



**Arbitration CAS 2014/A/3523 Club de Fútbol Atlante S.A. de C.V. v. Federación Mexicana de Fútbol (FMF) & Club Atlas F.C., award of 31 October 2014**

Panel: Mr Dirk-Reiner Martens (Germany), President; Prof. Massimo Coccia (Italy); Mr Michele Bernasconi (Switzerland)

*Football*

*Multiple ownership*

*Limits to the CAS Panel's power of review*

*Question whether or not FIFA provisions must be applied by a body of another legal entity*

*FMF Statutes and Regulations on the issue of multiple ownership*

*FIFA rule on multiple ownership*

1. While the *de novo* nature of the CAS Appeal Procedure allows a CAS panel to take new facts into account, it does not free the panel from the inherent constraint of any appeal procedure, which must remain within the scope of the first instance decision. By deciding upon a decision which was not the subject matter of the first instance, the CAS panel itself might be deemed to effectively decide as a first instance, thus exceeding its mandate.
2. The question whether or not FIFA provisions must be applied by a body of another legal entity cannot possibly be answered by a FIFA provision. Rather, the answer can only be given by the regulations governing that other legal entity. In addition, and in line with the concept of separate legal entities, Article 13(1) of the FIFA Statutes concerns solely the relationship between FIFA on the one side and its members on the other side.
3. The FMF Statutes and Regulations do not directly regulate the issue of multiple ownership. However, a gap to be filled under Article 49.17 of the FMF Statutes presupposes an inadvertent lack of regulations on a given issue. Article 49.17 of the FMF Statutes is not supposed to incorporate the FIFA regulations on multiple ownership.
4. The FIFA rule on multiple ownership is not absolute but is based on a case-by-case assessment of the jeopardy caused to the integrity of football matches or competitions. Whether or not the integrity of a match or competition is jeopardised is a very intricate assessment which necessarily must be based on profound knowledge of the match or competition in question. For this reason, the competent sporting bodies must have a certain degree of discretion in making that determination. In order to avoid becoming the decision-maker itself instead of merely reviewing the decision-maker's decision, it is appropriate for a CAS panel to allow a certain margin of discretion to the sporting bodies' assessment. The panel may intervene only if such assessment is either based on materially incorrect or incomplete fact-finding on the part of the sporting body or if its decision is obviously inappropriate for other reasons.

## **I. BACKGROUND**

### **1. Parties**

1. Club de Fútbol Atlante S.A. de C.V. (the “Appellant” or “Atlante”) is a professional football club based in Cancún, Mexico. During the last years, it played in the first Mexican professional division, the “Liga MX”. However, it was relegated after the end of the “Torneo Clausura” in May 2014 (each Liga MX season consists of two tournaments, the “Torneo Apertura” and the “Torneo Clausura”). Thus, Atlante is now playing in the second division, the “Ascenso MX”.
2. Federación Mexicana de Fútbol (the “First Respondent” or FMF) is the national football federation of Mexico. It is a member of the Fédération Internationale de Football Association (FIFA) and of the Confederation of North, Central America and Caribbean Association Football (CONCACAF).
3. Club Atlas F.C. (the “Second Respondent” or “Atlas”) is a professional football club based in Zapopan, Mexico. It is currently playing in the Liga MX.
4. Hereinafter, the Appellant and the Respondents are collectively referred to as the “Parties”.

### **2. Introduction**

5. In broad terms, during the 2014 “Torneo Clausura” of the Liga MX, Atlas requested that the General Assembly of the Liga MX authorizes the sale of Atlas to a new owner. A simple majority of clubs voted in favour of that request on 2 December 2013 (the “Liga MX Resolution”). Atlante subsequently filed an action for annulment before the FMF Executive Committee. The request for annulment was dismissed by a decision dated 14 February 2014, served on the Appellant on 18 February 2014 (the “FMF Decision”). With the present appeal (the “Appeal”), Atlante requests the Panel to annul the FMF Decision.

### **3. Facts**

6. Below is a summary of the main relevant facts, as established on the basis of the Parties’ written submissions and their pleadings at the hearing. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
7. On 20 May 2013, the General Assembly of the Liga MX adopted a resolution known as “Decálogo”. The aim of the Decálogo was to eventually do away with the long-standing history of multiple ownership in Mexican football, i.e. single parties owning property or interest in more than one club. According to the Decálogo, whose scope of application is limited to the Liga MX, multiple ownership shall be prohibited as of 2018. Moreover, with immediate effect, the Decálogo prohibits that any owner of one or more Liga MX Clubs acquires property or interest in any further Liga MX Club.
8. Both before and after the Decálogo was adopted, Atlas faced an extended period of economic problems. Atlas implemented a number of measures to avoid financial ruin. However, such

measures did not prove to be sufficient. This left Atlas' owner, a company named F.C. Atlas, A.C., with the option of either liquidating the assets of Atlas or selling the club. In order to preserve Atlas' rich history, certain conditions to be fulfilled by potential buyers were defined, including e.g. that the club had to remain in Zapopan and that the source of funding for the sale had to be identified. The only interested party that met all conditions was TV Azteca, a TV network owned by Grupo Salinas.

9. By letter dated 29 November 2013, Mr. Eugenio Ruiz, the President of Atlas, wrote to Mr. Decio de Maria Serrano, the President of the Liga MX, to inform him and the other owners of the member clubs of the Liga MX that on 25 November 2009, the board of F.C. Atlas, A.C. had unanimously approved the sale of Atlas to TV Azteca. As was later clarified, the sale was conducted by way of an asset deal, and the assets actually were not sold to TV Azteca, but to its wholly owned subsidiary company Club de Fútbol Rojinegros, S.A. de C.V.
10. TV Azteca, however, at that time already owned another Liga MX club by the name of Club Monarcas Morelia ("Monarcas").
11. On 2 December 2013, a General Assembly of the Liga MX was held and the clubs discussed the proposed sale of Atlas. The minutes of that Assembly – the accuracy of which is disputed by Atlas (see below paras. 61 *et seq.*) – report *inter alia* the following: The clubs discussed the issue of whether or not the sale could be authorized as an exception to the Decálogo. During the discussion, Atlante made an objection to the effect that a substitution in ownership on a club's Certificate of Affiliation – which is effectively a license – could not be effected in the middle of the season. The President of the Liga MX replied that a substitution was possible under the applicable rules if the economic stability of a club was in grave danger, and that in any event the 2 December 2013 Assembly was only concerned with a potential exception from the Decálogo, not with a substitution in ownership on Atlas' Certificate of Affiliation. The clubs Atlante, Monterrey, Toluca and Tigres opposed granting Atlas an exception to the Decálogo, stating that a different solution should be found for the situation. The clubs León and Pachuca voiced the opinion that if an exception was granted, it should be granted to all clubs, so that their owners could purchase further clubs before 2018. Eventually, 11 clubs voted in favour of and 7 clubs against "*modificar el 'decálogo'*", i.e. modifying the Decálogo, to the effect that TV Azteca was allowed to purchase Atlas, but needed to dispose of one of its two clubs by the end of the first trimester of 2016.
12. On 5 December 2013, Atlante filed an action before the FMF Executive Committee seeking "*nullidad de acuerdo de sustitución de certificado de afiliación*", i.e. annulment of the resolution to substitute the Certificate of Affiliation. In its submission to the FMF Executive Committee, Atlante contended that this resolution was taken at the above described 2 December 2013 General Assembly of Liga MX Clubs. In support of its request, Atlante argued that (i) the requisite majority of 80% for substitution of the Certificate of Affiliation had not been reached, (ii) no such substitution was possible in the middle of the season, and (iii) the substitution would contravene the Decálogo and FIFA's rules against multiple ownership.
13. By letter dated 18 December 2013, the FMF Secretary General informed the FMF President that the Office of the Secretary General, being the body in charge of administrating the

Certificates of Affiliation, to that date had not received a request for substitution of Atlas' Certificate of Affiliation. He further noted that the 2 December 2013 Assembly of Liga MX Clubs had only discussed a modification of the Decálogo, not a substitution of Atlas' Certificate of Affiliation.

14. On 10 January 2014, Liga MX sent the draft minutes of the 2 December 2013 General Assembly to its clubs. By letter dated 13 January 2014, Atlante submitted to the FMF that the minutes did not accurately reflect what had actually occurred at that General Assembly, and asked the FMF to amend the minutes so as to show that the substitution of Atlas' Certificate of Affiliation was approved. By letter dated 24 January 2014, the FMF President replied that it was currently impossible to change the minutes since they were still under review by the other Liga MX Clubs.
15. On 13 February 2014, the FMF Executive Committee rendered the FMF Decision dismissing Atlante's request for annulment. In its reasoning, the FMF Executive Committee found that there were no irregularities or violations of the applicable rules and regulations as regards the modification of the Decálogo. Furthermore, it noted that the FMF Secretary General had already stated that the Liga MX Resolution did not concern a substitution of Atlas' Certificate of Affiliations. Therefore, the FMF Executive Committee concluded that it was not appropriate to uphold Atlante's request to annul a resolution on the substitution Atlas' Certificate of Affiliation.
16. By letter to the FMF Secretary General dated 14 March 2014, the President of F.C. Atlas, A.C., i.e. the legal entity holding Atlas' Certificate of Affiliation, requested the initiation of the procedure for the substitution of Atlas' Certificate of Affiliation.
17. On 12 May 2014, i.e. almost two months after the present CAS proceedings had been initiated, the General Assembly of the Liga MX unanimously approved the minutes of its 2 December 2013 meeting (see above para. 11) and approved the substitution of Atlas' Certificate of Affiliation so that it could now be held by Club de Fútbol Rojinegros, S.A. de C.V. It must be noted that Atlante did not participate in the 12 May 2014 Assembly because, by that time, it had already been relegated to the Ascenso MX.

#### **4. Proceedings before the CAS**

18. By letter dated 10 March 2014, the Appellant filed its Statement of Appeal to the Court of Arbitration for Sport (the CAS).
19. After the deadline for the filing of the Appeal Brief had been extended until 31 March 2014 upon request by the Appellant, the Appellant filed its Appeal Brief on that date.
20. Both Respondents filed their Answer Briefs on 12 May 2014, after the deadline had been extended upon their respective requests.
21. On 22 April 2014, the CAS Court Office issued a notice to the Parties that the Panel was constituted in the following composition: Mr. Dirk-Reiner Martens as President of the Panel,

Mr. Massimo Coccia as Arbitrator appointed by the Appellant and Mr. Michele A. R. Bernasconi as Arbitrator appointed by the Respondents.

22. By letter from the CAS Court Office dated 15 May 2014, the Parties were invited to express their preference on whether to hold a hearing. By letter dated 22 May 2014, the Appellant indicated that it preferred that a hearing be held. By letters dated 16 and 22 May, respectively, the Respondents stated that they were “*favourable to the celebration of a hearing*”, but would “*not oppose*” if the Panel did not deem such hearing necessary in view of “*the clarity of the Answers filed by the Respondent*”.
23. After the Panel had decided to hold a hearing, the President of the Panel and counsel for the Parties agreed by telephone that the hearing would be held on 4 September 2014.
24. On 3 and 4 July, respectively, the Appellant and the First Respondent signed the Order of Procedure.
25. A hearing was held in Lausanne on 4 September 2014. The Appellant was represented by its President, Mr. Miguel Couchonnal, its Vice-President and Treasurer, Mr. Manuel Alejandro Ruiz de Chavez, and, as counsel, Mr. Jorge Ibarrola, Mr. Juan Manuel López Ruiz, Ms. Nataly St. Cyr Clarke and Ms. Catherine Pitre. The First Respondent was represented by its Legal Manager, Ms. Anna Peniche, and by Mr. Lucas Ferrer as counsel. The Second Respondent was represented by Mr. Héctor Iván Lara López and, as counsel, Ms. Nicole Adriana Santiago.
26. At the beginning of the hearing, the Parties confirmed that they had no objection to the formation of the Panel or to the conduct of the proceedings thus far. Afterwards, the Panel heard oral arguments from the Parties and their counsel. The Appellant amended its prayers for relief by withdrawing the third and fourth prayers, related to the purchase of Atlas by TV Atzeca. In turn, the Second Respondent amended its prayers for relief by withdrawing the first prayer, related to its standing to be sued. No objections were raised to such amendments of the prayers for relief.
27. Moreover, the Panel heard the following witnesses after reminding each of them that they were obliged to tell the truth subject to sanctions for perjury: Mr. Miguel Couchonnal (the Appellant’s President), Mr. Manuel Alejandro Ruiz de Chavez (the Appellant’s Vice-President and Treasurer) and, by telephone conference, Mr. Olivier Jaberg (FIFA) and Mr. Decio de Maria Serrano (President of the Liga MX). The Appellant had also called as a witness Mr. Gustavo Guzmán Sepúlveda, the President of Atlas. However, Atlas had informed the Panel prior to the hearing that Mr. Guzmán Sepúlveda was unavailable due to his travelling at the time of the hearing. The Appellant’s and Panel’s attempts to nonetheless reach Mr. Guzmán Sepúlveda during the hearing failed.
28. At the end of the hearing, after making legal submissions in support of their respective requests for relief, the Parties confirmed that they had no objections to raise regarding the conduct of the hearing; in particular, they did not raise any objection regarding their right to be heard. Furthermore, the Parties stated that they had no further submissions to make with respect to their legal fees.

## 5. The Parties' Submissions

29. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, indeed, has carefully considered all written and oral submissions made by the Parties, even if there is no specific reference to those submissions in this Award.

### 5.1 The Appellant's Submissions

30. The Appellant argues that the FMF Decision must be annulled based on three separate grounds.

31. First, the Appellant submits that the requisite number of votes for the Liga MX Resolution was not obtained. It contends that pursuant to Article 32(24) of the Reglamento de Afiliación, Nombre y Sede (RANS), the substitution of a Certificate of Affiliation requires approval by 80% of the clubs that make up the General Assembly of Liga MX Clubs. According to the Appellant, this quorum was applicable because, contrary to the minutes of the General Assembly of the Liga MX of 2 December 2013, the clubs did not vote on an exception from the Decálogo, but rather on a substitution of the Second Respondent's Certificate of Affiliation.

32. Second, the Appellant contends that the FMF Decision violates the FIFA and CONCACAF rules on multiple ownership, and that the FMF is under an obligation, as a FIFA and CONCACAF member and in accordance with its own statutes, to abide by these rules.

33. According to the Appellant, it follows from Article 11 of the FMF Statutes and Article 3 of the RANS that the FMF must abide by the FIFA regulations. In addition, Article 49.17 of the FMF Statutes provides that any gaps in the regulations of the FMF must be filled by the relevant FIFA regulations. Also, Article 13(1) of the FIFA Statutes stipulates that the national federations must comply with the FIFA Statutes and Regulations (lit. a) and must ensure that their own members comply with them (lit. d). Hence, the Appellant submits that the FMF is bound by Article 18(2) of the FIFA Statutes, which provides that

*"the member shall ensure that neither a natural nor a legal person (including holding companies and subsidiaries) exercises control over more than one club whenever the integrity of any match or competition could be jeopardised".*

34. The Appellant argues that Article 18(2) of the FIFA Statutes and the identical Article 7(m) of the CONCACAF Statutes are violated *in casu* because two clubs in the same league belonging to the same owner poses a serious threat to the competition. The Appellant adds that at the time of the sale of the Second Respondent, Mr. Gustavo Guzmán Sepúlveda was the President of both the Second Respondent and Monarcas. Furthermore, the Appellant submits that questionable transfers of players took place between Monarcas and the Second Respondent after the latter's sale.

35. Under these circumstances, the Appellant concludes that also Article 18bis of the FIFA Regulations for the Status and Transfer of Player was violated, whereby

*“No club shall enter into a contract which enables any other party to that contract or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams”.*

According to the Appellant, if two clubs in the same league have the same owner and the same President, it is difficult to discern in which capacity the President is acting when a transfer is made between those two clubs. If he was acting on behalf of the Second Respondent, there would be a third-party influence on its affairs, and vice-versa. Should he be acting in a dual capacity, there would inherently be a conflict of interests.

36. In addition, the Appellant argues that under the present circumstances, multiple ownership would violate the principle of fair play as enshrined in Article 18 of the FIFA Statutes. The lack of transparency in the dealings between the Second Respondent and Monarcas jeopardises the public’s perception that the results in the Liga MX are based solely on sporting merit. Furthermore, the questionable transfers of players between those two clubs had a very real and prejudicial impact on the Appellant, which was a competitor of the Second Respondent in the fight to avoid relegation at the end of the “Torneo Clausura” 2014.
37. Third, the Appellant contends that a substitution of the Certificate of Affiliation could not occur in the middle of the season.
38. On the basis of the above arguments, the Appellant submits the following prayers for relief to the CAS (as amended at the hearing):

*“1. The Appeal is upheld.*

*2. The decision issued on 14 February 2014 by the Federación Mexicana de Fútbol is annulled.*

*[...]*

*5. The Federación Mexicana de Fútbol and Club Atlas F.C. shall bear, jointly and severally, all the arbitration costs and shall be ordered to reimburse Club de Fútbol Atlante S.A. de C.V. the minimum CAS court office fee of CHF 1,000 as well as any other amounts of advances of costs paid to the CAS.*

*6. The Federación Mexicana de Fútbol and Club Atlas F.C. shall be ordered to pay, jointly and severally, FC Atlante a contribution towards the legal and other costs incurred by the latter in the framework of these proceedings”.*

## **5.2 The First Respondent’s Submissions**

39. The First Respondent argues that the Appeal must be dismissed *in limine* because it goes beyond the scope of the appealed decision. According to the First Respondent, based on the request submitted by the Appellant before the FMF Executive Committee, the scope of the FMF Decision was to decide whether the Liga MX Resolution had approved the substitution of the Second Respondent’s Certificate of Affiliation and, if so, whether this resolution had to be annulled. The First Respondent observes that the Appellant’s prayers for relief in these CAS proceedings do not even mention the substitution of the Certificate of Affiliation, and

instead introduce new requests and arguments.

40. Moreover, the First Respondent submits that the Liga MX Resolution was taken with a sufficient number of votes. Given that, according to the First Respondent, the Liga MX Resolution concerned only the Decálogo, not a substitution of the Appellant's Certificate of Affiliation, the quorum of 80% invoked by the Appellant is not applicable. Rather, the Decálogo could be amended by a normal resolution of the General Assembly of the Liga MX under Article 17 of the Reglamento Interno de la Primera División Profesional, which requires only a simple majority.
41. Furthermore, the FMF argues that the common ownership of Atlas and Monarcas does not render the FMF Decision illegal because, contrary to Atlante's assertion, the integrity of the competition was not jeopardized by the exception to the Decálogo granted to Atlas. The potential impact of the common ownership was insignificant, particularly because relegation is determined on the basis of the results obtained in the past 36 months, i.e. Atlante's relegation was largely due to results prior to the sale of Atlas. Also, the only match between Atlas and Monarcas in the Torneo Clausura 2014 (after the sale) ended with a draw; as Atlas finished the tournament with 11 points more than Atlante, a different outcome of that single game would not have changed anything as regards the relegation of Atlante.
42. The First Respondent submits the following prayers for relief to the CAS:
  - “1. To dismiss the present appeal in its entirety.*
  - 2. To condemn Atlante to pay the totality of the CAS costs.*
  - 3. To condemn Atlante to pay a contribution to the legal fees incurred by the Federación Mexicana de Fútbol for a total amount of EUR 50.000”.*

### **5.3 The Second Respondent's Submissions**

43. In its Answer Brief, the Second Respondent objected to being included in the Appeal because it argued that it did not have standing to be sued in this matter. At the hearing, however, the Second Respondent expressly withdrew its objection.
44. The Second Respondent submits that the Appeal should be dismissed because the scope of the appeal is limited to the request made by the Appellant before the FMF Executive Committee, i.e. to annul the substitution of Atlas' Certificate of Affiliation. According to the Second Respondent, no such resolution had existed at that time.
45. Furthermore, the Second Respondent submits that the Liga MX Resolution was approved by the requisite number of votes. The reasoning is in essence identical to the one given by the First Respondent (see above para. 40).
46. Moreover, the Second Respondent argues that multiple ownership is not prohibited in its particular situation. In addition to the arguments made by First Respondent, the Second Respondent highlights its difficult financial situation. It further emphasizes that the exception

granted to it was limited until 2016, i.e. it did not call into question the prohibition of multiple ownership from 2018 onwards as provided by the Decálogo. Also, given that multi-ownership in Mexican football has been allowed and notorious until today, the Second Respondent submits that the Appellant's allegation as to the competition or the public faith in it being jeopardized is grossly overstated and unsubstantiated. In addition, the Second Respondent contests that Mr. Guzmán was at any point in time the President of both the Second Respondent and Monarcas. Rather, both clubs had separate and distinct management teams, and while the Second Respondent is owned by Club de Fútbol Rojinegros, S.A. de C.V., Monarcas is owned by TV Azteca directly. Moreover, the Second Respondent disputes that questionable transfers took place between itself and Monarcas after the sale. Specifically, Monarcas made transfers to five different teams at that time and the Second Respondent received six players from three different teams. The two transfers between Monarcas and the Second Respondent were not suspicious in any way. Also, there was no lack of transparency as claimed by the Appellant because all transfers were public knowledge and approved by the Liga MX.

47. In addition, the Second Respondent submits that because no decision was taken in the Liga MX Resolution as to the substitution of Atlas' Certificate of Affiliation, the Appellant's argument regarding the timing of such substitution in the middle of the season has no merit.
48. The Second Respondent submits the following prayers for relief to the CAS (as amended at the hearing):

*"[...] 2. [...] to dismiss the present appeal in its entirety and condemn Atlante to pay Atlas' costs incurred in this proceeding and contribute to Atlas's [sic] legal fees".*

## II. LAW

### 1. Jurisdiction

49. The Panel finds that it has jurisdiction to adjudicate the present dispute.

50. According to Article R47 of the Code of Sports-related Arbitration (the "CAS Code"),

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

51. Article 86 of the FMF Statutes does provide for an appeal to CAS. The relevant parts of this Article read as follows (in the English translation provided by the Appellant):

*"The Member, in accordance with FIFA, is entitled to appeal before the CAS [...] provided that all judicial instances within the FEDERATION have been exhausted. [...]"*

52. In addition, all Parties have expressly confirmed in their written submissions that the CAS has

jurisdiction based on the above quoted provisions.

## 2. Law applicable to the merits

53. The law applicable to the merits of the Appeal consists of the FMF Statutes and Regulations and, subsidiarily, Mexican law.

54. Article R58 of the CAS Code provides that

*“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”.*

55. All Parties have expressly stated in their written submissions that the FMF Statutes and Regulations shall apply. It can be left open whether this amounts to a choice of the “applicable regulations” within the meaning of Article R58 of the CAS Code. Even if the Parties merely submitted their interpretation of what the “applicable regulations” are in the present case, the Panel agrees that the FMF Statutes and Regulations are indeed applicable. This follows from the fact that the appealed decision was taken by the FMF Committee on the basis of the FMF Statutes and Regulations. These applicable regulations also include the RANS and the Reglamento Interno de la Primera División Profesional (cf. Article 88 of the FMF Statutes on the basis of which the Liga MX can autonomously regulate its own affairs).

56. Whether or not the FIFA rules on multiple ownership apply is a question of whether they were incorporated by reference into the FMF Statutes and Regulations, and whether they needed to be applied by the FMF Executive Committee when deciding upon the Appellant’s action for annulment. These questions shall be dealt with below, when addressing the respective argument of the Appellant in the merits (see below paras. 80 *et seq.*).

57. Regarding the national law that shall apply subsidiarily pursuant to Article R58 of the CAS Code, the Panel notes that the federation which issued the appealed decision is seated in Mexico, which is why Mexican law applies subsidiarily.

## 3. Merits

58. The Panel finds that the Decision was legal and that the Appeal must therefore be dismissed. As a preliminary matter, the Panel finds that the Liga MX Resolution did not concern a substitution of the Second Respondent’s Certification of Affiliation (see section 3.1 below). Given that before the FMF Executive Committee, the Appellant nonetheless expressly challenged (only) an alleged substitution of the Certificate of Affiliation, there are doubts as to whether the scope of the present Appeal would allow the Panel to annul the FMF Decision even if the challenges now brought by the Appellant were well-founded (see section 3.2 below). However, this can be left undecided eventually because, even applying a broad scope of review, the Panel finds that the FMF Decision does not violate any of the applicable rules

and regulations (see section 3.3 below).

### **3.1 Subject matter of the Liga MX Resolution**

59. The outcome of these proceedings depends to a large extent on the subject matter of the Liga MX Resolution. In particular, if it in fact concerned (at least also) a substitution of Atlas' Certificate of Affiliation, it is doubtful whether the vote was taken with the requisite number of votes. However, for the following reasons, the Panel holds that the Liga MX Resolution did not constitute a decision on Atlas' Certificate of Affiliation.
60. The Panel finds the official minutes of the General Assembly of the Liga MX held on 2 December 2013 (the "Minutes") to be the natural starting point for determining what was discussed and decided during that meeting. As outlined in para. 11 above, according to the Minutes, the only decision taken was whether or not Atlas should be granted an exemption from the Decálogo. During the discussion that preceded the vote, the President of the Liga MX even expressly stated (in response to an objection made by Atlas) that a substitution of Atlas' Certificate of Affiliation was not the subject matter of the discussion.
61. The Appellant contends that the Minutes do not reflect what actually happened at the General Assembly of 2 December 2013. As a matter of course, the Panel acknowledges that minutes may be incorrect. However, *in casu*, all other participants of the meeting, notably also those clubs that voted against the Liga MX Resolution, confirmed the accuracy of the Minutes by unanimously approving them in the subsequent General Assembly of 12 May 2014 (see above para. 17). This happened despite the Appellant having requested a correction of the Minutes so as to reflect the alleged fact that the substitution of Atlas' Certificate of Affiliation was approved. Hence, the Appellant effectively suggests that all other clubs have either knowingly confirmed the Minutes even though they were incorrect or have misconceived what had actually happened at the 2 December 2013 meeting.
62. The Panel would be prepared to accept this far-reaching allegation only on the basis of compelling evidence to that effect. In other words, the Panel finds reasonable to presume on the basis of the conduct of all other clubs that the Minutes are correct, and it is for the Appellant to bear the burden to establish otherwise. This presumption is further supported by subsequent events: Had the substitution of Atlas' Certificate of Affiliation already been voted on at the General Assembly of 2 December 2013, as contended by the Appellant, it would be hard to understand why, on 12 May 2014, the General Assembly voted on and approved that very substitution.
63. In light of the presumption that the Minutes approved by all other Liga MX clubs are correct, the Panel finds that the Appellant has failed to establish that the Liga MX Resolution concerned the substitution of Atlas' Certificate of Affiliation.
64. The Appellant's allegation as to the subject matter of the 2 December 2013 meeting is backed solely by two witnesses that are the Appellant's own officials. By contrast, the President of the Liga MX, Mr. de Maria, did not confirm the Appellant's allegation when heard during the hearing. Likewise, the FMF Secretary General stated in a correspondence to the FMF

President dated 18 December 2013, that the 2 December 2013 General Assembly of the Liga MX had voted solely on an exemption from the Decálogo, as opposed to a substitution of Atlas' Certificate of Affiliation.

65. Apart from Mr. Guzman, who was not available for testimony during the hearing (see para. 67 below), the Appellant did not call to be heard at the hearing any further witnesses even though there should have been witnesses available – the 2 December 2013 meeting was attended by quite a number of persons who should thus have been in a position to testify on whether or not the Minutes were accurate.
66. In summary, the witnesses called by the Appellant have given contradicting testimony, without there being any clear indication whose testimony is closer to the truth. Hence, the Appellant did not succeed in establishing by way of oral evidence that the Minutes did not reflect what actually happened at the General Assembly of the Liga MX.
67. As to Mr. Guzman, who is the President of Atlas, the Appellant requested the Panel to draw an adverse inference based on the fact that Mr. Guzman did not make himself available (by telephone) during the hearing. The Panel agrees with the Appellant that it was unfortunate that Mr. Guzman could not be heard as a witness. However, the Panel is not prepared to draw any adverse inference on that basis alone.
68. Firstly, Mr. Guzman was invited to make himself available on short notice and him being on air travel was, in principle, a plausible excuse (backed by the airplane ticket exhibited by the Second Respondent).
69. Secondly, and crucially, Article R44.2 of the CAS Code (which is applicable to the Appeal Arbitration Procedure by virtue of Article R57 of the CAS Code) expressly provides that “[e]ach party is responsible for the availability and costs of the witnesses and experts it has called”. While it is true that Mr. Guzman was in the First Respondent’s sphere of influence, the Panel finds that the Appellant could at least have been expected to take appropriate measures itself with a view to ensure that Mr. Guzman either be available during the hearing (e.g. by contacting him well in advance of the hearing) or at least provide a written witness statement. If the Appellant had sufficiently attempted but failed to obtain Mr. Guzman’s (oral or written) testimony, the Panel would have had possibly to consider an adverse inference. However, there is no indication that the Appellant took appropriate steps to discharge itself of its responsibility as provided for in Article R44.2 of the CAS Code. Against this background, the Panel is not prepared to draw any adverse inference from the fact that Mr. Guzman was not available during the hearing.
70. Hence, the Panel finds that the vote taken at the General Assembly of the Liga MX held on the 2 December 2013 concerned the Decálogo, and in particular an exception to it, as stated in the Minutes. Also, for the following reasons, the Panel holds that granting an exemption from the Decálogo does not necessarily imply a (tacit) resolution on the Certificate of Affiliation.
71. First, from a formal perspective, the Decálogo and the Certificate of Affiliation involve

different competences and procedures: On the one hand, the Decálogo was enacted and can therefore be amended by the Liga MX or its clubs. On the other hand, Certificates of Affiliation are regulated by the RANS, i.e. regulations enacted by the FMF. They are administered by the FMF Secretary General, with whom any requests for substitution of Certificates of Affiliation must be filed, and who decides whether the requirements are met.

72. Second, from a substantive perspective, an exemption from the Decálogo and a substitution of the Certificate of Affiliation are two different issues underlying different requirements and entailing different consequences. Subject to certain exceptions alluded to by the FMF during the hearing, there are 47 requirements that must be fulfilled for a Certificate of Affiliation to be substituted. The Decálogo is not relevant for any of them. Essentially, the exemption from the Decálogo granted to Atlas was – in business terms, not in legal terms – an authorization of the sale of Atlas by the other Liga MX clubs. At the hearing, the Liga MX Resolution has been referred to as an authorization of the sale even by the Appellant. However, a sale of a club (and thus the authorization thereof) does not in and of itself have any effect on the Certificate of Affiliation. The FMF’s representative stated at the hearing that a club could be sold – from the standpoint of the general legal system – without a substitution of the Certificate of Affiliation and without the FMF even knowing, because the old owner would continue to be the FMF’s contact as long as the Certificate of Affiliation was not substituted. Also, the FMF’s representative stated that there have been a number of cases in which the request for substitution of the Certificate of Affiliation was filed only quite some time after the sale. These statements made on behalf of the FMF were not disputed by the Appellant and they show that the sale of a club, and thus the authorization thereof, does not necessarily coincide with the substitution of the Certificate of Affiliation.
73. Consequently, the Panel finds that, in accordance with the Minutes, the General Assembly of the Liga MX of 2 December 2013 decided solely on an exception to the Decálogo. The subject matter of the Liga MX Resolution is therefore not a substitution of the Certificate of Affiliation, as argued by the Appellant.

### **3.2 Scope of the Appeal**

74. As underscored by the Respondents, the Appellant’s request before the FMF Executive Committee was limited, at least based on its plain language, to the annulment of the substitution of Atlas’ Certificate of Affiliation. This leads to the question as to whether this Panel, too, must limit itself to the issue of the Certification of Affiliation when assessing the legality of the FMF Decision.
75. On the one hand, given that the Liga MX Resolution did not concern a substitution of Atlas’ Certificate of Affiliation, one could consider that the Appellant sought annulment of a non-existing decision. If one were to take that position, the FMF Decision would have to be upheld even if the decision that was actually taken by the Liga MX, i.e. the exemption from the Decálogo, were illegal, because *that* decision was not appealed against before the FMF Executive Committee. While the *de novo* nature of the CAS Appeal Procedure allows a CAS Panel to take new facts into account, it does not free the Panel from the inherent constraint of any appeal procedure, which must remain within the scope of the first instance decision

(cf., e.g., CAS 2007/A/1433, para. 36; CAS 2006/A/1206, para. 25). By deciding upon a decision which was not the subject matter of the first instance, the CAS Panel itself might be deemed to effectively decide as a first instance, thus exceeding its mandate.

76. On the other hand, it might be overly formalistic to conclude that, by expressly challenging only a substitution of Atlas' Certificate of Affiliation, the Appellant meant to limit the scope of its legal action before the FMF Executive Committee. An alternative interpretation of the Appellant's request before the FMF Executive Committee would be that, by referring to the substitution of Atlas' Certificate of Affiliation, it was merely describing (albeit incorrectly) the decision that it sought to challenge, namely the only vote taken at the General Assembly of the Liga MX of 2 December 2013. Indeed, this General Assembly was expressly referred to in the Appellant's submission made to the FMF Executive Committee. If one were to take this view and thus considered that the Appellant had challenged the Liga MX Resolution before the FMF Executive Committee, albeit misstating its subject matter, the scope of review with respect to the first instance decision would not be limited to a substitution of Atlas' Certificate of Affiliation. Rather, the Panel would also be in a position to annul the FMF Decision if its ruling on the actual subject matter, i.e. the exemption from the Decálogo granted in the Liga MX Resolution, violated applicable rules and regulations.
77. However, the Panel finds that this issue eventually can be left undecided. As will be demonstrated in the following section 3.3, even if the Panel were to take the latter, less formalistic approach, it would not find the FMF Decision to be in violation of the applicable rules and regulations.

### **3.3 *Legality of the FMF Decision***

78. The Appellant essentially relies on three arguments for its claim that the FMF Decision is illegal: It contends that the requisite majority of 80% under Article 32(24) of the RANS was not reached, that no substitution of the Certificate of Affiliation could be approved in the middle of the season, and that the FMF Decision violated rules on multiple ownership.
79. The first two arguments must fail as a consequence of the Panel's finding that the Liga MX Resolution did not concern a substitution of Atlas' Certificate of Affiliation, but rather an exemption from the Decálogo. The majority requirement under Article 32(24) of the RANS is applicable only to votes on a substitution of a Certificate of Affiliation, not to amendments to the Decálogo. Pursuant to Article 17 of the Reglamento Interno de la Primera División Profesional, the Decálogo could be amended by a simple majority of the Liga MX Clubs. This has been acknowledged also by the Appellant. Furthermore, the restrictions that the RANS foresees for a substitution of a Certificate of Affiliation in the middle of the season do not apply to an amendment of the Decálogo, which is an entirely different matter and follows a different procedure (see above paras. 72 *et seq.*).
80. As regards the Appellant's third argument, i.e. multiple ownership regulations, the Panel does not agree that the FMF Decision is in violation of Article 18(2) of the FIFA Statutes (or the identical provision in the CONCACAF Statutes).

81. To begin with, the Panel finds that, contrary to the Appellant's contention, the FIFA/CONCACAF regulations on multiple ownership do not apply to the case at hand. Article 88 of the FMF Statutes, which grants certain autonomy to the Liga MX, merely provides that decisions taken by the Liga MX shall not violate the FMF Statutes and Regulations. Hence, any FIFA/CONCACAF regulations can become relevant only to the extent that they are part of the FMF Statutes and Regulations. In that respect, the Appellant relies on several provisions which, according to the Appellant, require FMF to abide by the FIFA/CONCACAF regulations and to ensure that its own members comply with them (Article 11 of the FMF Statutes, Article 3 of the RANS, Article 13(1) of the FIFA Statutes). In addition, the Appellant refers to the gap-filling mechanism provided for in Article 49.17 of the FMF Statutes.
82. With respect to Article 11 of the FMF Statutes and Article 3 of the RANS, the Panel does not endorse the Appellant's interpretation of those provisions. The reference to FIFA contained therein is made only for the purpose of defining the matters for which the FMF is the supreme authority in the Mexican territory. Neither provision imposes any obligation to comply with the FIFA Statutes and Regulations.
83. Also, it cannot be concluded from Article 13(1) of the FIFA Statutes that the FIFA (or CONCACAF) regulations on multiple ownership apply to the Liga MX Resolution and thus needed to be considered by the FMF Executive Committee. From the outset, the question whether or not FIFA provisions must be applied by a body of another legal entity cannot possibly be answered by a FIFA provision. Rather, the answer can only be given by the regulations governing that other legal entity. In addition, and in line with the concept of separate legal entities, Article 13(1) of the FIFA Statutes concerns solely the relationship between FIFA on the one side and its members on the other side. The legal relationship between the FMF and the Liga MX, which is the relevant one for determining which rules FMF needs to apply when assessing the legality of decisions of the Liga MX, is not addressed by Article 13(1) of the FIFA Statutes.
84. The only provision that might indeed incorporate certain FIFA provisions into the FMF Statutes and Regulations is Article 49.17 of the FMF Statutes. It stipulates that the FIFA regulations shall govern cases which are not provided for in the FMF Statutes and Regulations. In essence, as submitted also by the Appellant, this is a gap-filling mechanism. However, for the following reasons, the Panel finds that Article 13(1) of the FIFA Statutes, i.e. the FIFA provision on multiple ownership, is not amongst the provisions which are incorporated by reference into the FMF Statutes.
85. It is true that the FMF Statutes and Regulations do not directly regulate the issue of multiple ownership. However, in the Panel's view, a gap to be filled under Article 49.17 of the FMF Statutes presupposes an *inadvertent* lack of regulations on a given issue. If, by contrast, the FMF consciously decided against regulating a particular issue at all, it would hardly make sense to incorporate any FIFA regulations on that issue. As regards multiple ownership, all parties acknowledged that multiple ownership has a long tradition in Mexico. To date, this has not led to any FIFA intervention, as confirmed implicitly by Mr. Jaberg of FIFA, who testified that there are no precedents at all in that field. Given this tradition of multiple ownership in

Mexico, and the fact that that FIFA does not seem to be concerned about it, it is hardly surprising that the FMF Statutes and Regulations do not follow the example of FIFA (and other sports governing bodies) to outlaw or at least restrict multiple ownership. Rather, it seems that this was a conscious decision reflecting the reality in Mexican football. In light of that situation, the Panel is not prepared to accept that Article 49.17 of the FMF Statutes is supposed to incorporate the FIFA regulations on multiple ownership.

86. In addition, the Liga MX has enacted the Decálogo, which is designed to put an end to multiple ownership (only) in the Liga MX. This enactment is based on the autonomy that is granted to the Liga MX under Article 88 of the FMF Statutes. Hence, the Decálogo is at least indirectly part of the FMF regulatory framework. To apply Article 13(1) of the FIFA Statutes to the issue of multiple ownership in the Liga MX would undermine the very essence of Article 88 of the FMF Statutes, according to which the Assembly of the Liga MX can regulate the affairs of the Liga MX autonomously.
87. Moreover, even if Article 13(1) of the FIFA Statutes were incorporated by reference in the FMF rules, as submitted by the Appellant, the Panel would not be prepared to find that the FMF Decision violates that provision. Article 18(2) of the FIFA Statutes reads as follows:
- “In any case, the member shall ensure that neither a natural nor a legal person (including holding companies and subsidiaries) exercises control over more than one club whenever the integrity of any match or competition could be jeopardised”.*
88. The Panel observes that the FIFA rule on multiple ownership is not absolute but is based on a case-by-case assessment of the jeopardy caused to the integrity of football matches or competitions. Whether or not the integrity of a match or competition is jeopardised is a very intricate assessment which necessarily must be based on profound knowledge of the match or competition in question. For this reason, the Panel finds that the competent sporting bodies must have a certain degree of discretion in making that determination. In order to avoid becoming the decision-maker itself instead of merely reviewing the decision-maker’s decision (cf. CAS OG 96/005, para. 10; CAS 2010/A/2275, para. 4.28), the Panel deems it appropriate to allow a certain margin of discretion to the sporting bodies’ assessment as to whether or not the integrity of a competition was jeopardised. The Panel shall intervene only if such assessment is either based on materially incorrect or incomplete fact-finding on the part of the sporting body or if its decision is obviously inappropriate for other reasons (the Panel notes the similar approach in CAS jurisprudence to disciplinary sanctions, see *ex multis* CAS 2009/A/1817 & 1844, para. 174 with further references).
89. The FMF exercised its discretion when it rejected the Appellant’s appeal against the Liga MX Resolution, which was *inter alia* based on the argument that the Decálogo and FIFA regulations against multiple ownership were violated and that Atlas would gain an unfair advantage in the competition. On the basis of the submissions made by the Parties, the Panel is not convinced that the integrity of the Liga MX was indeed jeopardised, much less that the FMF exercised its discretion in an inappropriate manner. In particular, the Panel does not consider sufficient the mere fact that there is common ownership of Atlas and Monarcas. In principle, common ownership and, as often connected with it, common management may indeed give rise to

concerns (see CAS 98/200, paras. 31 *et seq.*). However, the Panel does not deem it appropriate to find that in and of itself the common ownership of Atlas and Monarcas jeopardised the integrity of the Liga MX, when at the same time neither FMF nor FIFA have seen any need to put an end to multiple ownership in Mexican professional football (the Decálogo being an initiative by the Liga MX and limited to that league). As regards the two transfers which the Appellant submits are suspect, the allegations made by the Appellant are not sufficiently substantiated. In particular, there is no indication of whether the counter-value for the players was inappropriate, i.e. whether it did not reflect what an unrelated third party would have had to invest in order to retain those players. Hence, given that the Respondents have disputed that those transfers did in any way adversely affect the integrity of the competition, the Panel is not prepared to accept the Appellant's mere allegation that those transfers show that the integrity of the competition was compromised. Also, the Panel is not convinced by the Appellant's contention that its relegation was (at least partly) due to the common ownership of Monarcas and the Second Respondent. First, the sale occurred relatively late in the season. Second, relegation is determined based on the clubs' performances over a span of three years. Third, the difference in the standings between the Appellant on the one side and Monarcas and the Second Respondent on the other side does not suggest (absent any concrete evidence otherwise) that the Appellant would have avoided relegation if the Second Respondent had not been under common ownership with Monarcas.

90. For the above reasons, the Panel also is not satisfied that the Liga MX Resolution violated the principle of good faith or the FIFA Regulations on the Status and Transfer of Players. In any event, while any such violation (if it occurred) might prompt FIFA to intervene or might give rise to damage claims, if properly substantiated, it could not invalidate the FMF Decision.
91. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

## **ON THESE GROUNDS**

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

1. The Appeal filed by Club de Fútbol Atlante S.A. de C.V. on 10 March 2014 against Federación Mexicana de Fútbol and Club Atlas F.C. is dismissed.
2. The decision taken by the Federación Mexicana de Fútbol on 14 February 2014 is upheld.
3. (...).
4. (...).
5. All other or further-reaching motions or prayers for relief are dismissed.