companies to the extent appropriate.

About the dispute submitted to the Panel by the Parties

A. The object of the dispute

6. According to the parties' written submissions and the arguments raised by them in the hearing, the object of the dispute may be briefly summarized as follows:
 - (i) The Appellant considers that the Decision should be set aside as, in its opinion, the sanction imposed therein (a) does not refer to it, but to a club (Club Social y Deportivo Rangers de Talca) which does not exist anymore, and (b) is not extendable to the Appellant, which is a different entity that only purchased assets from the former extinct club.
 - (ii) The Respondent claims that the Decision, based on article 64 of the FIFA Disciplinary Code, be confirmed, essentially on the basis that the Appellant is a mere successor of Club Social y Deportivo Rangers de Talca and thus the sanction imposed in the Decision has to be served by it.

B. *Club Social y Deportivo Rangers de Talca vs. Club Rangers de Talca (Piduco). Succession*

7. In light of the argumentation followed by FIFA in its Decision, the Panel shall start its considerations and the examination of the *quaestio litis* by determining if the Appellant is to be considered a successor of Club Social y Deportivo Rangers de Talca, the entity which was ordered by the FIFA DRC to pay the sum of 21.000 USD to the Player and against which the disciplinary proceedings under article 64 of the FIFA Disciplinary Code were opened.
8. In this respect the Panel, after examining the facts and evidence brought to the proceedings, has noted that:
- (i) Piduco was set up with the specific purpose of acquiring the assets of Club Social y Deportivo Rangers de Talca. The terms of Piduco's incorporation deed are crystal clear in this regard.
 - (ii) The Appellant acquired from Club Social y Deportivo Rangers de Talca, within the frame of the bankruptcy proceedings followed before the Courts of Talca, the "*economic unit composed of all the assets seized under the bankruptcy proceedings of CLUB DEPORTES RANGERS DE TALCA, this including (i) Federative Rights at the National Association of Professional Football, (ii) Player's transfers, (iii) Trophies, (iv) Sporting equipment and (v) All the goods inventoried in the bankruptcy proceedings until the award's date which are not excluded due to legal reasons during the usual activity of the bankrupt entity*", with the purpose of devoting such economic unit to the development of sporting activities (clauses 2.1 and 2.2 of the Terms).
 - (iii) In the referred acquisition, the Appellant accepted and committed itself to maintain unaltered "*the image of Club de Deportes Rangers de Talca, its names, badges, hymns, emblems, t-shirts and colours red and black*" (clause 2.4 of the Terms), and in fact it complied with this commitment, at least according to the parties' statements and the evidence taken in these proceedings.
 - (iv) After the acquisition of assets and until today's date, Club Rangers de Talca remained in the city of Talca as requested in the Terms (clause 2.4).
 - (v) Clause 3.1 of the Terms expressly states in pertinent part that "*Act 20.019 stipulates that the foundations, corporations or legal entities which by means of any act, agreement or legal fact acquire or enjoy the same federative right and place in the sporting professional association, are considered as legal successors of the current clubs*" [emphasis added].
 - (vi) Clause 2.3 of the Terms foresees the obligation of the assets' purchaser of fulfilling some commitments of the bankrupt entity (not all of them, as FIFA wrongfully holds in its answer to the appeal, but some of them):
"Furthermore, the purchaser undertakes to fulfil with the National Association of Professional Football all the pecuniary, administrative, sporting and any other kind of obligations which are currently held by the bankrupt entity and the Professional Sport Fund of Club de Deportes Rangers de Talca and which are in relation, directly or indirectly, to its affiliation to the referred body and the practice of professional sport" [emphasis added].
9. In the same line, the Panel shall underscore that Club Rangers de Talca took the position formerly held by Club Social y Deportivo Rangers de Talca in the Chilean sporting institutions

and championships. In fact, one of the assets acquired by Piduco is the “*federative rights in the Asociación Nacional de Fútbol Profesional*”. This has been confirmed by the Appellant in (i) its letter of 14 June 2011, in which it is stated that that the Appellant acquired from Club Social y Deportivo Rangers de Talca “*the participation rights in the Chilean football championship*”, and (ii) in its letter of 1st September 2011, in which the Appellant acknowledges to have “*acquired the federative rights of the relevant club for competing as such in the championships organized by the Chilean National Association of Professional Football*”. The Chilean Football Federation, in its letter of 30 September 2011, confirmed this position as well.

10. All the above-mentioned considerations have led the Panel to conclude that indeed, the Appellant is to be understood as a successor of Club Social y Deportivo Rangers de Talca. It is clear for the Panel that with the assets purchased to Club Social y Deportivo Rangers de Talca, it continued the activity formerly developed by the referred club with the same image, badge, hymn, representative colours, emblems and placement, and is on the basis of the federative rights acquired in the auction that it has been participating, and currently participates, in the Chilean competitions replacing the former club. In other words and in practice, the “new club” took the position and activities performed by the former one, with the consent and approval of the Chilean Football Federation.
11. It is precisely on the basis of this situation of succession that FIFA, even if it was entitled (not obliged) to close disciplinary proceedings under article 107 of the FIFA Disciplinary Code in light of the situation of bankruptcy of Club Social y Deportivo Rangers de Talca, could legitimately decide to continue with such proceedings as it did, being unacceptable, in the Panel’s view, that in this case FIFA was compelled to drop or close the case by any customary practice on the application of the mentioned article 107, which in addition, if such practice exists, has not been sufficiently proven by the Appellant.

C. *Effects of the succession in the case at stake. Does it necessarily mean that the Appellant is to be sanctioned?*

12. The next issue to addressed by the Panel is if in spite of its quality of successor of Club Social y Deportivo Rangers de Talca, the Appellant is to be sanctioned in the way foreseen in the Decision or not.
 - a) General considerations
13. In this respect, the Panel shall firstly recall that the sanction imposed in the Decision is based on the previous failure to comply with a FIFA order to pay a sum deriving from a labour credit.
14. In accordance with Swiss Law, and in particular with article 333 para. 3 of the Swiss Code of Obligations, the new employer (acquirer) and the former employer (transferor) are joint and severally liable for any claims of an employee which fell due prior to the transfer of the company or of part of it (“*L’ancien employeur et l’acquéreur répondent solidairement des créances du travailleur échues*”).

dès avant le transfert jusqu'au moment où les rapports de travail pourrait normalement prendre fin ou ont pris fin par suite de l'opposition du travailleur).

15. Taking this provision into account, in the case at stake one could hold that the Appellant, which acquired an “economic unit” from Club Social y Deportivo Rangers de Talca, should be liable for labour debts of such former club, and that the effects of the failure to pay these debts (*i.e.* sanctions under article 64 of the FIFA Disciplinary Code) should be also applied on it as successor.
16. Against the above-explained position the Appellant has argued that in this specific case, the fact that the sanctioned club was in bankruptcy makes a difference and prevents the application of the effects of the succession on the Appellant (*i.e.* the sanction imposed by Decision).
17. The Appellant intends to rely on a Decision of the Swiss Federal Court (ATF 129 III 335) related to article 333 of the Swiss Code of Obligations (the “TF Decision”), which considers that an exception to the cited principle of succession has to be made in certain cases of acquisition of bankrupt entities.

18. The summary in French of the TF Decision provided by the Appellant reads as follows:

Celui qui acquiert une entreprise et poursuit avec les travailleurs les rapports de travail existant avant la reprise ne répond pas de créances de salaires pendantes, qui étaient devenues exigibles avant la reprise, si la reprise de l'entreprise est survenue à la suite de la faillite du précédent employeur.

In English (informal translation):

The purchaser of a company which keep the employees which contracts existed before the re-activation is not liable for pending salary credits which have become demandable before the re-activation, if such re-activation takes place following the bankruptcy of the former employer.

19. After analyzing this argument raised by the Appellant, the Panel cannot share its view on the non-applicability of the Decision on the Appellant based on the cited alleged exception to the general principle of succession in cases of bankruptcy, mainly for the following reasons:
 - (i) The Panel is not persuaded that the exception gathered in the TF Decision shall apply to the present case, as the circumstances of one case and the other are neither equivalent nor completely comparable. In our case, the transaction involved was a transfer of assets from a bankrupt entity to a newly incorporated company (and not of a bankrupt company or entity), and no re-activation of the transferring entity (Club Social y Deportivo Rangers de Talca) took place – in fact it was not possible, as this entity disappeared and did not exist anymore. Needless to say that only this TF Decision, and not broad and consolidated Swiss jurisprudence, has been brought by the Appellant to sustain its position.
 - (ii) In any case, at the time of the opening of the disciplinary proceedings (August 2011), the situation of bankruptcy had been removed months ago, and thus payment of credits were at that time not restricted at all by legal provisions ruling the bankruptcy proceedings.

The Panel is aware that in most bankruptcy legal systems worldwide (including the Chilean “Ley de Quiebras”), a bankrupt entity, while the bankruptcy proceedings are still going on, cannot freely pay the debts accrued before the declaration of bankruptcy, this mainly as regards the general principle of *par conditio creditorum*. In fact, in the last times it is not unusual to see in the market of football that clubs which are declared bankrupt become, in accordance with the national laws ruling the bankruptcy proceedings, prevented from paying their debts in an immediate and entire manner. This situation is logically provoking undesired inequities in the referred market at international level, where clubs in bankruptcy enjoy the privileges of the bankruptcy proceedings while the other clubs are forced to honour their commitments in full and timely manner, all of them playing in the same competitions. Such inequity of treatment and opportunities is clearly against the essential principles of the so-called “lex sportiva”.

It may be thus discussible that a club which in accordance with its national laws, is not allowed to make payments due to its situation of bankruptcy, can be sanctioned as regards a failure to pay something which it is not allowed to pay, but this is not the case hereto, as no restriction to the capacity to pay could take place in August 2011, as the bankruptcy proceedings had finalized well before (it shall be recalled that the sale of assets was formalised in public deed on 25 November 2010). In other words, it was on the Appellant’s hands to pay and avoid the sanction, not being limited by any legal prohibition or restriction.

20. Therefore, in the Panel’s opinion, the Appellant, successor of the entity obliged to the payment of the labour debt ordered in the FIFA DRC in its Decision of 18 June 2009, (i) became bound to pay such debt, (ii) was not legally prevented from paying it and (iii) thus, should, at least theoretically, bear the consequences of such failure to pay.
21. In line with the above-mentioned, the Panel resolves that the requests for relief contained in points 2, 3 and 4 of the Appeal’s brief petitem, even if it is discussible that a decision on them shall be rendered given its declarative nature and the scope of this appeal (confirm or revoke a sanction), are in any case to be dismissed.
 - b) *In casu*
22. At this stage, the Panel shall decide if in this particular case and in spite of the considerations made in section C.a) of this award, the Appellant shall bear the consequences (sanctions) foreseen in the Decision.
23. For the reasons explained below, the Panel considers that it shall not.
24. The Panel shall remind again in this respect that the Decision, and the sanctions imposed therein under article 64 of the FIFA Disciplinary Code, are based on the previous failure of a club to comply with an order of FIFA to pay a labour credit to a player.

25. Having this in mind, in accordance with the letter sent by the Player to FIFA on 10 September 2009, the Panel deems undisputed that the Player (i) knew from the very beginning about the existence of the bankruptcy proceedings and (ii) even declared his intention to claim for his credit in these proceedings. This letter, in pertinent part, reads as follows (translation into English):

We hereby inform FIFA that this party has notified the Respondent and this Respondent has informed us about its inability to pay the amounts due as it is under bankruptcy proceedings before the Ordinary Court of Talca.

This statement leads us to request that this issue is dealt with in the Disciplinary Committee.

Furthermore, should these requests or sanctions of the Disciplinary Committee have no effect, we request to be provided with the decision of the Dispute Resolution Chamber in writing, with the apostille of The Hague, by regular post to Sarmiento 1574, piso 3° of "D" (CP 1042) of Buenos Aires in order to allow this player (regardless the actions that FIFA could take) to file its claim before the Court dealing with the bankruptcy of the condemned club.

26. It is also clear that in accordance with Chilean Law (and in particular with article 148 of the "Ley de Quiebras" and article 2472 of the Chilean Civil Code), the salary credits, as it happens in other bankruptcy legal systems like the Swiss one, are considered privileged credits in the bankruptcy proceedings, that is to say, with priority of recovery before the ordinary ones, and are claimable within the bankruptcy proceedings.
27. This being said, in accordance with the evidence taken in these proceedings (*i.e.* the letter of the bankruptcy's receiver – "*síndico*" – dated 6 March 2012, not challenged by FIFA), the Player apparently decided not to claim for his labour debt in the bankruptcy proceedings, in spite of (i) being aware of these proceedings and (ii) having announced his intention to do so.
28. This, in the Panel's opinion, is to be considered as a lack of dilligence of the Player in recovering his credit that shall have an impact in the present case.
29. It has been proven in the present proceedings that the Appellant paid a considerable amount of money to acquire the assets of the bankrupt entity, and that this amount was used to pay the credits of such entity. The Player, who held a privileged labour credit, could thus have moved forward to recover such prioritary credit from this amount arising out of the assets' sale, but he failed to do so.
30. Therefore, the Player somehow contributed not to remove the prerequisite leading to the sanction imposed on the Decision: the lack of payment of the debt ordered in the FIFA DRC decision of 18 June 2009. His inactivity did not foster the recovery of the debt and hence the elimination of the circumstances of fact which gave rise to the sanction imposed by the Decision.
31. At the present stage the Panel cannot ascertain if the Player would have received the sum of his credit in case he had duly claimed for it in the bankruptcy proceedings, but it was at least a feasible theoretical possibility that could have happened (especially taking into account the privileged nature of his credit) and which would have provoked that the order of payment issued

by the FIFA DRC was complied and thus, that the sanction imposed in the Decision became groundless. The Panel is of the view that the Player should have explored such possibility, should have communicated his credit in the bankruptcy proceedings as he previously announced, should have tried to get the money and not simply remain passive, additionally pretending that disciplinary sanctions are imposed irrespective of his diligence or negligence in trying to achieve a result (recovery of the debt) that would remove the ground of the sanction.

32. In this state of affairs, the Panel considers that no sanction shall be applied in this case.
33. Therefore, in this specific case and given the particularities described above, the Panel resolves that the Decision shall be revoked and thus that the sanctions imposed on the Appellant therein are left without effect.

The Court of Arbitration for Sport rules:

1. The appeal filed by Club Rangers de Talca on 23 November 2011 is upheld.
 2. The decision of the FIFA Disciplinary Committee dated 13 October 2011 imposing sanctions on Club Rangers de Talca is set aside and left without effect.
- (...)
5. All other motions and/or prayers for relief are dismissed.