Arbitration CAS 2015/A/4153 Al-Gharafa SC v. Nicolas Fedor & Fédération Internationale de Football Association (FIFA), award of 9 May 2016

Panel: Mr Mark Hovell (United Kingdom), President; Mr Ercus Stewart (Ireland); Mr Efraim Barak (Israel)

Football
Termination of the employment contract by mutual agreement
FIFA circulars and hierarchy of norms
Responsibility of the debtor to comply with its obligations

1. **In accordance with clear and consistent CAS jurisprudence, FIFA circulars cannot be allowed to take precedence over the clear and specific wording of FIFA's regulations, including the RSTP, as the RSTP contains provisions of a higher ranking in the hierarchy of FIFA regulations than the contents of a circular. The wording in a FIFA circular cannot amend, override, change or contradict the provisions in the RSTP. If there is a contradiction between the RSTP and a circular, the former should prevail. Pursuant to the principle of *contra proferentem*, any unclear wording should be interpreted against the author of the wording (i.e. FIFA).**

2. **It is the responsibility of the debtor to undertake all relevant efforts to comply with its obligations. The utmost obligation of the debtor is to duly transfer the amount to the bank account provided by the creditor, and, therefore it is the responsibility of the debtor to do all relevant efforts to comply with its payment obligation in accordance with a FIFA decision and according to the creditor's wishes. The actions of a club, whose bank transfer to a player is rejected as the bank deems it to be a violation of the national anti-money laundering laws but does not notify the player or request his assistance in either clarifying or remedying the situation with the bank, does not respond to four separate default notices and only raises these alleged problems once a legal dispute is commenced at FIFA and then the CAS, are not consistent with those of a debtor willing, in good faith, to undertake all relevant efforts to comply with its financial and contractual obligations. Accordingly, the club cannot be exempted from its financial obligations for reasons out of its control (i.e. the national anti-money laundering laws) and it has to make the payment due to the player.**

I. PARTIES

1. Al-Gharafa SC (the "Club" or "Appellant") is a football club with its registered office in Doha, Qatar. The Club is currently competing in the Qatar Stars League. It is a member of the Qatar Football Federation, which in turn is affiliated to Fédération Internationale de Football Association.

2. Nicolas Fedor (the "Player" or "First Respondent") is a professional football player of Venezuelan and Hungarian nationality.

3. Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") is the governing body of world football and has its registered office in Zurich, Switzerland

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

5. On 29 September 2013, the Club and the Player entered into an employment agreement valid from that date until 31 July 2016 (the "Employment Agreement"). Under the Employment Agreement, the Player was entitled to a total remuneration of EUR 4,500,000 net of any worldwide tax.

6. Article 8 of the Schedule to the Employment Agreement provided as follows:

All the amounts specified in clause 1 and 2 of this SCHEDULE are considered to be NET amounts. The Club shall assume any possible Tax withholding of the Player in accordance with the Tax rate of the country where the Player is a Tax resident. In order for the Player to become a Tax resident of Qatar, the Club shall arrange for the Player any certificate whatsoever required by the Player to prove that he is Tax resident in Qatar.

7. On 29 January 2015, the Club and the Player decided by mutual agreement to terminate the Employment Agreement before the expiry date and entered into a settlement agreement that day (the "Settlement Agreement").

8. Clause 2.1 of the Settlement Agreement provided as follows:

The Club shall, as full, complete and final settlement under the Employment Contract pay to the Player to the total amount of ***EUR 750,000 (seven hundred and fifty thousand Euros) net*** *("settlement amount") within 3 (three) days as from the signature of this Agreement.*

9. Clause 2.2 of the Settlement Agreement provided as follows:

The aforementioned amount shall be transferred to the following bank account of the Player:

***BENEFICIARY BANK**: […]*

***ACCOUNT HOLDERS**: NICOLAS FEDOR FLORES L. E/O […]*

***ACCOUNT NUMBER**: […]*

***IBAN**: […]*

***SWIFT**: […]*

In the event the payment is done to another bank account different from the one contained herein, the payment shall be deemed as not done.

10. Clause 2.3 of the Settlement Agreement provided as follows:

In the event the Club fails to provide the payment as set out in clause 2.1 and clause 2.2 above, default interest will accrue on the full amount outstanding at the rate of 5% annual rate from the due date until the date of payment.

11. Further, clause 4 of the Settlement Agreement provided that the notices between the parties relating to the Settlement Agreement must be delivered in person or sent in writing, post or facsimile.

12. On 4 February 2015, the Club sent a formal request to its bank in Qatar - the Qatar National Bank (the "QNB") – to transfer to the Player the amount of EUR 750,000 as set out of clause 2.1 of the Settlement Agreement. The Club also provided to its bank a copy of the referenced Settlement Agreement.

13. On 7 February 2015, a manager from the QNB emailed the Club stating as follows:

We kindly inform you that our compliance refused to transfer the amount to the bank account you indicated in our last email. It seems that some elements set out in the bank account indicated and in the settlement agreement does not comply with anti-money Laundering laws of Qatar.

14. The QNB later 'informally clarified' to the Club that they suspected the money transfer would breach the terms and conditions set out in 'Combating Money Laundering and Terrorism Financing Law of Qatar' and the 'Anti-Money Laundering and Combating Terrorist Financing Rules' (the "QAML laws") as the transfer contained the following suspicious elements:

- The QNB did not understand why a Venezuelan/Hungarian football player wanted to receive such a large amount in a bank account in Switzerland.

- Up until that point, all the employment remuneration for the Player had been transferred to his bank account in Doha, Qatar.

- The Settlement Agreement set out that the amount had to the paid to the Player, yet the bank account provided was in the name of the Player and another unidentified holder – "Viviana Carolina Acosta Cammarota".

- The QNB found it suspicious that the transfer was only permitted to be done to a Swiss bank account and no other account.

- None of the other settlement agreements signed with the other football players required the Club to pay amounts to bank accounts in Switzerland.

- The Club and the Player failed to provide any documents from the Venezuelan, Spanish or Hungarian tax authorities referencing the Swiss bank account.

15. On 9 February 2015, the Player sent a written notification to the Club, requesting the payment of the agreed EUR 750,000 (net). The Club did not respond to this letter.

16. On 2 March 2015, the Player sent a second written notification to the Club, requesting the payment of the agreed EUR 750,000 (net) on or before 9 March 2015, failing which the Player would file a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC"). The Club did not respond to this letter.

17. On 10 March 2015, the Player sent a third written notification to the Club, requesting the payment of the agreed EUR 750,000 (net) on or before 12 March 2015, failing which the Player would file a claim before the FIFA DRC. The Club did not respond to this letter either.

Proceedings before FIFA

18. On 25 March 2015, the Player filed a statement of claim before the FIFA DRC claiming the payment of the agreement EUR 750,000 (net) plus default interest of 5% as from 2 February 2015 until the date of effective payment. Further, the Player requested that the FIFA DRC apply a transfer ban on the Club for one or two consecutive registration periods in accordance with Article 12bis(4) of the FIFA Regulations on the Status and Transfer of Players (the "RSTP").

19. On 27 March 2015, FIFA acknowledged receipt of the Player's claim and informed him that in order to consider his claim, the Player should provide by 10 April 2015 proof of a written default notice to the Club granting a minimum deadline of 10 days in order to comply with its financial obligations, as well as copy of the Settlement Agreement in which the signature of both parties was legible.

20. On 27 March 2015, the Player provided FIFA with a legible copy of the Settlement Agreement.

21. On 30 March 2015, the Player amended his claim and sent a fourth written notification to the Club, requesting the payment of the agreed EUR 750,000 (net) within 10 days.

22. On 14 April 2105, FIFA wrote to the Club informing them of the Player's claim regarding overdue payables and specific mention was made in this letter to Article 12bis of the RSTP.

23. On 11 May 2015, the Appellant filed an answer before the FIFA DRC, acknowledging its obligation to pay the agreed amount and confirming its willingness to comply. However, in summary, the Club sustained that it could not complete the payment since there were strong indications that the referenced bank account was used for tax evasion purposes. Further, the Club stated that the Player should provide an alternative bank account where the payment could be made or alternatively, provide a document confirming that the Swiss bank account provided by the Player complied with the tax laws of Venezuela, Hungary and Spain.

24. On 22 May 2015, FIFA wrote to the parties informing them that the investigation phase of the matter had been closed and that the matter was to be submitted to the FIFA DRC for consideration and a formal decision within the next 3 to 5 working days.

25. On 22 June 2015, the FIFA DRC rendered a decision (the "Appealed Decision") as follows:

    1. *The claim of the Claimant, Nicolas Fedor, is partially accepted.*

    2. *The Respondent, Al Gharafa SC, has to pay to the Claimant,* ***within 30 days*** *as from the date of notification of this decision, overdue payables in the amount of EUR 750,000, plus interest at the rate of 5% p.a. as from 2 February 2015 until the date of effective payment.*

    3. *In the event that the amount due to the Claimant is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

    4. *Any further claim lodged by the Claimant is rejected.*

5. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.

6. A warning is imposed on the Respondent.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 20 July 2015, pursuant to Article R47 of the Code of Sports-related Arbitration (the "CAS Code"), the Club filed a Statement of Appeal against the Player and FIFA at the Court of Arbitration for Sport (the "CAS"). The Statement of Appeal contained the following requests for relief:

FIRST – To set aside the Appealed Decision;

Alternatively and only in the event the above is rejected:

SECOND – To annul the Appealed Decision, refer the case to the FIFA DRC and order the FIFA DRC to re-start the FIFA DRC proceedings while grating [sic] the Appellant full party rights based upon the provisions set out in the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber;

THIRD - To grant the Appellant, upon request, further or other relief that may be appropriate; and

FOURTH - To condemn the First Respondent and the Second Respondent to the payment of the legal expenses incurred by the Appellant; and

FIFTH - To establish that the costs of this arbitration procedure before CAS will be borne by the First Respondent and the Second Respondent.

27. In its Statement of Appeal, the Club requested that the matter be heard by a Sole Arbitrator.

28. On 27 July 2015, the Player wrote to the CAS office stating that he did not agree with the matter being heard by a Sole Arbitrator unless it was one of Mr Efraim Barak, Mr Michele Bernasconi or Mr Rui Botica Santos. In the event that the matter was to be heard by a Panel, the Player nominated Mr Efraim Barak, Attorney-at-Law, Tel Aviv, Israel as an arbitrator.

29. On 31 July 2015, FIFA wrote to the CAS Court Office stating that it did not agree with the appointment of a Sole Arbitrator as this was the first case at the CAS dealing with Article 12bis of the RSTP and the outcome could therefore potentially have substantial and wide reaching consequences in respect of future FIFA procedures. Consequently, FIFA preferred that the matter was to be heard by a Panel of three arbitrators to provide a more balanced outcome.

30. On 7 August 2015, pursuant to Article R51 of the CAS Code, the Club filed its Appeal Brief with the CAS Court Office with the following requests for relief:

FIRST – *To set aside the Appealed Decision in full;*

SECOND – *To annul the Appealed Decision and refer the case to the FIFA DRC and order the FIFA DRC to re-start the legal proceedings based upon the correct applicable law and procedure rules, since the applicable law and procedure rules executed by the members of the FIFA DRC while rending the Appealed Decision (i.e. versions 2015) is legally baseless.*

Alternatively and only in the event the above is rejected:

THIRD - *To confirm pursuant the date in which statement of claim was lodged by the First Respondent (i.e. 25 March 2015) Art. 12bis of the FIFA RSTP does not apply to the ongoing dispute (cf. Art. 29 and Art. 26 of the FIFA RSTP, in combination with Art. 21, par. 2 of the FIFA Procedure Rules);*

FOURTH - *To set aside the warning imposed on the Appellant in accordance to the Appealed Decision since Art. 12bis of the FIFA RSTP does not apply to the ongoing matter (cf. Art. 29 and Art. 26 of the FIFA RSTP, in combination with Art. 21, par. 2 of the FIFA Procedure Rules);*

Alternatively and only in the event the above is rejected:

FIFTH - *To set aside the warning imposed on the Appellant and set out in Appealed Decision, in the unlike event version 2015 of the FIFA RSTP is confirmed as applicable law in the ongoing matter since the First Respondent failed anyway to attend the pre-requisites as set out in Art. 12bis, par. 3 of the FIFA RSTP;*

SIXTH - *To confirm that the non-compliance of the contractual obligations set out in clause 2.1 of the Settlement Agreement, in casu, the payment of EUR 750,000 to the First Respondent shall not be attributed to the Appellant;*

SEVENTH - *To uphold that in the scenario set out above, the Appellant shall not be ordered to pay any default interest since the non-compliance with the obligations set out in clause 2.1 of the Settlement Agreement cannot be attributed to it;*

Alternatively and only in the event the above is rejected:

EIGTH - *To confirm that in the unlike event the Panel order the Appellant to pay default interest the rate shall not be higher than 5% p.a., as well as it shall be calculated as from the moment in which the default notice was officially forwarded by the First Respondent (i.e. 30 March 2015); and*

NINETH - *To establish that any procedure or legal cost determined by the Panel and relating to this arbitration shall be calculated paying due consideration to the terms and conditions as set out in clause 6.1 of the Settlement Agreement.*

31. On 7 August 2015, the Club also wrote to the CAS Court Office nominating Mr Ercus Stewart SC, Barrister, Dublin, Ireland, as an arbitrator.

32. On 10 August 2015, FIFA wrote to the CAS Court Office stating that it did not object to the Player's nomination of Mr Efraim Barak as an arbitrator.

33. On 8 September 2015, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to this case was constituted as follows:

President:	Mr Mark A. Hovell, Solicitor, Manchester, United Kingdom
Arbitrators:	Mr Ercus Stewart S.C., Barrister, Dublin, Ireland
	Mr Efraim Barak, Attorney-at-Law, Tel Aviv, Israel.

34. On 28 September 2015, pursuant to Article R55 of the CAS Code, the Player filed his Answer containing the following requests for relief:

> *1. Reject the appeal filed by the Appellant, Al Gharafa SC, against the decision of the FIFA Dispute Resolution Chamber on 22 June 2015 (reference nr. OP 15-0435/ssa), whose grounds were notified to the Parties on 29 June 2015.*
>
> *2. Confirm the FIFA DRC decision in full and accordingly, to condemn Al Gharafa SC to pay Mr. Fedor overdue payables in the amount of* ***EUR 750,000 (Seven Hundred Fifty Thousand Euros) net of any taxes*** *plus interest at the rate of 5% p.a. as from 2 February 2015 until the date of effective payment in accordance with the settlement agreement entered into by the Parties on 29 January 2015.*
>
> *3. Confirm the warning imposed on the Appellant by the FIFA DRC.*
>
> *4. Fix a minimum sum of 50,000 CHF to be paid by the Appellant as a contribution to the First Respondent's legal fees and costs.*
>
> *5. Condemn the Appellant to pay the entire amount of CAS administration and the Arbitrator fees.*

35. On 28 September 2015, pursuant to Article R55 of the CAS Code, FIFA filed its Answer containing the following requests for relief:

> *1. In light of the above considerations, we insist that the decision passed by the DRC was fully justified. We therefore request that the present appeal be rejected and the decision taken by the DRC on 22 June 2015 be confirmed in its entirety.*
>
> *2. Furthermore, all costs related to the present procedure as well as the legal expenses of FIFA shall be borne by the Appellant.*

36. On 29 September 2015, the CAS Court Office wrote to the parties inviting them to inform the CAS Court Office whether they preferred a hearing to be held in this matter or whether wished for the Panel to issue an award based solely on the parties' written submissions.

37. On 1 October 2015, the Player wrote to the CAS Court Office stating that he did not deem a hearing to be necessary and wished for the Panel to render an award solely on the written submissions.

38. On 5 October 2015, FIFA wrote to the CAS Court Office stating that it did not deem a hearing to be necessary and wished for the Panel to render an award solely on the written submissions.

39. On 6 October 2015, the Club wrote to the CAS Court Office stating that it wished for a hearing to be held in this matter.

40. On 14 October 2015, given the disagreement between the parties regarding the need for a hearing, the CAS Court Office wrote to the parties on behalf of the Panel requesting them to inform the CAS Court Office by 16 October 2015 whether it would accept a second round of written submissions in lieu of a hearing.

41. On 16 October 2015, the Club wrote to the CAS Court Office stating that it preferred to have a hearing in lieu of a second round of written submissions. FIFA wrote to the CAS Court Office stating that it preferred to have a second round of written submissions in lieu of a hearing. The Player did not state a preference in this regard and his silence was considered an acceptance that he would prefer a second round of submissions in lieu of a hearing.

42. On 21 October 2015, the CAS Court Office wrote to the parties on behalf of the Panel informing them that prior to determining whether a hearing was necessary, the Panel had ordered the parties to engage in a second round of written submissions. Further, the Panel provided the parties with a copy of *CAS 2013/A/3323 Deportivo Petare FC v FIFA* and were invited to address the applicability (or not) of this case to the present proceedings.

43. On 3 November 2015, the Club submitted its second round of written submissions, which contained the following additional request for relief in addition to those contained in its Appeal Brief:

Alternatively and only in the event the above is rejected:

TENTH - To establish that in the event the Panel understands that clause 6.1 of the Settlement Agreement is not applicable in the ongoing arbitration, any procedure or legal cost determined and relating to this arbitration shall be paid by the First Respondent and the Second Respondent.

44. On 18 November 2015, the Player submitted his second round of written submission entitled "Answer to the Reply Brief".

45. On 23 November 2015, FIFA submitted its second round of written submissions.

46. On 4 December 2015, the CAS Court Office wrote to the parties informing them that based on the two rounds of written submissions to date, the Panel deemed itself sufficiently informed to render an award on the written submissions alone, without a hearing, in accordance with Article R44.2 of the CAS Code. Accordingly, no hearing would be held in this matter.

47. On 22 December 2015, all three parties filed a signed Order of Procedure with the CAS Court Office.

IV. SUBMISSIONS OF THE PARTIES

48. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel however, has carefully considered all the submissions made by the parties, even if no explicit reference is made in what immediately follows.

49. The Panel was made aware by the Player of certain "without prejudice" communications between the parties. The Club objected to the correspondence forming part of the CAS file in the matter at hand. The Panel, noted that the correspondence was not intended to be part of the CAS file and therefore disregarded it entirely.

A. The Club's Submissions

In summary, the Club submitted the following in support of its Appeal:

i. Violation of Procedural rules by the FIFA DRC

50. The Club noted that prior to the case being heard by the FIFA DRC, they were not officially informed by the FIFA general secretariat about who the members of the FIFA DRC panel were that would be hearing the matter. The Club submitted that this was a violation of Article 7 of the FIFA Procedural Rules, the pertinent section of which states:

> *7 Withdrawal and challenges*
>
> …
>
> *2. Members of the Players' Status Committee and of the DRC may be challenged by the parties if there is legitimate doubt as to their independence and impartiality. A challenge shall be made within five days of the grounds for the challenge coming to light, otherwise the parties shall forfeit the right to make a challenge. Motions shall be substantiated and, if possible, supported by evidence. If the member concerned disputes the allegation raised, the Players' Status Committee or the DRC shall reach a decision on the challenge in the absence of the member concerned.*

51. FIFA notified the Club and the Player on 22 May 2015 that the 'investigative phase' of the dispute had been completed and the matter was going to be submitted to the FIFA DRC for consideration and formal decision within 3 to 5 working days. The Club stated that *"as a general rule"*, at this stage FIFA usually also informs the parties of the precise date and the member(s) who will analyse and decide the dispute.

52. However, in this case FIFA failed to do that. The Club only later received a copy of the Appealed Decision on 29 June 2015. As they were not informed of the identity of the member(s)

of the FIFA DRC who were to hear the dispute, they were deprived of the right to challenge their appointment(s) pursuant to Article 7(2) of the FIFA Procedural Rules quoted above. The Club submitted that this was not only a violation of Article 7 of the FIFA Procedural Rules, but also a violation of the Club's personality rights, the principle of equal treatment and due process and also infringed Swiss public policy.

53. The Club also asserted that there was a violation of the equal treatment of the parties pursuant to Article 9 of the FIFA Procedural Rules. The Club noted that on 27 March 2015, after he lodged his claim at FIFA, the FIFA administration wrote to the Player informing him to provide by 10 April 2015 proof of a written default notice to the Club granting them a minimum of 10 days to comply with their financial obligations in accordance with Article 12bis of the FIFA RSTP. The Club argued that while the FIFA administration can assist the parties in avoiding their claims or answers being rejected by the FIFA DRC (per Article 9(2) of the FIFA Procedural Rules), in this particular case it amounted to a violation of the principle of equal treatment of the parties as there was no reason for them to request the Player to obtain proof of a default notice pursuant to Article 12bis of the FIFA RSTP. In doing so, it acted against the interests of the Club.

54. Accordingly, for all the reasons above, the Club stated that the Appealed Decision was null and void and that the matter should be referred back to the FIFA DRC in order for the matter to be heard again.

ii. Application of the incorrect version of the RSTP

55. The Club stated that the FIFA DRC applied the incorrect version of the RSTP in the Appealed Decision.

56. On 23 January 2015, FIFA issued to its members FIFA Circular Number 1468 ("Circular 1468") regarding prospective amendments to the RSTP and Procedural Rules. The introduction of Article 12bis was one of the changes discussed in Circular 1468. Circular 1468 contained a number of new amendments, some of which were to come into force on 1 March 2015 and others which were to come into force on 1 April 2015. The Club acknowledged that it clearly stated that Article 12bis was to come into force on 1 March 2015.

57. A few weeks later, a copy of the revised version of the RSTP ("RSTP 2015") was issued and was sent to FIFA member associations and uploaded on to the FIFA website.

58. However, while the RSTP 2015 contained the new Article 12bis as expected, it also contained the following provisions (emphasis added by the Panel):

> *26 Transitional Measures*
>
> *1. **Any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations**.*

2. As a general rule, all other cases shall be assessed according to these regulations with the exception of the following:

a) disputes regarding training compensation;

b) disputes regarding the solidarity mechanism;

c) labour disputes relating to contracts signed before 1 September 2001.

Any cases not subject to this general rule shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose.

…

29 Enforcement

These regulations were approved by the FIFA Executive Committee on 20 and 21 March 2014, respectively 18 and 19 December 2014 and ***come into force on 1 April 2015****.*

59. At no point in the RSTP 2015 did it specify that Article 12bis was to come into force on 1 March 2015 instead of 1 April 2015. Further, Article 12bis did not fall into the exceptions listed above in Article 26(2) RSTP 2015.

60. Accordingly, there was a contradiction regarding when Article 12bis came into force. Circular 1468 stated that it was to be 1 March 2015 while Article 29 of the RSTP 2015 states that it was 1 April 2015. The Player's Statement of Claim was submitted to FIFA on 25 March 2015, i.e. in between these two dates.

61. The Club submitted that it is undisputed that contents of FIFA Circular letters do not have the legal prerequisites to supersede the provisions set out in the RSTP. In this regard, the Club quoted *CAS 2009/A/1810 & 1811*, which stated:

The interpretation of the statutes and of the rules of a sport association has generally to be objective and ***always begin with the wording of the rule****, which is the object of the interpretation.*

62. The Club also quoted *CAS 2004/A/594*, which stated:

1. For the implementation of the FIFA Regulations, FIFA has issued numerous Circular Letters. ***Although these Circular Letters are not regulations in a strict legal sense****, they reflect the understanding of FIFA and the general practice of the federations and associations belonging thereto. Thus, these Circular Letters are relevant for the interpretation of the FIFA Regulations.*

63. Given the contradiction between the RSTP 2015 and Circular 1468, the former should prevail based upon the fundamental principle of hierarchy of norms. Moreover, pursuant to the principle of *contra proferentem*, the unclear wording should be interpreted against the author of the wording (i.e. FIFA).

64. The Club also noted that FIFA could have provided the Panel with copies of 'previous' versions of the RSTP which contained Article 12bis and stated that it was to come into force on 1 March 2015. However, it did not do so, instead relying on FIFA Circular Letters to establish the existence of Article 12bis as of 1 March 2015.

65. The Club submitted that according to all of the above, the previous, published version of the RSTP (the "RSTP 2014") should have been applied by the FIFA DRC in the Appealed Decision as the RSTP 2015 had not yet come into force when the Player filed his statement of claim with FIFA and the wording of the RSTP takes precedence over FIFA Circular Letters.

66. However, the FIFA DRC applied the RSTP 2015 (and consequently the new Article 12bis) in making their decision, which was confirmed in paragraph 3 of the Appealed Decision which stated:

3. Furthermore, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26, par. 1 and par. 2 of the Regulations on the Status and Transfer of Player (2015), and considering the present claim was lodged on 25 March 2015, the 2015 edition of said regulations (hereinafter: Regulations) is applicable to the matter at hand as to the substance.

67. As the incorrect version of the applicable law was applied in the Appealed Decision, the Club asserted that the Appealed Decision should be deemed null and void and the matter should be sent back to the FIFA DRC to be heard again as this was not a procedural violation that could be cured by the *de novo* principle. To not do so *"would certainly pass a negative message to the members of FIFA as [a] whole, giving the impression that any kind of procedural irregularity can be cured by CAS"*.

iii. Non applicability of Article 12bis of the RSTP 2015

68. Even if the Panel were to rule that the FIFA DRC correctly applied the RSTP 2015 in the Appealed Decision, the Club argued that the FIFA DRC incorrectly applied Article 12bis as *"there was no legal basis to apply it on the [Club] whatsoever"*.

69. According to Article 12bis (3) of the RSTP 2015:

In order for a club to be considered to have overdue payables in the sense of the present article, the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s).

70. The Club noted that the statement of claim was filed by the Player on 25 March 2015. However, the Player then sent a letter to the Club on 30 March 2015 (i.e. 5 days after filing a claim at the FIFA DRC) putting the Club on notice of the default for the overdue payment.

71. The Club argued that this was a violation of Article 12bis (3) of the RSTP 2015 as it did not make any legal sense whatsoever to address a default notice to a party *after* having lodged a claim at FIFA. The Club argued that the spirit of Article 12bis of the RSTP 2015 was based upon the principle of good faith as it should grant the debtor a chance to remedy the purported breach within the 10-day deadline.

72. As the Player had already filed a claim at FIFA before issuing the Club with a default notice per Article 12bis (3) of the RSTP 2015, the FIFA DRC should not have applied any of the sanctions listed in Article 12bis (4) of the RSTP 2015 against the Club. Consequently, the warning that was applied against the Club in the Appealed Decision should not have been imposed.

73. Moreover, based on the letter FIFA sent to the Player on 27 March 2015, it was apparent that the default notices which the Player had previously sent to the Club were not sufficient to comply with the terms and conditions set out in Article 12bis (3). Were it not for the actions by FIFA administration in providing the Player with *"privileged instruction"*, the Player's claim would not have complied with Article 12bis RSTP 2015. Accordingly, the overdue payables element of his claim should be deemed null and void.

iv. Violation of Qatar public policy

74. The Club clarified that it had always maintained (during correspondence with the Player, during the dispute at FIFA and now at the CAS) that it was willing to comply with its obligations under the Settlement Agreement and it did not deny that it owed the Player EUR 750,000. The Club also acknowledged that clause 2.2 of the Settlement Agreement specifically stated that *"In the event the payment is done to another bank account different from the one contained herein, the payment shall be deemed as not done"*.

75. However, the Club claimed that the amount had not been paid yet for two reasons: 1) the QNB refused to transfer the money to the Swiss bank account indicated in the Settlement Agreement; and 2) the Player refused to provide an alternate bank account.

76. In their submissions, the Club referred to the QAML laws which stated, *inter alia*, that when deciding whether an unusual or inconsistent transaction was a suspicious transaction, a financial institution in Qatar needed to take into account whether the transaction had no apparent or visible economic purpose, whether the size or pattern of the transaction was unusual, whether the customer had failed to give an adequate explanation for the transaction or to fully provide information about it, whether the transaction involved the use of offshore accounts, companies or structures that are not supported by the customer's economic needs and whether the transactions involved the unnecessary routing of funds through third parties.

77. In this regard, the Club submitted as evidence an email from the QNB dated 7 February 2015. Further, the Club stated that the QNB later *"informally clarified"* to them that their compliance department considered the transaction unusual (paragraphs 13 and 14 supra).

78. Accordingly, the Club stated that completing the transfer would have been a violation of Qatar public policy and there was nothing the Club could have done about it. As such, clause 2.2 of the Settlement Agreement (which required the amount to be transferred to the Swiss bank account) should be disregarded.

79. The Club stated that this problem could have been remedied if the Player was willing to provide details of an alternate bank account to conclude the transfer. As the Player was not willing to

do so, the non-compliance of the Club's obligation to pay the amount of EUR 750,000 should not be attributed to the Club.

v. Imposition of default interest and costs

80. Finally, the Club stated that in the event the Panel determined that the Club had to pay default interest, the calculation of the said interest should only commence from 30 March 2015 which is the date the Player sent the default notice required under Article 12bis RSTP 2015.

81. Further, Clause 6.1 of the Settlement Agreement states as follows:

> *In the event of a dispute arising from this Agreement, each party shall pay and be responsible for its own costs, including any legal costs, incurred which relate to any such dispute, including costs arising out of mediation, arbitration, litigation, or any alternative dispute resolution.*

82. As such, each party should be responsible for their own costs including legal costs and the costs of this arbitration.

vi. Summary of the second round of submissions by the Club

In addition to the arguments outlined above, the Club, in summary, also submitted the following in their second round of submissions:

83. FIFA had no legal basis to demand its members assume that legal proceedings would run in a different legal manner from those expressly and formally stated in its own regulations (i.e. the FIFA Procedural Rules). Moreover, FIFA has an obligation to provide this information, otherwise parties are not able to exercise their right to challenge any member(s) of the proposed FIFA DRC panel.

84. The reason the Club did not contest FIFA's letter dated 22 May 2015 (i.e. which stated that the matter was going to be submitted to the FIFA DRC but did not specify the composition of the FIFA DRC panel) is that it was waiting for FIFA's final communication which is usually sent by a member of the FIFA Players' Status Committee. This 'final' letter confirms the date and composition of the FIFA DRC which was to hear the matter, but the Club never received such a letter in this instance. This constituted a violation of due process and the Club's right to be heard.

85. In response to FIFA's submission that the Club had not contested the composition of the FIFA DRC panel in another, separate, case currently being heard at the FIFA DRC, the Club referred to Art. 5, par. 7 of the FIFA Procedural Rules to state that any information regarding another case currently being heard should be inadmissible for reasons of confidentiality.

86. In response to FIFA's arguments relating to the applicability of Article 12bis, the Club noted that FIFA should have submitted printed versions of the former RSTP's, i.e. January 2015 and March 2015. However, they did not and instead chose to rely on FIFA Circular letters to evidence the applicability and existence of former versions of the RSTP.

87. In response to the Player's submissions that the *de novo* rule would cure any alleged procedural defects from the Appealed Decision, the Club argued that the *de novo* rule is not limitless and the procedural violations in this matter (as outlined above) are sufficiently significant for the Panel to return the mater back to the FIFA DRC.

88. In response to the Player's submissions that the *pacta sunt servanda* principle was breached by the Club in this case, the Club argued that this principle was not absolute and the principle of *clausula rebus sic stantibus* applied to give them an 'escape clause' from the Settlement Agreement due to the fundamental change of circumstances.

89. Further, the Club reiterated that in a letter to FIFA dated 11 May 2015, they offered to make the required payment to a separate bank account but the Player never stepped in to accept this offer and solve the banking problems. As such, the Player is now 'estopped' from claiming that he never refused to provide an alternative bank account.

vii. Applicability of CAS 2013/A/3323 to this case

90. The Club submitted that in *CAS 2013/A/3323*, the Venezuelan club never provided any evidence that they tried to transfer the outstanding amount to the Argentinean player or that there was an obstacle to making the required payment. Conversely, in this case the Club has provided evidence that they tried to make the payment and the QNB denied it.

91. Further, the Club noted that in *CAS 2013/A/3323*, the Player requested the payment to be made into a bank account located in the place where he lived whereas in this case, the Player is asking for a payment to be made in Switzerland *in lieu* of his place of residence.

B. The Player's Submissions

In summary, the Player submitted the following in support of his defence:

92. The dispute falls under the scope of the *pacta sunt servanda* principle as the Player and the Club entered into a valid and binding agreement (the Settlement Agreement) which the Club has failed to honour for no legitimate reason. In fact, the Club do not even deny that they are obliged to fulfil their obligations. Further, despite the Club's assertions, the Club never informed the Player by writing that there was an issue with his Swiss bank account.

93. The Club, in bad faith, only appealed the Appealed Decision to the CAS in order to delay the entire procedure and its payment obligation towards the Player. The present appeal was nothing more than a dilatory tactic to postpone its financial obligations in bad faith which has caused the Player *"immense financial and moral damage"*.

94. With respect to the Club's request to send the matter back to FIFA for reconsideration, the Player stated that this had no legal basis as even if the Panel were to decide that there were procedural violations by the FIFA DRC or the incorrect version of the RSTP was applied in the Appealed Decision, pursuant to Article R57 of the CAS Code, the Panel had the power to hear the matter *de novo*. In doing so, the Panel would be curing any alleged procedural violations

in the Appealed Decision. The Player cited numerous CAS cases such as *CAS 1998/A/208*, *CAS 2008/A/1700* and *CAS 2008/A/1710* to support this argument. As such, the Panel had no reason to refer the case back to FIFA and doing so would only benefit the Club and cause further damage to the Player.

Moreover, in direct response to the Club's arguments, the Player submitted the following:

i. Violation of Procedural rules by the FIFA DRC

95. In their correspondence to the parties dated 22 May 2015, FIFA informed the parties that the investigatory phase of the procedure had finished, the matter was going to be submitted to the FIFA DRC for consideration and a formal decision within 3 to 5 working days and there was no mention that any further correspondence would be sent. The Player noted that despite being aware of this, the Club did not raise any objection whatsoever.

96. If the Club wanted to know the identity of the FIFA DRC members who would be deciding the matter, it had the opportunity to request FIFA to disclose this information. However, it did not do so, thereby tacitly accepting the manner in which FIFA conducted the proceedings. Moreover, the legal counsel representing the Club at the CAS is the same counsel who represented the Club at FIFA and he should have acted in good faith at the stage of the FIFA proceedings if he had any procedural objections.

97. Irrespective of this, the Club had nonetheless not provided at the CAS any grounds under which it would, or could, have challenged the independence or impartiality of any of the FIFA DRC members who passed the Appealed Decision. This proves that even if the Club did know the identity of the FIFA DRC members, they would not have raised a challenge anyway.

98. The Player also denied the Club's claims that the FIFA administration unfairly 'assisted' him by requesting him to provide proof of putting the Club in default pursuant to Article 12bis. The Player states that he had already put the Club in default on three separate occasions (9 February 2015, 2 March 2015 and 10 March 2015) and provided the Club more than a month to make the outstanding payment. Therefore, if anything it was the Player who suffered harm by having to issue a fourth default notice providing the Club with a further 10 days to make the payment. The Player stated that the Club's obligation to pay is irrefutable.

99. Accordingly, the manner in which FIFA conducted the proceedings had not caused any damage to the Club whatsoever and the sole intention of the Club when attempting to refer the matter back to FIFA was to simply further delay its payment obligations towards the Player.

ii. Application of the incorrect version of the RSTP

100. The Player noted that it was widely known and publicised that Article 12bis was to come into force on 1 March 2015 while other amendments were to come into force on 1 April 2015. As such, there were, in effect, two new versions of the RSTP – a 1 March 2015 version and a 1 April 2015 version.

101. It was specified in FIFA's letter to the parties dated 22 May 2015 that the "1 March 2015" edition of the RSTP would be applied by the FIFA DRC to the dispute.

102. The Player further stated that the fact FIFA did not upload a version of the 1 March 2015 RSTP does not mean that the 1 March 2015 RSTP had not come into force, as a document being published on the FIFA website is not a prerequisite to its validity. FIFA had widely communicated to the football world in general that certain amendments (including Article 12bis) were to come into force on 1 March 2015 and thus, it did come into force on that date without the need for further communication.

iii. Non applicability of Article 12bis of the RSTP 2015

103. In respect of the Club's argument that the Player had not put the Club in default correctly pursuant to Article 12bis RSTP 2015, the Player noted again that it had actually sent the Club notices on three separate occasions (on 9 February, 2 March and 10 March 2015) even before his letter of 30 March 2015. If the Club had intended to comply with its obligations in accordance with its good faith, it had ample opportunity to do so.

104. In summary, the Player fully complied with all the required elements of Article 12bis RSTP 2015 before FIFA considered his claim.

iv. Violation of Qatar public policy

105. In relation to the Club's arguments about the impossibility of making the bank transfer, the Player noted the following:

- Firstly, the Swiss bank account specified in clause 2.2 of the Settlement Agreement was the same bank account to which the Player had transferred all of his money from his QNB bank account when he left Qatar. The reason for being specific about this in the Settlement Agreement was to avoid any potential misunderstanding in the future.

- Secondly, the Player had used this bank account for many years regardless of where he was playing at the time (Spain, Scotland or Qatar). He never had any problems in the past in money being transferred to this Swiss bank account from anywhere in the world.

- Thirdly, the Club never informed the Player about the alleged problems with the Swiss bank account. Further, contrary to the Club's assertions, it never asked him to provide a new, alternative bank account or provide any documentation to assist in getting the payment approved. Had the Club informed the Player of these alleged problems, the Player would have done everything he could (save for providing an alternate bank account) in order to solve the problems and receive his money. Not only did the Club not inform the Player of the issues but the Club also never replied to any of the Player's notifications/letters. If the Club really did want to solve the alleged bank account issues, it would have notified the Player but it chose not to, proving that its real intention was to avoid payment.

106. In relation to the Club's arguments that the bank transfer would amount to a violation of Qatar public policy, the Player noted that the Club freely agreed to include clause 2.2 in the Settlement Agreement specifying the bank account. Pursuant to Article 74.1 of the Swiss Code of Obligations (the "Swiss CO"), "*the place of performance is determined by the intention of the parties as stated expressly or evident from the circumstances*". The Player also reiterated that had he been told about the alleged bank problems he would have done everything he could, save for providing an alternate bank account, to help solve the problem. Pursuant to the principle of *pacta sunt servanda*, there is nothing to prevent the Club from fulfilling its obligations under the Settlement Agreement.

v. Imposition of default interest and costs

107. In relation to the Club's arguments that interest should only be payable from 30 March 2015, the Player noted that the Settlement Agreement clearly stated that the deadline for the performance of the Club's financial obligations was 2 February 2015. By being in default of this payment, any interest applied should be applied from 2 February 2015 onwards.

108. In relation to the issue of costs, the Player submitted that clause 6.1 of the Settlement Agreement does not prevent the Panel from granting the prevailing party a contribution towards its legal fees and other expenses pursuant to Article R64.5 of the CAS Code.

vi. Summary of the second round of submissions by the Player

In addition to the arguments outlined above, the Player, in summary, also submitted the following in his second round of submissions:

109. The Player reiterated that the expedited procedure adopted by FIFA in this dispute was justified due to the objectives pursued by Article 12bis (i.e. to ensure that clubs properly and promptly comply with their financial contractual obligations). The fact that the Club did not object to the procedure adopted by FIFA at the time but waited to raise the argument at the CAS shows the Club's bad faith. Further, in any event, the *de novo* hearing at the CAS would remedy any alleged procedural violations.

110. In response to the Club's claims that an incorrect version of the RSTP was applied, the Player reiterated that FIFA had made it abundantly clear that Article 12bis was to come into force on 1 March 2015 and the Club's baseless arguments are an attempt to mislead the Panel and justify their reprehensible behaviour during this dispute.

111. In response to the Club's claims that Article 12bis should not apply in any event, while reiterating that he fully complied with the requirements of Article 12bis, the Player noted that the payment obligation of the Club is irrefutable (as constantly admitted by the Club) and FIFA could, and should, have dealt with the case anyway. Moreover, by asking the Player to submit yet another default notice (after having already given 3 separate default notices to the Club), if anything it was the Player who could have suffered damage as he had clearly already put the

Club in default for more than 10 days. As such, FIFA did not violate the principle of equal treatment.

112. In response to the Club's claims that the principle of *clausula rebus sic stantibus* applies to override the principle of *pacta sunt servanda*, the Player asserts that this is incorrect as no circumstances had changed since entering into the Settlement Agreement and the Club could actually have made the payment to the specified bank account. Further, the Club failed to prove that it made reasonable attempts to make the payment.

113. In response to the Club's claims that they offered to make the payment to another bank account but the Player never accepted this offer, the Player states that the Club is trying to mislead the Panel by claiming that a response in a letter addressed to FIFA constituted a formal request (pursuant to clause 4 of the Settlement Agreement) to the Player to provide a new bank account. The Club was well aware of how it needed to directly communicate with the Player but failed to ever directly request him to provide an alternate bank account.

vii. Applicability of CAS 2013/A/3323 to this case

114. The Player stated that *CAS 2013/A/3323* fully applied to this matter as the Club had not proved that they made any effort to comply with their financial obligations. Moreover, pursuant to Article 74.1 of the Swiss CO, it is undisputed that the parties agreed the place of performance of the Settlement Agreement.

C. FIFA's Submissions

In summary, FIFA submitted the following in support of its defence:

i. Violation of Procedural rules by the FIFA DRC

115. FIFA submitted that the Club had not provided any well-founded or cogent arguments that confirm any procedural mistakes from the FIFA administration and the Club appeared to be searching for invalid arguments allowing it to further delay the payment of the amount it undeniably owed the Player.

116. Although the Club referred to the "usual practice" of FIFA, it went without saying that when there is a new Article in the RSTP, such as Article 12bis, a party in front of FIFA could not merely assume that the proceedings regarding the new article would be conducted in exactly the same way as proceedings in any other "regular" dispute. Therefore, the Club's arguments that the FIFA administration violated its procedural rights because it proceeded differently from a "regular" dispute were unfounded and based on assumptions.

117. In relation to the arguments that the Club's right to equal treatment or right to be heard were violated, FIFA failed to see how this was true. FIFA provided both the Club and the Player the opportunity to state their positions, the Club was provided with the Player's complete claim and relevant exhibits, were given the chance to submit their answer and both parties received exactly

the same letters from the FIFA administration. As such, the Club's claims of the violation of their right to be heard and equal treatment were groundless.

118. In relation to the Club's arguments that they were not provided an opportunity to challenge the composition of the FIFA DRC which would pass the Appealed Decision, FIFA noted that neither the Club nor the Player addressed any correspondence to FIFA requesting further information following FIFA's letter of 22 May 2015, therefore tacitly confirming that no objections would be raised and they were satisfied with the contents of the said letter.

119. Moreover, the specificity of the dispute resolution system at FIFA had to be taken into consideration as it was different from other, more traditional arbitration bodies such as the CAS, as members of the FIFA DRC are not appointed by the parties. The FIFA DRC is always composed of a chairman (or deputy chairman) together with either 2 or 4 members (in equal number of player and club representatives) from a closed list of 24 members. As this list of members is publically available and the parties have no direct influence over the composition of any DRC panel that would hear a specific matter, FIFA stated that:

…there is no real need to inform the parties about the exact composition of the DRC in advance. Indeed, the principle of equal representation of players and clubs will, in any case, guarantee fair proceedings when it comes to the decision-making process. In addition, it is worth emphasising that the [Club] *is not raising any kind of objection with respect to the actual composition of the DRC that was chosen to hear the dispute at stake. In other words, it accepted and confirmed that there are no reasons to doubt on their independence and impartiality.*

120. Even if the Panel were to determine that not disclosing the identities of the FIFA DRC was a procedural mistake, FIFA submitted that this would not render the Appealed Decision null and void. Pursuant to both CAS and Swiss Federal Tribunal (the "SFT") jurisprudence, it is not acceptable for a party to keep an alleged procedural violation in reserve, which is confirmed by the SFT case *X.___ S.A. de C.V. v. A. ____, 4A_476/2012 (judgment of 24 May 2013)*, which stated that "… *it is contrary to good faith and an abuse of rights for a party to keep a ground for appeal in reserve, only to postpone it in case of a disadvantageous outcome in the proceedings or a foreseeable loss of the case*".

121. This bad faith by the Club was confirmed by their actions in a separate Article 12bis case heard at FIFA involving the Club after the Appealed Decision was passed. In that case, the Club was sent a similar letter to the one it received on 22 May 2015 in this case and did not raise any objections then either. By not raising such objections immediately, the Club is now prevented from invoking such procedural irregularity in their CAS appeal.

122. FIFA also stated that it failed to see the rationale in the Club's allegations that FIFA violated their right to equal treatment by requesting the Player to submit proof of putting the Club in default pursuant to Article 12bis RSTP 2015. FIFA stated that if anything, the Club should be grateful that FIFA proceeded in the way they did as it provided the Club with yet another opportunity to settle the dispute with the Player without FIFA's involvement. However, the Club chose to ignore this default notice and chose instead to involve the Player in a lengthy legal dispute.

ii. Application of the incorrect version of the RSTP

123. In relation to this point, the Panel notes that FIFA raised largely the same arguments as the Player which have been detailed above so these will not be repeated below.

124. In summary, the Club (and the broader football community) was well aware from Circular 1468 that Article 12bis was to come into force on 1 March 2015 irrespective of whether a 1 March 2015 version of the RSTP was published on their website. As such, the FIFA DRC correctly applied the 1 March 2015 version of the RSTP 2015 (containing Article 12bis) in the Appealed Decision.

125. In any event, on 14 April 2015, FIFA sent the Club a letter regarding the Player's claim and specifically mentioned Article 12bis and the 1 March 2015 version of the RSTP and once again, no objection was raised by the Club at that stage. In fact, when the Club replied to the Player's claim, it even used the term 'OP' in its letter.

iii. Non applicability of Article 12bis of the RSTP 2015

126. FIFA submitted that there was nothing in any provisions which prevented the Player from proceeding in the way that it did. In any event, FIFA only sent the Player's claim to the Club after the 10-day period mentioned in the Player's default notice of 30 March 2015 had already expired. As such, Article 12bis of the RSTP 2015 was applicable to the Club.

iv. Violation of Qatar public policy

127. FIFA noted that, unlike at the CAS proceeding where it has submitted a variety of documents which it believes supports its claims, at the procedure in front of FIFA, the Club did not submit a single document indicating that the QNB did not want to execute the bank transfer as it was suspicious. Nevertheless, FIFA stated that the alleged reasons put forward by the Club as to why the bank transfer was denied were not supported by any documentation from the QNB. Moreover, as the Club was based in Qatar and is regularly involved in international transactions, it can be reasonably expected that the Club should have been aware of the relevant laws and regulations surrounding this. Despite this, the Club specifically agreed to include clause 2.2 in the Settlement Agreement so the FIFA DRC was correct in concluding that the Club failed to comply with its financial obligations without any valid reason.

v. Imposition of default interest and costs

128. The Panel notes that FIFA did not make any specific submissions about this issue.

vi. Summary of the second round of submissions by FIFA

In addition to the arguments outlined above, FIFA, in summary, also submitted the following in their second round of submissions:

129. In response to the Club's claims that FIFA are acting in violation of Art. 5 par. 7 of the FIFA Procedural Rules by referring to another case currently being heard in front of FIFA involving the Club, FIFA stated that this was incorrect and there was in fact no provision in the FIFA Procedural Rules which prevented them from demonstrating the bad faith of the Club by keeping an alleged procedural violation 'in reserve'.

130. FIFA stated that when applying the new Article 12bis, they have adopted an approach by means of which it first makes a *prima facie* analysis of whether a particular claim could potentially fall under the scope of Article 12bis and therefore trigger an expedited procedure. If a claim could potentially fall under the scope of Article 12bis, then FIFA would inform the creditor of the relevant procedure and request documentation where necessary. By doing so, FIFA hopes that disputes would be resolved in a more expedited manner which is not only desirable for the parties but the wider football community. One of the main aims of Article 12bis is to prevent parties from abusing the FIFA dispute resolution system to unduly delay payments which are clearly due. The fact that the Club in this case have never denied that an amount is overdue and payable makes their arguments in this case even more incomprehensible.

131. FIFA also stated that at no point did the Club explicitly request the FIFA DRC to establish that the Club was entitled to make the payment to an alternate bank account.

vii. Applicability of CAS 2013/A/3323 to this case

132. FIFA submitted that *CAS 2013/A/3323* was fully applicable to this matter and reiterated that the parties clearly contractually agreed to a specific bank account and the Club did not prove that it was impossible to make the required payment.

V. JURISDICTION OF THE CAS

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

> *An appeal against a 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.*

134. Further, Article 7.2 of the Settlement Agreement provided that:

> *Any dispute arising from or related to the present Agreement will be submitted exclusively to the judicial bodies of FIFA … In the event that, for any reason, FIFA is not competent to deal with any dispute arising from or related to this settlement agreement, such dispute will be submitted to the Court of Arbitration for Sport (CAS-TAS) and resolved definitively in accordance with the Code of sports-related arbitration. The Panel will consist of three arbitrators and the language of the arbitration will be English. The final award shall be final and fully enforceable by and between the Parties before any competent body and/or authority.*

135. Moreover, the Club relied on Articles 66 and 67 of the FIFA Statutes. The jurisdiction of CAS was not disputed by any of the parties. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by all parties.

136. It follows that the CAS has jurisdiction to hear this dispute.

VI. ADMISSIBILITY

137. The Statement of Appeal, which was filed on 20 July 2015, complied with the requirements of Articles R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.

138. It follows that the appeal is admissible.

VII. APPLICABLE LAW

139. Article R58 of the CAS Code provides the following:

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

140. According to Article 7.1 of the Settlement Agreement:

> *This settlement shall be governed by and interpreted in accordance with the laws of Switzerland and the FIFA Regulations.*

141. Accordingly the Panel rules that FIFA Regulations would apply (the question of which exact version of the RSTP would apply is dealt with below), with Swiss law applying to fill in any gaps or *lacuna*, when appropriate.

VIII. LEGAL DISCUSSION

A. Merits

142. The Panel observes that the main issues to be resolved are:

a) Should the matter be sent back to the FIFA DRC or heard *de novo* by the Panel?

b) When did Article 12bis come into force - 1 March 2015 or 1 April 2015?

c) If the latter, what is the effect of FIFA applying the incorrect version of the RSTP in the Appealed Decision?

d) Did FIFA fail to treat the parties equally in the procedure leading up to the Appealed Decision?

e) Is the unpaid amount of EUR 750,000 due and payable by the Club to the Player?

f) Was the performance of the Club's obligations under the Settlement Agreement impossible due to Qatar's national laws and public policy? Could the Player have assisted in resolving this issue?

g) If the unpaid amount is due and payable, when should interest begin accruing– 30 March 2015 or 2 February 2015?

a) Should the matter be sent back to the FIFA DRC or heard de novo by the Panel?

143. The Panel notes that the Club has claimed that a number of their procedural rights were violated by the FIFA DRC when rendering the Appealed Decision. In summary, the Club claimed:

i. The incorrect version of the RSTP was applied in the Appealed Decision;

ii. Their procedural rights were violated when FIFA did not inform them about the constitution of the FIFA DRC panel that was to render the Appealed Decision; and

iii. Their right to equal treatment was violated when the FIFA administration sent a letter to the Player requesting proof that the Player had put the Club in default with a 10-day period of notice, subject to Article 12bis RSTP 2015.

144. The Club also argued that as a result of the procedural violations above, the matter should be sent back to FIFA to be heard again by the FIFA DRC as a *de novo* proceeding is unable to cure these procedural defects.

145. At the outset, the Panel wishes to point out that the wording in Article R57 of the CAS Code clearly states that:

The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

146. The Panel notes that even if the allegations of procedural violations above were founded (discussed further below), as has been widely confirmed in long standing CAS jurisprudence, a *de novo* proceeding at the CAS cures the procedural defects of a first instance decision. In *CAS 2008/A/1718-1724*, the Panel stated:

… not only can the Panel review the facts and the law contained in the Decisions but it can as well replace those Decisions if the Panel finds that the facts were not correctly assessed or the law was not properly applied leading to an erroneous decision.

147. Further, in *CAS 2008/A/1700 & CAS 2008/A/1710*, the Panel stated:

Under Article R57 of the CAS Code, the Panel's scope of review is fundamentally unrestricted. It has full power to review the facts and the law…

148. The Panel concludes that there are no special circumstances in this case which warrant sending this matter back to the first instance decision maker. The Panel notes that to send this matter back to the FIFA DRC would only delay proceedings further and ask FIFA to perform the task that the Panel themselves are entitled and fully able and willing to do. Thus, the Panel concludes that it can, and will, hear this matter *de novo*, as Article R57 of the CAS Code clearly empowers them to do.

b) When did Article 12bis come into force - 1 March 2015 or 1 April 2015?

149. The Panel notes that the issue of whether Article 12bis came into force on 1 March 2015 or 1 April 2015 could have an impact not just on this particular case, but also on any other Article 12bis cases which were initiated at FIFA between 1 March and 1 April 2015.

150. Both the Player and FIFA point to Circular 1468 stating that Article 12bis was clearly intended to come into force on 1 March 2015 and all the stakeholders in the football community were made aware of this in advance of this date. Moreover, FIFA points out that they specifically referred to Article 12bis in their correspondence with the Club and the Club replied to FIFA citing the reference "OP" in their letters. At no point did the Club object to the applicability of Article 12bis before the Appealed Decision. Thus, irrespective of what it states in the RSTP 2015, it should be considered that Article 12bis applies to the matter at hand and generally as from 1 March 2015. FIFA also submitted that there were, in reality, many versions of the RSTP in 2015, as various rules and regulations changed at different times, but only one (the final) version was put into print and published on the FIFA website, due to commercial expedience, and it contained all the changes made from the RSTP 2014 version by these various new versions and it then became the formal, final RSTP 2015.

151. Conversely, the Club rely on the specific wording contained in Article 29 of the RSTP 2015 which states that the entire RSTP was to come into force on 1 April 2015. Further, the Club argues that FIFA could have either issued a 1 March 2015 version of the RSTP or it could have specifically stated in the RSTP 2015 exactly what date the various changes came into effect, including the fact that Article 12bis came into force on 1 March 2015, but it did neither.

152. In summary, the Panel sides with the Club's arguments in this regard. There is an undoubted confusion which has been created by the discrepancy between Circular 1468 and Article 29 of the RSTP 2015 and this confusion was created by FIFA. The Panel acknowledges FIFA's arguments that the entire football community was made aware that Article 12bis was *intended* to come into effect on 1 March 2015. However, the reality is that the first (and only) publically available legislation containing Article 12bis (i.e. the final, printed version of the RSTP, being RSTP 2015) expressly stated that the entire RSTP was to come into force on 1 April 2015, which included Article 12bis. It would not have been too onerous to produce more than one version of the RSTP as each change was made, or simply to have confirmed with the RSTP 2015 exactly when each change was to take effect from.

153. Moreover, as stated by the panel in *CAS 2004/A/594*, (emphasis added):

> … *FIFA has issued numerous Circular Letters. Although* ***these Circular Letters are not regulations in a strict legal sense****, they reflect the understanding of FIFA and the general practice of the federations and associations belonging thereto. Thus, these Circular Letters are relevant for the interpretation of the FIFA Regulations.*

154. Thus, the Panel concludes that in accordance with clear and consistent CAS jurisprudence in this regard (*CAS 2008/A/1705, CAS 2006/A/1181, CAS 2006/A/1125, CAS 2004/A/794* and *CAS 2004/A/594* to name a few), FIFA Circulars cannot be allowed to take precedence over the clear and specific wording of FIFA's regulations, including the RSTP, as the RSTP contains provisions of a higher ranking in the hierarchy of FIFA regulations than the contents of a circular. The wording in Circular 1468 cannot amend, override, change or contradict the provisions in the RSTP 2015 as it appears to do so in this situation. Given the contradiction between the RSTP 2015 and Circular 1468, the former should prevail. For the abundance of clarity, the Panel also agrees with the Club's argument that pursuant to the principle of *contra proferentem*, the unclear wording should be interpreted against the author of the wording (i.e. FIFA).

155. If FIFA wanted Article 12bis to apply from 1 March 2015 (and the Panel acknowledges that they clearly intended to do so) but only wanted to issue one 'new' version of the RSTP on 1 April 2015 for procedural efficiency, it could have – as the Club stated – simply specified in the RSTP 2015 that while the rest of the RSTP came into force on 1 April 2015, Article 12bis in particular came into force on 1 March 2015. However, FIFA failed to do so and the Club should not have to suffer the adverse consequences of FIFA's oversight.

156. In summary, the Panel concludes that Article 12bis came into force on 1 April 2015. Accordingly, the sanction of a 'warning' imposed on the Club in the Appealed Decision pursuant to Article 12bis (4) FIFA RSTP 2015 is to be set aside.

c) The effect of FIFA applying the incorrect version of the RSTP in the Appealed Decision.

157. Given the above conclusion that Article 12bis applies from 1 April 2015 and not 1 March 2015, the obvious consequence of this is that Article 12bis should not have been applied in the Appealed Decision. The broader consequence of this is that FIFA applied the incorrect version of the RSTP in the Appealed Decision as it applied the RSTP 2015 when it should have applied the RSTP 2014.

158. Although the incorrect regulations were applied in the Appealed Decision, the Panel hears the matter on a *de novo* basis as detailed above. The Panel applies the correct version of the RSTP in this Award, thereby curing this procedural defect. The Panel notes that both versions of the RSTP enable it, standing in the shoes of the FIFA DRC, to consider an employment based dispute between a player and a club of an international dimension resulting out of a settlement agreement.

d) Did FIFA fail to treat the parties equally in the procedure leading up to the Appealed Decision?

159. While any alleged procedural defects in the Appealed Decision would be cured by this *de novo* CAS proceeding, for the sake of completeness the Panel nevertheless wishes to address the remaining allegations of procedural violations made by the Club.

i. The Club's procedural rights were violated when FIFA did not inform them about the constitution of the FIFA DRC panel that was to render the Appealed Decision

160. The Club argued that by not informing them of the exact composition of the FIFA DRC panel that was to render the Appealed Decision, FIFA denied them an opportunity to challenge their appointments pursuant to Article 7(2) of the FIFA Procedural Rules. Moreover, this amounted to a violation of the Club's personality rights, the principle of equal treatment, due process and also a violation of Swiss public policy.

161. On the other hand, FIFA argued that while it may ordinarily advise the parties to a dispute about the composition of the FIFA DRC panel in advance of a decision, as Article 12bis is a 'new' procedure, the Club could not simply assume that FIFA would follow the same procedure as in other disputes. Further, FIFA argued they provided both parties the opportunity to state their position and did not violate the principle of equal treatment or right to be heard. Moreover, in any event, FIFA argued that the specificity of the dispute resolution system at FIFA needed to be taken into account as the nature and composition of FIFA DRC panels is such that the principle of equal representation and fair proceedings is guaranteed.

162. The Player also pointed out that at no point has the Club provided any hypothetical grounds under which it could, or would, have challenged the appointment of any of the members of the FIFA DRC which rendered the Appealed Decision.

163. The Panel agrees in part with all three of the parties in this regard. While acknowledging FIFA's arguments that the principle of fair proceedings and equal representation is usually respected in FIFA DRC panels given the rules about their composition, the Panel also accepts the Club's arguments (in principle) that they were not provided with an opportunity to challenge any of their appointments pursuant to Article 7(2) of the FIFA Procedural Rules. The Panel also reject FIFA's position that this was a new procedure, so the parties should not "assume" that it would follow the usual procedure. Quite apart from the fact that actually Article 12bis now plays no part in the matter at hand, FIFA were under the impression it did, but the Panel finds it would be a perfectly reasonable assumption of the parties to assume the Procedural Rules would still apply as normal and they would be informed of who at the FIFA DRC would hear their matter.

164. However, as the Player rightfully points out, other than for making a broad complaint, the Club do not actually provide any arguments regarding which of the FIFA DRC members it would have challenged the appointment of, if it had been given the opportunity. The Club's arguments would have carried more weight for the Panel if they could have pinpointed a member of the FIFA DRC panel which passed the Appealed Decision and provided reasonable and substantiated grounds for why it would have challenged their appointments. However, they

failed to do so. Instead, they simply made a broad complaint that their procedural rights were violated and requested for the matter to be re-heard by FIFA. Given the lack of evidence to the contrary, this leads the Panel to believe that even if the Club had been told of the identities of the FIFA DRC panel, they would not have filed a challenge of any of their appointments in any case.

165. Irrespective of this, even if FIFA's actions in this regard could amount to a technical violation of Article 7(2) of the FIFA Procedural Rules, the *de novo* nature of these CAS proceedings would cure this hypothetical procedural defect in any case. For completeness, the Panel notes that at the outset of this CAS proceeding, the Club were told of the identities of the Panel issuing this decision and were given a fair opportunity to challenge their appointments if they wished to. They did not raise any challenge and therefore accepted the Panel's appointments and signed the Order of Procedure too. This procedural defect is also thereby cured by this CAS Award.

ii. The Club's right to equal treatment was violated when FIFA administration sent a letter to the Player requesting proof that the Player had put the Club in default and provided them with a 10-day period of notice, subject to Article 12bis RSTP 2015.

166. The Club also argued that their right to equal treatment was violated when the FIFA administration sent a letter to the Player requesting him to provide proof that he had put the Club in default pursuant to Article 12bis. The Club argued that this was a violation of Article 9 of the FIFA Procedural Rules. Conversely, both FIFA and the Player argued that, if anything, this damaged the Player more than the Club because he had to give the Club a further period of 10 days to comply with their obligations.

167. Leaving aside for a moment the fact that the Panel has decided that Article 12bis is not applicable in this dispute, the Panel nevertheless rejects the Club's arguments and agrees with the Player and FIFA on this point. The Club themselves acknowledge that the FIFA administration can assist the parties in avoiding their claims or answers being rejected pursuant to Article 9(2) of the FIFA Procedural Rules. When reviewing the wording of the letter sent by the FIFA Administration to the Player on 27 March 2015, there is nothing which the Panel considers would constitute as advice which privileged the Player over the Club. Instead, the letter simply stated that pursuant to Article 9 of the FIFA Procedural Rules, the Player needed to submit a further document in order for his claim to be deemed complete. The Panel finds that this letter does not amount to a violation of Article 9 of the FIFA Procedural Rules and does not find that the Club's right to equal treatment was violated.

168. The Club also argued that if not for this 'privileged advice' by the FIFA Administration, the Club would not be deemed to have had overdue payables pursuant to Article 12bis. The Panel notes that the intention of Article 12bis is to ensure that parties comply with the financial obligations on time. As the Player pointed out in his submissions, he had already provided three separate notices of default to the Club and provided the Club over one month to pay the outstanding amounts, yet the Club ignored all three notices. When provided with a fourth default notice, the Club chose to do nothing yet again. Nevertheless, the Panel does find it curious that the FIFA Administration still requested the Player to issue *yet* another default notice in such a situation when it was clear that the Player had already given the Club ample

opportunity to fulfil their obligations within the (albeit ultimately incorrect) window of applicability of Article 12bis.

169. Thus, the Panel concludes that the Club's right to equal treatment was not violated and in any event, as the Panel concluded that Article 12bis is not applicable in this dispute, whether or not the Player technically satisfied the procedural requirements of Article 12bis is irrelevant.

e) Is the unpaid amount of EUR 750,000 due and payable by the Club to the Player?

170. The Panel notes at the outset that all three parties in this dispute agree that the Club owes EUR 750,000 to the Player pursuant to Clause 2.2 of the Settlement Agreement. The Club states that they have always been willing to make this payment, but have been unable to do so to date for two reasons:

- The QNB refused to transfer the money to the Swiss bank account specified in Clause 2.2 of the Settlement Agreement; and
- The Player refused to provide an alternate bank account.

171. The Panel therefore confirms that the amount of EUR 750,000 is due and payable by the Club to the Player. The Panel will deal with the two alleged problems relating to payment below.

f) Was the performance of the Club's obligations under the Settlement Agreement impossible due to Qatar's national laws and public policy? Could the Player have assisted in resolving this issue?

172. The Club essentially state that the performance of their obligations under the Settlement Agreement were impossible due to the QAML laws. As such, the legal principle of *clausula rebus sic stantibus* should provide an exception to the principle of *pacta sunt servanda*, as the circumstances when they entered into the Settlement Agreement changed in an unforeseeable manner and to a material extent which made performance impossible. The Panel notes that the Club bears the burden of proof in relation to convincing the Panel that it was (or is) impossible to make such payments to the Player into the stipulated bank account and that it had requested the Player, in these circumstances, to provide details of another bank account that it was possible to transfer the funds to.

173. However, based on the evidence submitted by the Club, the Panel is not convinced that the payment was 'impossible' as the Club states. Firstly, the Club stated that the QNB refused to complete the requested bank transfer but the only evidence submitted by the Club in this regard is an email from the QNB in which the bank very briefly stated that the payment was rejected. The only reason given was that the payment *"does not comply with anti-money Laundering laws of Qatar"*. However, the Club claims that the QNB later *"informally clarified"* that the reasons for rejecting the transfer were:

- The payments made by the Club to the Player under the Employment Contract were transferred to a bank account in Qatar, yet the money due under the Settlement Agreement was being transferred to an account in Switzerland.

- The Swiss bank account provided was also in the name of an unidentified holder - Viviana Carolina Acosta Cammarota.

- The Player was a Venezuelan/Hungarian football player who was allegedly living in Spain at the time, but requested the money to be transferred to Switzerland.

- The obligation to transfer the money only and exclusively to the specified bank account in Switzerland was interpreted as suspicious.

- None of the other settlement agreements signed with the other football players required the Club to pay amounts to bank accounts in Switzerland.

- The Club and the Player failed to provide any documents from the Venezuelan, Spanish or Hungarian tax authorities referencing the Swiss bank account.

174. The Panel finds it unusual for a bank, such as the QNB, to provide no specific reasons for rejecting the bank transfer when contacting the Club via email, yet later on an 'informal' basis were willing and able to provide 6 specific reasons for why the payment was rejected. Why did they not state these reasons in an email or letter to the Club? In any event, why did the Club not communicate these reasons to the Player either verbally or in writing? Nevertheless, after analysing all of the evidence provided, for the reasons outlined below the Panel is not convinced that the Club did everything they could to comply with their obligations under the Settlement Agreement.

175. It may be true that previous payments to the Player by the Club were made to a bank in Qatar, yet this payment was to be made to an account in Switzerland. The Player confirmed that he closed his Qatar account as he left the country. However, if the QNB reviewed the Settlement Agreement (which they were provided a copy of) they would have seen that the payment was for a football player of foreign nationality who was no longer going to be playing or living in Qatar, so requiring the payment to be made to a foreign bank account was not, in itself, noteworthy. Would the QNB be aware of the next destination of the Player? Did it know that the Player was not going to reside in Switzerland? If he had joined a club there, would it have refused to send the money to Switzerland? Further, if the bank account contained a co-holder (Viviana Carolina Acosta Cammarota), why did the Club not ask the Player to confirm who this was? The Player could presumably have easily answered that question. The QNB allegedly stated that the Player and Club failed to provide any documents from the Venezuelan, Spanish or Hungarian tax authorities referencing the Swiss bank account. Why did the Club not ask the Player to provide this? Further, why is it relevant where settlement agreement amounts to other players were paid to as they all would (presumably) have different nationalities and circumstances and would have nothing to do with the Player?

176. Moreover, the Player submitted that the specified Swiss bank account *"is the same bank account where* [the Player] *had transferred all the money he had in his bank account in the QNB until he had the obligation to cancel such bank account as requirement to acquire the exit clearance to be able to leave Qatar".* Further, the Player also submitted that this Swiss bank account was the same account he had used for many years while he was playing in Spain, Scotland and Qatar. Leaving aside the issue of whether this is true or not and that the QNB might not have been aware of all this, if the Club contacted the Player to request his assistance in resolving these problems, the Panel believes it is reasonable to assume (as the Player states) that he would have done his utmost to assist the Club in providing the Club with information to help process the transfer, as this was clearly in his best interests. Statements from the Swiss bank, the Player and/or various tax authorities may have assisted in allaying the QNB's fears. However, the Club has produced no evidence that it made any real attempt to obtain such information. Had the Club tried to obtain this information and the Player either refused to provide it or provided information which confirmed the QNB's fears regarding this transfer, the Panel could have given far more weight to the Club's claims that they did all they could in trying to comply with their obligations under the Settlement Agreement. However, it appears they failed to make any efforts whatsoever, other than writing to FIFA and suggesting the Player provided a different account.

177. The Panel also struggles to understand the position of the QNB in any event. The sum due from the Club to the Player was stipulated as "net of tax". As such, the Panel assume that any tax that would be due on the settlement monies would have to be paid in Qatar by the Club, leaving the net sum for the Player. If there had been no settlement and the Employment Contract had run its course, the same Club would be making payments to the same Player. Again, the Club would have deducted tax and paid it in Qatar and the monies in the Player's bank account in Qatar would be the net proceeds from his employment (less whatever he spent while in Qatar). The QNB seemed to have no issue with the Player closing his account with them and transferring the balance abroad. Why should it view sums due under a settlement agreement between an employer and employee and differently from those received under a contract of employment between the same parties?

178. The Panel acknowledges that it may well have been the case that the Club could have raised all of these points with the QNB and provided evidence and statements from the Player, and *still* have had the bank transfer rejected as the QNB deemed it to be a violation of the QAML laws. However, the Panel can only make a decision based on the evidence provided to it and based on that, it appears that the Club never made a serious attempt to convince the QNB to change their decision regarding the transfer. It appears the Club requested the QNB to make the payment, were denied without any detailed reasons and simply accepted this without any complaint. When they were later 'informally' told of 6 further specific reasons by the QNB, they did not share these reasons with the Player or request his assistance in either clarifying or remedying the situation with the QNB. Instead, they simply did not make the required payment, did not notify the Player, did not respond to four separate default notices and only raised these alleged problems once a legal dispute was commenced at FIFA and then the CAS.

179. Further, the Club stated that the Player was unwilling to provide an alternative bank account. However, the Club has not provided any evidence of contacting the Player to specifically request this at any stage. Instead, the Club essentially states that the Player saw in the Club's submissions

at FIFA and the CAS that there was an issue with the Swiss bank account yet never offered the Club an alternative. The Panel does not believe that this constitutes a valid, bona fide attempt in good faith to request the Player to provide an alternative option. It would not estop the Player from arguing against the submission made by the Club in the matter at hand.

180. Moreover, it is important to note that the Club freely agreed to enter into the Settlement Agreement with the Player and willingly chose to agree to Clause 2.2 specifying the Swiss bank account to the exception of all others. As a football club dealing with international football players, it is reasonable to expect that the Club should have known about the QAML laws even if the Player did not, and should have known there was a risk that the payment would not be processed and accordingly not have agreed to such a clause.

181. In relation to the question of whether the Player could have done more to resolve this issue, further to the above, the Panel notes that in *CAS 2013/A/3323*, the panel stated (emphasis added):

> *84. The Panel is of the view that* ***the utmost obligation of the debtor is to duly transfer the amount to the bank account provided by the creditor, and, therefore it is the responsibility of the debtor to do all relevant efforts to comply with its payment obligation in accordance with a FIFA decision and according to the creditor's wishes****. The latter is therefore free not to accept a payment which would not be made on the bank account which details he has been requested to provide, which obligation he met.*

182. The Panel fully agrees with this and states that it is the responsibility of the debtor (in this case the Club) to undertake all relevant efforts to comply with their obligations. The Player specified which bank account he wanted the payment to be made into and the Club freely agreed to this in the Settlement Agreement. In any event, it does not appear that the Club even requested the Player to either assist in convincing the QNB to process the bank transfer or requested him to provide an alternate bank account. While the Club submit that this case has no relevance to the matter at hand, as in *CAS 2013/A/3323* the club was "unwilling" to make the payment, whereas it submitted it was "unable" to make the payment, it has not convinced the Panel that this was really the case.

183. In summary, based on the evidence provided and for all the reasons stated above, the Panel is not convinced that the actions of the Club were consistent with those of a debtor willing, in good faith, to undertake all relevant efforts to comply with their financial and contractual obligations. Accordingly, the Panel rejects the Club's claims that they should be exempted from their financial obligations under the Settlement Agreement for reasons out of their control (i.e. the QAML laws) and it has to make the payment due to the Player in accordance with the Settlement Agreement, unless the Player agree to vary that in some way in the future.

g) If the unpaid amount is due and payable, when should interest begin accruing– 30 March 2015 or 2 February 2015?

184. The Player argued that default interest on any award should be awarded from 2 February 2015 until the effective date of payment as this was the date specified in Clause 2.2 of the Settlement Agreement. The Club argues that since the Player issued his default notice pursuant to Article 12bis on 30 March 2015, any default interest should be calculated from this date onwards.

185. The Panel, having determined that Article 12bis is of no relevance to the matter at hand, dismisses the arguments of the Club and concludes that default interest should be applicable from the date specified in the Settlement Agreement, i.e. 2 February 2015.

B. Conclusion

186. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel finds that:

- The Club must pay the Player the outstanding amount of EUR 750,000 (net of all taxes), plus interest of 5% p.a. as from 2 February 2015 until the effective date of payment.

- The 'warning' imposed on the Club by FIFA in the Appealed Decision pursuant to Article 12bis FIFA RSTP 2015 is to be overturned, as Article 12bis had not yet come into force.

187. All further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Al-Gharafa S.C. on 20 July 2015 against the decision of the FIFA Dispute Resolution Chamber dated 22 June 2015 is partially upheld.

2. The decision of the FIFA Dispute Resolution Chamber dated 22 June 2015 is amended as follows:

   The 'warning' imposed on Al-Gharafa S.C by FIFA in the said Decision pursuant to Article 12bis FIFA RSTP 2015 is to be overturned.

3. The remainder of the decision of the FIFA Dispute Resolution Chamber dated 22 June 2015 is confirmed.

4. (…).

5. (…).

6. All other motions or prayers for relief are dismissed.