



**Arbitration CAS 2017/A/5481 Cruzeiro E.C. v. Al Wahda FC, award of 14 May 2018**

Panel: Prof. Martin Schimke (Germany), Sole Arbitrator

*Football*

*Loan agreement*

*Admissibility of amendment(s) of prayer(s) for relief between the statement of appeal and the appeal brief*

*Inadmissibility of counterclaims filed in appeal proceedings before the CAS*

1. **There is no specific provision in the CAS Code that forbids the appeal brief to go beyond or amend the request(s) for relief as formulated in the statement of appeal. Pursuant to article R56 of the CAS Code, parties shall in principle not be authorised to “supplement or amend their requests or their argument (...) after the submission of the appeal brief and of the answer”, which implies that the request(s) for relief may be amended until the filing of the appeal brief.**
2. **Counterclaims are not admissible in appeal procedures before the CAS. Consequently, should a potential respondent want to challenge part or all of a decision, it must file an independent appeal with the CAS within the applicable time limit for appeal.**

**I. PARTIES**

1. Cruzeiro E.C. (the “Appellant” or “Cruzeiro”) is a football club with its registered office in Belo Horizonte, Brazil. Cruzeiro is registered with the Brazilian Football Confederation (*Confederação Brasileira de Futebol* – the “CBF”), which in turn is affiliated to the *Fédération Internationale de Football Association* (“FIFA”).
2. Al Wahda FC (the “Respondent” or “Al Wahda”) is a football club with its registered office in Abu Dhabi, United Arab Emirates. Al Wahda is registered with the United Arab Emirates Football Association (the “UAEFA”), which in turn is also affiliated to FIFA.

**II. BACKGROUND**

3. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions and the evidence examined in the course of the present appeal arbitration proceeding. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal analysis.

## A. Background Facts

4. On 18 July 2016, Al Wahda and Cruzeiro concluded a loan agreement (the “Loan Agreement”) for the temporary transfer of Mr D (the “Player”) to Cruzeiro. The parties agreed on a loan fee in a total amount of EUR 850,000 that would be paid in seven instalments as follows in English and Portuguese:

<i>“EUR € 250,000.00 until 31.07.2016</i>	<i>EUR € 250.000,00 ate 31/07/2016</i>
<i>EUR € 100,000.00 on 10/08/2016</i>	<i>EUR € 100.000,00 em 10/08/2016</i>
<i>EUR € 100,000.00 on 10/09/2016</i>	<i>EUR € 100.000,00 em 10/09/2016</i>
<i>EUR € 100,000.00 on 10/10/2016</i>	<i>EUR € 100.000,00 em 10/10/2016</i>
<i>EUR € 100,000.00 on <u>11/10/2016</u></i>	<i>EUR € 100.000,00 em <u>10/11/2016</u></i>
<i>EUR € 100,000.00 on <u>12/10/2016</u></i>	<i>EUR € 100.000,00 em <u>10/12/2016</u></i>
<i>EUR € 100,000.00 on 10/01/2017</i>	<i>EUR € 100.000,00 em 10/01/2017”</i>

[emphasis added by the Sole Arbitrator].

5. Clause 3.2 of the Loan Agreement determines as follows:

*“In case of delay in the payment of any instalment above, CRUZEIRO shall be liable to pay AL-WAHDA a penalty of 10% per month or part thereof on the amount due”.*

6. Clause 15 of the Loan Agreement determines as follows:

*“This Agreement was made in English and Portuguese so that its terms are fully understood by the parties. In the case of conflicting versions contained in different versions, the English shall prevail”.*

7. On 10 August, 4 September and 21 September 2016, Al Wahda reminded Cruzeiro of its payment obligations.

## B. Proceedings before the Single Judge of FIFA’s Players’ Status Committee

8. On 8 October 2016, with amendments made on 15 November and 12 December 2016, Al Wahda lodged a claim before FIFA against Cruzeiro, claiming an outstanding amount of EUR 850,000 in accordance with the Loan Agreement and an amount of EUR 300,000 as penalty on the basis of clause 3.2 of the Loan Agreement.

9. Cruzeiro contested Al Wahda’s claim.

10. On 29 August 2017, the Single Judge of FIFA’s Players’ Status Committee (the “FIFA PSC Single Judge”) rendered his decision (the “Appealed Decision”), with the following operative part:

*“1. The claim of [Al Wahda] is partially accepted.*

2. [Cruzeiro] *has to pay to [Al Wahda] **within 30 days** as from the date of notification of this decision, the amount of EUR 850,000 as outstanding loan fee, plus interest as follows:*
    - 5 % over the amount of EUR 250,000 as from 1 August 2016 until the date of effective payment;
    - 5 % over the amount of EUR 100,000 as from 11 August 2016 until the date of effective payment;
    - 5 % over the amount of EUR 100,000 as from 11 September 2016 until the date of effective payment;
    - 5 % over the amount of EUR 100,000 as from 11 October 2016 until the date of effective payment;
    - 5 % over the amount of EUR 100,000 as from 12 October 2016 until the date of effective payment;
    - 5 % over the amount of EUR 100,000 as from 13 October 2016 until the date of effective payment;
    - 5 % over the amount of EUR 100,000 as from 11 January 2017 until the date of effective payment.
  3. *If the aforementioned sum, plus interest (point 2) is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
  4. *Any further claims lodged by [Al Wahda] are rejected.*
  5. *The final costs of the proceedings in the amount of CHF 20,000 are to be paid **within 30 days** as from the date of notification of this decision, as follows:*
    - 5.1 *The amount of CHF 5,000 has to be paid by [Al Wahda] to FIFA. Given that [Al Wahda] has already paid the amount of CHF 5,000 as advance of costs at the start of the present proceedings, the latter is exempted to pay the cited amount.*
    - 5.2 *The amount of CHF 15,000 has to be paid by [Cruzeiro] to FIFA, to the following bank account with reference to case nr. 16-01838/vmo".*
11. On 27 November 2017, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:
- “[The] Single Judge acknowledged that on 18 July 2016, [Al Wahda] and [Cruzeiro] concluded an agreement in relation with the loan of the player, by means of which [Cruzeiro] undertook to pay [Al Wahda] a loan fee in the amount of EUR 850,000 in seven instalments as follows:
    - EUR 250,000 until 31 July 2016
    - EUR 100,000 on 10 August 2016
    - EUR 100,000 on 10 September 2016
    - EUR 100,000 on 10 October 2016

- EUR 100,000 on 11 October 2016
  - EUR 100,000 on 12 October 2016
  - EUR 100,000 on 10 January 2017”.
- On the one hand, the Single Judge noted that [Al Wahda] maintained being entitled to receive from [Cruzeiro] the outstanding amount of EUR 850,000, indicating that the latter had not yet paid any instalments of the loan fee that respectively fell due on 31 July 2016, 10 August 2016, 10 September 2016, 10 October 2016, 11 October 2016, 12 October 2016 and 10 January 2017. In view of the above, [Al Wahda] referred to the agreement and claimed from [Cruzeiro] the amount of EUR 850,000 corresponding to the loan fee, the amount of EUR 445,000 as penalty based on article 3.2 of the agreement, or alternatively, only in the event that this amount is rejected, “a delay penalty of EUR 212,000 corresponding to quarter of the principal amount of EUR 850,000”, or “a delay penalty of 17% per annum on the total outstanding amount of EUR 850,000 as the maximum rate that can be granted without violating Swiss public policy” as well as legal and procedural costs to be borne by [Cruzeiro].
- Furthermore, the Single Judge took into account the fact that [Al Wahda] provided FIFA with a correspondence dated 19 July 2016 by means of which [Cruzeiro] acknowledged the outstanding payments amounting to EUR 850,000.
- On the other hand, with regard to the payment of the instalments of the loan fee, the Single Judge observed that, for its part, [Cruzeiro] contested the allegations of [Al Wahda], alleging that “all Brazilian banks remained under strike during the period between 06 September and 07 October 2016” invoking in this respect a case of “force majeure” and further alleged that [Al Wahda] failed to provide it with the entitled invoices and bank account details in order to pay the instalments. Furthermore, [Cruzeiro] maintained that the penalty of 10% per month as stipulated in article 3.2 of the agreement, violates the jurisprudence of the Players’ Status Committee being excessive and, therefore, should be considered as invalid.
- At this stage, the Single Judge referred to art. 12 par. 3 of the Procedural Rules according to which any party claiming a right on the basis of an alleged fact shall carry the burden of proof.
- In doing so, the Single Judge thoroughly analysed the documents on file and, in particular, the content of the documentation submitted by the parties. In this regard, first of all, the Single Judge recalled that according to the agreement, [Al Wahda] was not obliged to send invoices to [Cruzeiro].
- Secondly, the Single Judge took into account that, for its part, [Al Wahda] actually sent several default notices including bank details to [Cruzeiro] respectively on 10 August 2016, 4 September 2016 and 21 September 2016.
- As a result, considering the legal principle of burden of proof as well as the argumentation and documentation presented by both parties, the Single Judge deemed that [Cruzeiro] did not have any valid argument and decided to reject the latter’s position and argumentation.
- In continuation, turning his attention to [Al Wahda’s] request amounting to EUR 850,000 corresponding to the payment of the loan fee in accordance with the agreement, the Single Judge emphasised

*that it was undisputed that such amount had not been paid by [Cruzeiro] and was, therefore, still due. Consequently, the Single Judge considered, that, in the present case, it remained uncontested that [Al Wahda] was contractually entitled to receive from [Cruzeiro] the total amount corresponding to the loan fee, i.e. EUR 850,000.*

- *Bearing in mind the aforementioned and the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Single Judge concluded that [Cruzeiro] had breached its contractual obligations towards [Al Wahda] and should, as a consequence, be liable to pay the outstanding amount of EUR 850,000.*
- *Having established the above, the Single Judge continued his deliberations by examining [Al Wahda's] second request, i.e. the amount of EUR 445,000 based on article 3.2 of the agreement.*
- *In this regard, the Single Judge focussed his attention to the content of article 3.2 of the agreement concluded between the parties which stipulated that, "[i]n case of delay in the payment of any instalment above, [Cruzeiro] shall be liable to pay [Al Wahda] a penalty of 10% per month or part thereof on the amount due".*
- *In this respect, the Single [Judge] observed that in its statement of defence, [Cruzeiro] challenged [Al Wahda's] entitlement to a default penalty of 10% per month for late payment as being excessive and therefore invalid according to the jurisprudence of the Players' Status Committee.*
- *In continuation and with regard to [Al Wahda's] request for a penalty amounting to EUR 445,000, the Single Judge first highlighted that such penalty constitutes nothing more than an interest rate as it is open ended, i.e. 10 % per month as stipulated in the contract, although the parties may call it a penalty fee.*
- *Secondly, the Single Judge recalled that interest at a rate of 10% per month for late payment, corresponding to interest at a rate of 120% per year, is to be considered as manifestly disproportionate and excessive, and as such, cannot be enforced. In view of the foregoing, the Single Judge held that the contractual rate of article 3.2 of the agreement should be disregarded and that, as an alternative, taking into account the longstanding practice of the Players' Status Committee, the Single Judge concluded that [Cruzeiro] has to pay 5% default interest p.a. on the respective outstanding instalments as of the relevant due dates until the date of effective payment.*
- *Consequently, the Single Judge ruled that the relevant request of [Al Wahda] had to be rejected and, taking into account the constant practice of the Players' Status Committee, decided to grant interest at a rate of 5% p.a. as follows:*
  - *5% p.a. over the amount of EUR 250,000 as from 1 August 2016 until the date of effective payment;*
  - *5% p.a. over the amount of EUR 100,000 as from 11 August 2016 until the date of effective payment;*
  - *5% p.a. over the amount of EUR 100,000 as from 11 September 2016 until the date of effective payment;*

- 5% p.a. over the amount of EUR 100,000 as from 11 October 2016 until the date of effective payment;
  - 5% p.a. over the amount of EUR 100,000 as from 12 October 2016 until the date of effective payment;
  - 5% p.a. over the amount of EUR 100,000 as from 13 October 2016 until the date of effective payment;
- In conclusion, the Single Judge decided that the claim of [Al Wahda] is partially accepted and held that [Cruzeiro] has to pay to [Al Wahda] the amount of EURO 850,000 as outstanding loan fee, plus interest at a rate of 5% p.a. over the above-mentioned amounts as of the relevant due dates until the date of effective payment and that any further claims lodged by [Al Wahda] are rejected”.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 18 December 2017, Cruzeiro lodged a Statement of Appeal, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2017) (the “CAS Code”), naming Al Wahda as the sole respondent. In this submission, Cruzeiro requested the matter to be referred to a sole arbitrator and to “dismiss in full the Appealed Decision”.
13. On 26 December 2017, Al Wahda informed the CAS Court Office that it agreed with the appointment of a sole arbitrator.
14. On 10 January 2018, Cruzeiro filed its Appeal Brief, pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments giving rise to the appeal. Cruzeiro challenged the Appealed Decision, submitting the following (amended) requests for relief:

*“FIRST – To set aside partially the Appealed Decision;*

*SECOND – To determine that the default interest imposed on the 5<sup>th</sup> and 6<sup>th</sup> instalments shall respect the following contents and conditions:*

- a. 5% p.a. over the amount of EUR 100,000 as from 11 November 2016 until the date of effective payment; and*
- b. 5% p.a. over the amount of EUR 100,000 as from 11 December 2016 until the date of effective payment.*

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

*FOURTH – To order the Respondent to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel”.*

15. Also on 10 January 2018, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the parties were informed that the arbitral tribunal appointed to decide the present matter was constituted by:

Prof. Martin Schimke, Attorney-at-Law in Dusseldorf, Germany, as Sole Arbitrator

16. On 5 February 2018, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in accordance with Article R52 and R41.3 of the CAS Code.
17. On 21 February 2018, Al Wahda filed its Answer, pursuant to Article R55 of the CAS Code. Al Wahda submitted the following requests for relief:

***FIRST:*** *To partially set aside the Appealed Decision.*

***SECOND:*** *To dismiss all the requests made by the Appellant.*

***THIRD:*** *To order the appellant to pay the respondent the total claimed amount of EUR 850,000 (Eight Hundred and Fifty Thousand Euro), plus an annual default interest rate of 17% p.a. that can be granted without violating Swiss Public Policy as decided in previous judgments.*

- *17% over the amount of EUR 250,000 as from 1<sup>st</sup> August 2016 until the date of effective payment.*
- *17% over the amount of EUR 100,000 as from 11<sup>th</sup> August 2016 until the date of effective payment.*
- *17% over the amount of EUR 100,000 as from 11<sup>th</sup> September 2016 until the date of effective payment.*
- *17% over the amount of EUR 100,000 as from 11<sup>th</sup> October 2016 until the date of effective payment.*
- *17% over the amount of EUR 100,000 as from 11<sup>th</sup> November 2016 until the date of effective payment.*
- *17% over the amount of EUR 100,000 as from 11<sup>th</sup> December 2016 until the date of effective payment.*
- *17% over the amount of EUR 100,000 as from 11<sup>th</sup> January 2017 until the date of effective payment.*

***FOURTH:*** *to impose sanction on the Appellant as stipulated in Article 12bis par 4 of FIFA RSTP.*

***FIFTH:*** *To hold the Appellant as the sole responsible for all Arbitration Costs and also to pay any or all the expenses of the proceedings of adjudication and attorney fees associated with this case till the final settlement of the dispute”.*

18. On 23 February 2018, the CAS Court Office acknowledged receipt of Al Wahda's Answer and informed it that no counterclaims can be filed in appeal proceedings before CAS.
19. On 5 March 2018, following an invitation from the CAS Court Office to express their positions in this respect, Al Wahda indicated that it preferred a "*hearing to be held and the award to be issued solely based on our previous written documents and submissions*" and Cruzeiro indicated that it preferred a hearing to be held.
20. Also on 5 March 2018, the CAS Court Office acknowledged receipt of Al Wahda's letter of the same day and informed the parties that it was understood that Al Wahda left it to the Sole Arbitrator to decide whether to hold a hearing or to render an award on the basis of the written submissions.
21. On 16 March 2018, the CAS Court Office informed the parties as follows:

*"The Sole Arbitrator notes that the Respondent expressly confirms the Appellant's position that the appealed decision incorrectly ordered it to pay interest as from wrong dates and confirms the Appellant's only request for relief in this respect.*

*In view of the above and the fact that counterclaims are not admissible before the CAS, the Sole Arbitrator invites the parties to agree, by 22 March 2018, that an award on costs be rendered which will only confirm the parties' agreement as to the Appellant's request.*

*Should the parties already agree on the issues of arbitration costs and legal costs, they are invited to inform the CAS Court Office within the same deadline.*

*In the absence of any answer from the parties within the prescribed deadline or in case of objection, the parties are informed that the Sole Arbitrator will render an award on the basis of the written submissions".*
22. On 22 March 2018, Cruzeiro informed the CAS Court Office that the parties had not reached an agreement and that the Sole Arbitrator was therefore to render an award based on the written submissions.
23. On 3 and 4 April 2018 respectively, Al Wahda and Cruzeiro returned duly signed copies of the Order of Procedure to the CAS Court Office. By signing the Order of Procedure, the parties confirmed that the Sole Arbitrator was permitted to decide this matter based on the parties' written submissions, and that their right to be heard had been respected.
24. The Sole Arbitrator confirms that he carefully took into account in his decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present arbitral award.

#### **IV. SUBMISSIONS OF THE PARTIES**

25. Cruzeiro's submissions, in essence, may be summarised as follows:

- With reference to several provisions in the FIFA Statutes, the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules"), Switzerland's Private International Law Act (the "PILA") and in accordance with CAS jurisprudence, the FIFA PSC Single Judge had no legal grounds whatsoever to render a decision beyond the requests for relief submitted by the parties during the proceedings. The FIFA PSC Single Judge therefore violated due process and his obligation to never decide *ultra petita*.
- During the negotiations leading to the Loan Agreement, the parties always negotiated that the payment of the amount due as loan fee should occur within seven consecutive and monthly instalments. It is unquestionable that there is a contradiction between the exact due dates in the English and the Portuguese version. Although the Loan Agreement determines that the English version should prevail in case of divergence, the due dates of the instalments of the loan fee set out in the English version do not reflect what the parties had effectively negotiated. Any reasonable person would agree that the parties never negotiated that Cruzeiro was going to pay three instalments in three consecutive days. After the payment of the first instalment of EUR 250,000 all six further instalments would all have to be paid on the 10<sup>th</sup> of the following months.
- It is important to stress that Al Wahda confirmed this understanding in the proceedings before the FIFA PSC Single Judge in its letter dated 16 February 2017. The FIFA PSC Single Judge therefore had to ignore the provisions set out in the English version of clause 3.1 of the Loan Agreement.
- The default interest to be applied relating to the fifth and sixth instalment shall take into account as due dates 10 November 2016 and 10 December 2016.

26. Al Wahda's submissions, in essence, may be summarised as follows:

- Based on Article 12bis FIFA RSTP, Cruzeiro was obliged to comply with its financial obligations. Despite written warnings issued by Al Wahda, Cruzeiro explicitly and repeatedly breached its contractual obligations. CAS shall therefore impose a more severe penalty on Cruzeiro as per Article 12bis(6) FIFA RSTP.
- Pursuant to Clause 3.2 of the Loan Agreement, a penalty of 10% per month would have to be paid by Cruzeiro to Al Wahda in case of any delays in payment. The basic legal principle *pacta sunt servanda* should never be disregarded. It is not *bona fide* for a party to express its acceptance on the terms and conditions of an agreement and later trying to escape its obligation by alleging that such provision violates the jurisprudence of the FIFA PSC. The reduction of the penalty interest rate from 10% per month to 5% *per annum* has caused substantial loss to Al Wahda.
- CAS has awarded interest rates of 10%, 17% and 25% in the past. By awarding interest at a rate of 5% *per annum*, the FIFA PSC Single Judge decided against CAS jurisprudence.

- The reasons invoked by Cruzeiro as to why it did not pay the instalments due (*“the Brazilian banks remained under strike during the period between 6<sup>th</sup> Sep and 7<sup>th</sup> Oct 2016”*) have no legal merit, because the said period corresponds to the third instalment only. Two instalments were already due before the date of the alleged strike and four instalments fell due after the strike.
- Accordingly, Al Wahda is liable to be compensated for the non-compliance of the financial obligations of Cruzeiro.
- As to the contradiction between the English and the Portuguese version of the Loan Agreement, it is submitted that *“the due dates of the instalments concerning the payment as set out in Article 3.1 of the English version do not reflect what the parties have negotiated and agreed”*. Al Wahda has in various submissions before the FIFA PSC Single Judge confirmed that the payments had to occur within the due dates as set out in Article 3.1 of the Portuguese version. It is to be noted that *“the Single Judge went wrong while calculating the default interest to be applied in the 5<sup>th</sup> and 6<sup>th</sup> installments. The judge should have considered the true and mutually agreed upon intention of the parties, without regard to the incorrect statement used by the parties by mistake”*.

## V. JURISDICTION

27. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) of the FIFA Statutes (2016 edition), providing that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question” and Article R47 of the CAS Code.
28. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by both parties.
29. It follows that CAS has jurisdiction to decide on the present dispute.

## VI. ADMISSIBILITY

30. The appeal was filed within the deadline of 21 days set by Article 58(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
31. As mentioned above (*see* para. 14), the Appeal Brief contains different requests for relief as initially submitted in the Statement of Appeal. However, there is no specific provision in the CAS Code that forbids an Appeal Brief to go beyond or amend the request for relief as formulated in the Statement of Appeal. Article R51 of the CAS Code, addressing the content of the Appeal Brief, does not specifically prohibit an amendment of the requests for relief. Furthermore, pursuant to Article R56 of the CAS Code, parties shall in principle not be authorised to *“supplement or amend their requests or their argument (...) after the submission of the appeal*

*brief and of the answer*”, which implies that the requests for relief may be amended until the filing of the Appeal Brief (*see* CAS 2007/A/1396 & 1402, para. 11, MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 414 and 415).

32. This is all the more so because in the matter at hand the requests for relief in the Appeal Brief did not go beyond the requests for relief in the Statement of Appeal, but rather entailed a limitation thereof, because Cruzeiro no longer requested the Appealed Decision to be dismissed in full, but only partially. The amendment of the requests for relief therefore did not prejudice Al Wahda in any way.
33. It follows that the appeal is admissible.

## VII. APPLICABLE LAW

34. Cruzeiro submits that the regulations of FIFA are primarily applicable and, alternatively, if necessary, Swiss law.
35. Al Wahda did not make any specific submissions in respect of the law to be applied.
36. 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

37. Article 57(2) of the FIFA Statutes determines the following:

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

38. Clause 12.1 of the Loan Agreement determines as follows:

*“This Agreement and any non-contractual obligation related to it from or connected with it shall be construed in accordance with the various regulations of FIFA, in particular the FIFA RSTP”.*

39. The Sole Arbitrator is satisfied that primarily the various regulations of FIFA are applicable, in particular the FIFA RSTP, and subsidiarily Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

## VIII. MERITS

### A. The main issues

40. The main issues to be resolved by the Sole Arbitrator are:
- i. What is the scope of the present appeal arbitration proceedings?
  - ii. On which dates did the fifth and sixth instalment of the loan fee set out in Clause 3.1 of the Loan Agreement fall due?

#### *i. What is the scope of the present appeal arbitration proceedings?*

41. The Sole Arbitrator observes that Cruzeiro put forward only one material request for relief, namely to determine that the fifth and sixth instalment of the loan fee fell due on 10 November and 10 December 2016, as opposed to the dates of 11 and 12 October 2016 as decided by the FIFA PSC Single Judge in the Appealed Decision.
42. Insofar Al Wahda argues that Cruzeiro acted in bad faith by disputing the validity of the penalty interest set out in the Loan Agreement in the proceedings before the FIFA PSC Single Judge, by failing to comply with its contractual obligations under the Loan Agreement, and by arguing that Cruzeiro did not invoke any valid reason to justify its failure to pay the due amounts, the Sole Arbitrator finds that all these claims and arguments fall outside the scope of the present appeal arbitration proceedings.
43. Indeed, in order for the Sole Arbitrator to be able to address such issues, Al Wahda should have filed an independent appeal against the Appealed Decision.
44. As already indicated in the letters of the CAS Court Office dated 23 February and 16 March 2018, counterclaims are not admissible in appeal arbitration proceedings before CAS.
45. The Sole Arbitrator observes that legal scholars have commented as follows in respect of the possibility to file a counterclaim in appeal arbitration proceedings before CAS following the 2010 revision of the CAS Code:
- “It must be noted that, since 2010, counterclaims are no longer possible in appeal procedures. This means that, if a potential respondent wants to challenge part or all of a decision, it must file an independent appeal with the CAS within the applicable time limit for appeal”* (MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport*, 2015, p. 249 and 488, with further references to CAS 2010/A/2252, para. 40, CAS 2010/A/2098, paras. 51-54, CAS 2010/A/2108, paras. 181-183; *see also* CAS 2013/A/3432 paras. 54-57 with reference to a decision of the Swiss Federal Tribunal).
46. The Sole Arbitrator shares the view expressed by the writers cited above and finds that Al Wahda’s claim to be awarded default interest at a rate of 17% *per annum* and for a sanction to

be imposed on Cruzeiro go beyond a mere statement of defence and that, in case of being upheld, have the effect of prejudicing the position of Cruzeiro. Accordingly, such claims are to be declared inadmissible. In order for Al Wahda to validly raise such issues it should have filed its own independent appeal against the Appealed Decision.

47. Furthermore, insofar Al Wahda maintains that Cruzeiro did not have any valid reason not to comply with its payment obligations under the Loan Agreement, the Sole Arbitrator finds that such argument is not relevant in respect of Cruzeiro's request to amend the commencement dates of the interest awarded, as Cruzeiro did not challenge the validity of the FIFA PSC Single Judge in this respect.
48. Consequently, the Sole Arbitrator finds that the scope of the present appeal is limited to assessing on which dates the fifth and sixth instalment of the loan fee set out in Clause 3.1 of the Loan Agreement fell due.

**ii. *On which dates did the fifth and sixth instalment of the loan fee set out in Clause 3.1 of the Loan Agreement fall due?***

49. The Sole Arbitrator observes that Cruzeiro's sole request for relief, namely to determine that the fifth and sixth instalment of the loan fee fell due on 10 November and 10 December 2016, as opposed to 11 and 12 October 2016 as decided by the FIFA PSC Single Judge in the Appealed Decision, is not disputed by Al Wahda.
50. In fact, Al Wahda explicitly confirms in the present proceedings before CAS that the due dates as set out in the Portuguese version of the Loan Agreement should have been followed and that "*the Single Judge went wrong while calculating the default interest to be applied in the 5<sup>th</sup> and 6<sup>th</sup> installments*".
51. Consequently, in light of the parties' mutual understanding in respect of the due dates of the instalments as set out in Clause 3.1 of the Loan Agreement, the Sole Arbitrator finds that the fifth and sixth instalment fell due on 10 November and 10 December 2016 and that interest over such amounts shall accrue as follows:
  - Interest at a rate of 5% *per annum* over the amount of EUR 100,000 as from 11 November 2016 until the date of effective payment; and
  - Interest at a rate of 5% *per annum* over the amount of EUR 100,000 as from 11 December 2016 until the date of effective payment.

**B. Conclusion**

52. Based on the foregoing, the Sole Arbitrator holds that:
  - i. The scope of the present appeal is limited to assessing on which dates the fifth and sixth instalment of the loan fee set out in Clause 3.1 of the Loan Agreement fell due.

- ii. The fifth and sixth instalment as set out in Clause 3.1 of the Loan Agreement fell due on 10 November and 10 December 2016 respectively.

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

## ON THESE GROUNDS

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

1. The appeal filed on 18 December 2017 by Cruzeiro E.C. against the decision issued on 29 August 2017 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is upheld.
2. The decision issued on 29 August 2017 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is confirmed, save for para. 2 (fifth and sixth indent) thereof, which shall read as follows:
  - Interest at a rate of 5% *per annum* over the amount of EUR 100,000 as from 11 November 2016 until the date of effective payment; and
  - Interest at a rate of 5% *per annum* over the amount of EUR 100,000 as from 11 December 2016 until the date of effective payment.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.