



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2019/A/6263 Sport Club Internacional v. Udinese Calcio S.p.A. & Fédération Internationale de Football Association (FIFA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Efraim **Barak**, Attorney-at-Law, Tel Aviv, Israel

Arbitrators: Mr Rui Botica **Santos**, Attorney-at-Law, Lisbon, Portugal

Mr Fabio **Iudica**, Attorney-at-Law, Milan, Italy

Ad hoc Clerk: Mr Dennis **Koolaard**, Attorney-at-Law, Arnhem, the Netherlands

in the arbitration between

Sport Club Internacional, Porto Alegre, Brazil

Represented by Mr Daniel Cravo Souza and Mr Diego Eidelvein do Canto, Attorneys-at-Law, Cravo Pastl Balbuena Associated Attorneys, Porto Alegre, Brazil

and

Udinese Calcio S.p.A., Udine, Italy

Represented by Mr Gianpaolo Monteneri and Ms Anna Smirnova, Attorneys-at-Law, Monteneri Sports Law LLC, Zurich, Switzerland

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr Miguel Liétard, Head of Litigation Department, Mr Patrick Schmidiger, Senior Legal Counsel, Players' Status Department, and Ms Audrey Cech, Legal Counsel, Litigation Department, FIFA, Zurich, Switzerland

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I. PARTIES

1. Sport Club Internacional (“Internacional”) is a professional football club with its registered office in Porto Alegre, Brazil. Internacional 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*.
2. Udinese Calcio S.p.A. (“Udinese”) is a professional football club with its registered office in Udine, Italy. Udinese is registered with the Italian Football Federation (*Federazione Italiana Giuoco Calcio* – the “FIGC”), which in turn is also affiliated to the *Fédération Internationale de Football Association*.
3. The *Fédération Internationale de Football Association* (“FIFA”) is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.
4. Internacional, Udinese and FIFA are hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings. This background information is given 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 discussion.

A. Background facts

6. On 28 March 2017, Udinese and Internacional signed a loan agreement (the “Loan Agreement”) regarding the loan of the professional football player Mr Edenilson Andrade dos Santos (the “Player”) from Udinese to Internacional for a period of one season, i.e. from 1 July 2017 until 30 June 2018, in exchange for a payment of EUR 200,000 to be paid by 1 July 2017. The Loan Agreement also contained the following option (the “Option Right”):

“ART. 3

Udinese grants to Internacional the exclusive option right to acquire from Udinese the Player’s registration on a permanent basis immediately following the expiry of the Loan Period as well as 50% (fifty per cent) of the Player’s Economic Rights held by Udinese, i.e. the “sell on fee on a future transfer” (hereinafter, the “Option Right”), for the guaranteed amount of EUR 1,500,000 (Euros one million five hundred thousand) in accordance with the following payment schedule:

- 3a) EUR 500,000 (Euros five hundred thousand), by 30 August 2018;
- 3b) EUR 500,000 (Euros five hundred thousand), by 28 February 2019;
- 3c) EUR 500,000 (Euros five hundred thousand), by 30 August 2019.

In order to exercise the Option Right, Internacional shall send to Udinese a written notice to the fax number +39 0432 544933 until 23:59 (CET time) on 30 June 2018.

Internacional shall be obliged to exercise the Option Right, and thus to pay the compensation mentioned above, in the event the Player will participate, for at least 30 minutes each match, with the first team of Internacional, in 60% of the official matches in the period from 1 July 2017 until 30 June 2018.

In the event that Internacional fails to pay to Udinese on due dates the amounts indicated above or makes only a partial payment, then the remainder will become immediately due and payable. In such event an interest rate of 15% p.a. will apply starting from the date of default.”

- 7. On 25 June 2018, Internacional duly exercised the Option Right and permanently registered the Player.
- 8. On 21 November 2018, Mr Franco Collavino, General Director of Udinese, informed Mr Roberto Melo, Football Vice-President of Internacional, as follows:

“We refer to the [Loan Agreement].

On 25 June 2018, based on Art. 3 of the [Loan Agreement], Internacional exercised the option to transfer the Player on definitive basis and, therefore, Udinese has become entitled to the amount of EUR 1,500,000 payable under the agreed schedule. Pursuant to Art. 3 par. 31 thereof, Internacional committed to pay the first instalment of EUR 500,000 by 30 August 2018. However, despite the clarity of the [Loan Agreement], the relevant payment was not transferred to the account of Udinese.

In accordance with Art. 3 of the [Loan Agreement], in the event that Internacional fails to pay to Udinese on due dates the specified amounts or makes only partial payment(s), then the remainder becomes immediately due and payable. In such event an interest rate of 15% p.a. applies starting from the date of default.

Bearing the foregoing in mind, Udinese herewith urges Internacional to arrange within ten days as from the receipt of this letter for the payment of EUR 1,500,000 plus 15% p.a. as from 31 August 2018 until the date of effective payment.

Unless the payment of the amount in issue is made in full and within the specified deadline, Udinese reserves its right to start legal proceedings against Internacional without further warnings.”

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

9. On 4 December 2018, Udinese lodged a claim against Internacional before the Single Judge of the FIFA Players’ Status Committee (the “Single Judge”), requesting that Internacional be ordered to pay overdue payables in the amount of EUR 1,500,000, plus 15% interest *p.a.* as from 31 August 2018.
10. On 7 March 2019, the Single Judge rendered his decision (the “Appealed Decision”), with the following operative part:

“1. The claim of [Udinese] is accepted.

*2. [Internacional] has to pay to [Udinese], **within 30 days** as from the date of notification of this decision, overdue payables in the amount of EUR 1,500,000, plus interest at the rate of 15% *p.a.* as from 31 August 2018 until the date of effective payment.*

3. If the aforementioned amount is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee, for consideration and a formal decision.

*4. [Internacional] is ordered to pay a fine in the amount of CHF 15,000. The fine is to be paid **within 30 days** of notification of the present decision to FIFA to the following bank account [...].*

*5. The final amount of costs of the proceedings in the amount of CHF 20,000 is to be paid by [Internacional], **within 30 days** as from the notification of the present decision, as follows:*

a) The amount of CHF 5,000 to [Udinese];

b) The amount of CHF 15,000 to FIFA to the above-mentioned bank account [...].

6. [Udinese] is directed to inform [Internacional] immediately and directly of the account number to which the remittances under points 2. and 5.a) are to be made and to notify the Single Judge of every payment received.

7. A warning is imposed on [Internacional].”

11. On 3 April 2019, the grounds of the Appealed Decision were communicated to Internacional and Udinese determining, *inter alia*, the following:

➤ *[...] [T]he Single Judge concluded that [Udinese] had duly proceeded in accordance with art. 12bis par. 3 of the Regulations, which stipulates*

that 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 obligations.

- *Subsequently, the Single Judge took into account that [Internacional], for its part, had acknowledged owing the sum of EUR 1,500,000 to [Udinese] and had requested to pay the relevant amount in instalments alleging that it was undergoing financial problems. In the same context, the Single Judge further remarked that such request of [Internacional] had been rejected by [Udinese].*
- *In this regard and considering the content of [Internacional's] response, the Single Judge acknowledged that [Internacional] had to pay to [Udinese] the amount of EUR 1,500,000, which became due entirely once the first instalment due on 30 August 2018 had not been paid in accordance with the acceleration clause in the transfer agreement.*
- *[...] In addition, taking into account [Udinese's] request as well as the content of the [Loan Agreement] in this regard, the Single Judge decided that [Internacional] must pay to [Udinese] interest of 15% p.a. on the amount of EUR 1,500,000 as from 31 August 2018 until the date of effective payment.*
- *In this respect, the Single Judge deemed it appropriate to clarify that, in spite of the objection of [Internacional], the interest rate of 15% p.a. in case of late payment, as stipulated in the acceleration clause included in the [Loan Agreement], is not excessive as per Swiss law and his well-established jurisprudence. In addition, such rate was voluntarily agreed upon between the parties and is therefore to be applied in the present case.*
- *[...] The Single Judge established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on [Internacional]. Therefore, bearing in mind that [Internacional] duly replied to the claim of [Udinese] and taking into account that [Internacional] was also condemned to pay overdue payables to [Udinese] in the case Nr 18-02547, the Single Judge decided to impose a warning and a fine on [Internacional] in accordance with art. 12bis par. 4 lit. a) and c) of the Regulations.*
- *Furthermore, taking into consideration the amount due of EUR 1,500,000, the Single Judge regarded a fine amounting to CHF 15,000 as appropriate and hence decided to impose said fine on [Internacional].*
- *In this connection, the Single Judge wished to highlight that a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty in accordance with art. 12bis par. 6 of the Regulations. [...]"*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 24 April 2019, Internacional filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the Appealed Decision, in accordance with Articles R47 and R48 of the 2019 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). In this submission, Internacional nominated Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal, as arbitrator. Internacional also indicated that, based on CAS jurisprudence, it is unnecessary for a party to apply for a stay of execution of an appealed decision of financial nature, since it is incapable of being enforced while under appeal, and therefore did not request a formal stay of execution of the Appealed Decision.
13. On 29 April 2019, the CAS Court Office initiated the present arbitral procedure and invited the Parties to inform it whether they would agree to refer the proceedings in *CAS 2019/A/6263* to the same panel as the proceedings in *CAS 2019/A/6264*. Furthermore, with reference to CAS jurisprudence, the CAS Court Office confirmed that a request for stay of execution of the Appealed Decision would be moot as a decision of financial nature issued by a private Swiss association is not enforceable while under appeal, and would therefore in principle be dismissed.
14. On 3 May 2019, Udinese and FIFA indicated to have no objection to refer the proceedings in *CAS 2019/A/6263* to the same panel as the proceedings in *CAS 2019/A/6264*.
15. On 6 May 2019, Internacional filed its Appeal Brief, in accordance with Article R51 CAS Code.
16. On 7 May 2019, Udinese and FIFA jointly nominated Mr Fabio Iudica, Attorney-at-Law in Milan, Italy, as arbitrator.
17. On 9 May 2019, Internacional indicated that it did not object to refer the proceedings in *CAS 2019/A/6263* to the same panel as the proceedings in *CAS 2019/A/6264*.
18. On 6 June 2019, in accordance with Article R54 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 decide the present matter was constituted as follows:
 - Mr Efraim Barak, Attorney-at-Law in Tel Aviv, Israel, as President;
 - Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal; and
 - Mr Fabio Iudica, Attorney-at-Law in Milan, Italy, as arbitrators.
19. On 26 June and 1 July 2019 respectively, Udinese and FIFA filed their Answers, in accordance with Article R55 CAS Code.
20. On 3 July 2019, the CAS Court Office informed the Parties that Mr Dennis Koolgaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.

21. On 9 July 2019, following an inquiry from the CAS Court Office, Udinese and FIFA indicated that they did not consider a hearing necessary, whereas Internacional considered it indispensable that a hearing be held.
22. On 24 July 2019, following the Panel's decision to hold a hearing, Internacional suggested to hold the hearing in Madrid, Spain, which proposal was accepted by Udinese, FIFA and the Panel.
23. On 4 September 2019, the CAS Court Office sent an Order of Procedure to the Parties, which was signed and returned by Udinese, FIFA and Internacional on 5, 6 and 9 September 2019, respectively.
24. On 26 September 2019, a hearing was held in Madrid, Spain. At the outset of the hearing, the Parties confirmed not to have any objection as to the constitution and composition of the arbitral tribunal.
25. In addition to the Panel, Mr Antonio de Quesada, Counsel to the CAS, and Mr Dennis Koolgaard, *Ad hoc* Clerk, the following persons attended the hearing:
 - a) For Internacional:
 - 1) Mr Daniel Cravo Souza, Counsel;
 - 2) Mr Diego Eidelvein do Canto, Counsel.
 - b) For Udinese:
 - 1) Mr Gianpaolo Monteneri, Counsel;
 - 2) Ms Anna Smirnova, Counsel.
 - c) For FIFA:
 - 1) Mr Miguel Liétard, Director of FIFA Litigation Department;
 - 2) Mr Patrick Schmidiger, Senior Legal Counsel, FIFA Players' Status Department;
 - 3) Ms Audrey Cech, Legal Counsel, FIFA Litigation Department.
26. At the outset of the hearing, Internacional and Udinese declared that they had concluded a settlement agreement (the "Settlement Agreement"), but that it had not been exercised yet and that they would let the Panel know as soon as everything had been formalised. Furthermore, Internacional and Udinese informed the Panel that in light of the conclusion of the Settlement Agreement and in spite of the fact that it was yet to be exercised, they had chosen to waive their right to plea and bring evidence during the hearing related to the contractual dispute. Accordingly, although Internacional initially called Mr Felipe Dallegrave Baumann, Head of Internacional's Legal Department, as a witness, it finally renounced hearing him.
27. The Parties agreed that, should the Settlement Agreement ultimately be exercised between Internacional and Udinese, the Panel would issue a Consent Award as to the

contractual dispute between Internacional and Udinese and a Final Award on the disciplinary dispute between Internacional and FIFA.

28. The Panel also made it clear to the Parties that no additional hearing would take place and that in case the Settlement Agreement would finally not be exercised, the Panel would render an award on the contractual dispute based solely on the written submissions. The Parties confirmed their understanding and agreement to such caveat made by the Panel. The hearing then proceeded on the premise that the Settlement Agreement would be exercised between Internacional and Udinese and therefore solely focused on the disciplinary measures imposed on Internacional by FIFA.
29. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.
30. On 23 December 2019, Internacional requested the Panel to issue, subject to Udinese's confirmation, a Consent Award, enclosing a copy of the Settlement Agreement thereto.
31. On 27 December 2019, Udinese consented to Internacional's request that the Panel issue a Partial Consent Award on the basis of the Settlement Agreement.
32. Internacional and Udinese asked the Panel to ratify the following Settlement Agreement that addresses the proceedings in CAS 2019/A/6263 as well as in CAS 2019/A/6264 and to incorporate it into an arbitral award:

"AGREEMENT"

THIS AGREEMENT is made on the 12 September 2019, by and between

(1) Udinese Calcio S.p.A., based in Viale A. e A. Candolini 2, 33100 Udine, Italy, as duly represented by its General Director, Mr. Franco Collavino, who confirms being authorized to sign the present Agreement (hereinafter, "Udinese")

and on the other side

(2) Sport Club Internacional, based in Avenida Padre Cacique, n. 891, ZIP Code n. 90810-240, Porto Alegre/RS, Brazil, as duly represented by its President, Mr. Marcelo Feijó de Medeiros, who confirms being authorized to sign the present Agreement (hereinafter – "Internacional")

(each referred to as a "Party" and collectively referred to as "the Parties")

WHEREAS:

A. Player Lopez Nicolás Federico Lopez Alonso

1. On 17 July 2016, Udinese and Internacional entered into the transfer contract concerning the Player Lopez Nicolás Federico López Alonso (hereinafter accordingly, "the Lopez Transfer Contract", "the Player Lopez").

2. Pursuant to 'Clause two – Transfer fee and Payments' of the Lopez Transfer Contract, Internacional committed to pay to Udinese the transfer fee in net amount of USD 4,000,000 in accordance with the following payment schedule:
 - a) USD 1,000,000 net within 48 hours after the receipt by CBF of the ITC of the Player Lopez;
 - b) USD 750,000 net – on 31 January 2017;
 - c) USD 750,000 net – on 31 July 2017;
 - d) USD 750,000 net – on 31 January 2018;
 - e) USD 750,000 net – on 31 July 2018.
3. Internacional arranged for the payment of the first instalment of the transfer fee of USD 1,000,000. However, by the time the second instalment of the transfer fee matured, no payment was made to Udinese.
4. In this connection, following negotiations carried out between the parties, it was agreed to reschedule the payments of the transfer fee, and on 3 May 2017, Internacional and Udinese entered into the settlement agreement (hereinafter, "the Lopez Settlement Agreement").
5. In accordance with the Lopez Settlement Agreement, Internacional confirmed having the open debt towards Udinese in amount of USD 3,000,000 net plus USD 50,000 of the interest accrued.
6. Pursuant to clause 3 of the Lopez Settlement Agreement, Internacional and Udinese agreed on the following schedule pertaining to the payment of the open amount of USD 3,050,000:
 - (a) USD 200,000 by 15 May 2017;
 - (b) USD 600,000 by 31 July 2017;
 - (c) USD 350,000 by 30 September 2017;
 - (d) USD 400,000 by 31 October 2017;
 - (e) USD 750,000 by 31 January 2018;
 - (f) USD 750,000 by 31 July 2018.
7. In accordance with clause 5 of the Lopez Settlement Agreement, in the event of failure, delay or partial payment by Internacional of any of the instalments mentioned in clause 3 thereof for more than 15 days beyond the time limits established in the Lopez Settlement Agreement, the whole of the remaining payments became immediately due and payable, and the interest of 10% p.a. applied.
8. Internacional paid the amounts of the first and second instalments set out under clause 3 lit. (a) and (b) of the Lopez Settlement Agreement on time.
9. The third instalment of USD 350,000 was paid by Internacional (together with the default interest of USD 4,340) on 5 December 2017, and the fourth instalment of USD 400,000 was paid on 9 January 2018.
10. The fifth and the sixth instalments of USD 750,000 each, i.e. due under clause 3 lit. (e) and (f) of the Lopez Settlement Agreement, were not paid.

11. *On 21 November 2018, Udinese addressed the default notice where with reference to clause 3 and clause 5 of the Lopez Settlement Agreement it requested Internacional to arrange for the payment of USD 1,500,000 plus 10% p.a. as from 10 January 2018 until the date of effective payment as well as the interest of 10% p.a. on the amount of USD 1,900,000 for the period from 16 October 2017 through 9 January 2018.*
12. *Internacional did not arrange for the payments sought. Udinese lodged a claim before the FIFA Players' Status Committee.*
13. *The Single Judge of the FIFA Players' Status Committee on 7 March 2019 passed the Decision, which was notified to the parties on 3 April 2019 (hereinafter, "the Lopez Decision").*
14. *In accordance with the Lopez Decision, the claim of Udinese was accepted and Internacional was condemned to the payment of overdue payables amounting to:*
 - *USD 1,500,000 plus interest at the rate of 10% as from 10 January 2018 until the date of effective payment, and*
 - *Interest at the rate of 10% p.a. on the amount of USD 1,900,000 as from 16 October 2017 until 9 January 2018.*
15. *Furthermore, FIFA also ordered Internacional to pay to Udinese CHF 5,000 of the costs of the proceedings before FIFA and imposed disciplinary sanctions on it.*
16. *On 24 April 2019, the Internacional appealed against the Lopez Decision. The case is currently enrolled under the procedural number CAS 2019/A/6264 Sport Club Internacional v. Udinese Calcio S.p.A. & Fédération Internationale de Football Association (FIFA).*
17. *In accordance with clause 3.2 of the Lopez Transfer Contract, provided Udinese has formally manifested by 31 August 2018 of its interest in transferring part of the economic rights related to the Player that remained under its ownership and the Player had played in at least 50% of the official matches of Internacional's first team during the period from 20 July 2016 through 31 July 2018, in such event Internacional committed to arrange for the payment in favour of Udinese of the net amount of USD 2,000,000 divided into two instalments as follows:*
 - *USD 1,000,000 net payable on 31 January 2019,*
 - *USD 1,000,000 net payable on 31 July 2019.*
18. *On 23 August 2018, Udinese informed Internacional of its intention to transfer the relevant part of the economic rights pertaining to the Player Lopez.*
19. *Internacional did however not pay the two instalments to date.*
20. *In accordance with clause 3.7 of the Lopez Transfer Contract, in the event of delay superior to 15 days in the payment of any of the instalments agreed by the Parties in accordance with clause 3, the remainder shall become immediately due and the interest of 10% p.a. shall apply to the overdue instalment until the effective payment of the due amount.*

21. *Internacional shall therefore pay to Udinese:*

- *USD 1,000,000 net plus 10% interest p.a. as from 1 February 2019 until the date of effective payment;*
- *USD 1,000,000 net plus 10% interest p.a. as from 1 August 2019 until the date of effective payment.*

22. *In accordance with clause 3.3 of the Lopez Transfer Contract, provided Udinese has formally manifested by 31 August 2019 of its interest in transferring part of the economic rights related to the Player that remained under its ownership and the Player had played in at least 50% of the official matches of Internacional's first team during the period from 1 August 2018 through 31 July 2019, in such event Internacional committed to arrange for the payment in favour of Udinese of the net amount of USD 2,000,000 divided into two instalments as follows:*

- *USD 1,000,000 net payable on 31 January 2020,*
- *USD 1,000,000 net payable on 31 July 2020.*

23. *On 28 August 2019, Udinese informed Internacional of its intention to transfer the relevant part of the economic rights pertaining to the Player Lopez. Internacional shall therefore pay the above-mentioned amounts at the established dates.*

24. *All amounts due to Udinese are without any withholding or deductions under any heading. The solidarity contribution under the RSTP shall be paid by Internacional in addition to the amounts due to Udinese.*

B. Player Edenilson Andrade dos Santos

25. *On 28 March 2017, Udinese and Internacional entered into the contract with respect to the transfer of the player Edenilson Andrade dos Santos (hereinafter accordingly, "the Edenilson Contract", "the Player Edenilson").*

26. *Pursuant to the Edenilson Contract, Udinese agreed to transfer the Player Edenilson to Internacional on a loan basis and granted to the latter the option to acquire the Player Edenilson's registration on a permanent basis immediately following the expiry of the loan period.*

27. *In accordance with Art. 2 of the Edenilson Contract, for the transfer of the Player Edenilson on loan basis to Internacional, the latter committed to pay to Udinese the loan fee of EUR 200,000 (hereinafter, "the Edenilson Loan Fee") by 1 July 2017. The Parties also established that in the event Internacional had failed to pay to Udinese on due date the amount of the Edenilson Loan Fee or made only a partial payment than an interest rate of 15% p.a. would apply from the date of default.*

28. *Internacional failed to cover timely the Edenilson Loan Fee. Therefore, on 12 September 2017, Udinese sent to Internacional the default letter urging for the payment of the outstanding amount together with the 15% interest p.a. which had accrued. With delay, Internacional covered the Edenilson Loan Fee.*

29. *In accordance with Art. 3 of the Edenilson Contract, Udinese granted to Internacional the option right to acquire the Player Edenilson's registration on permanent basis for the amount of EUR 1,500,000 (hereinafter, "the Edenilson Transfer Fee") in accordance with the following schedule:*
- *EUR 500,000 by 30 August 2018,*
 - *EUR 500,000 by 28 February 2019, and*
 - *EUR 500,000 by 30 August 2019.*
30. *Art. 3 par. 3 of the Edenilson Contract established that Internacional was obliged to exercise the option right for acquiring the rights of the Player Edenilson in a definitive way in the event the Player Edenilson participated in at least 60% of the official matches in the period from 1 July 2017 until 30 June 2018 for at least 30 minutes each match with the first team of Internacional.*
31. *During the period from 1 July 2017 until 30 June 2018, the Player Edenilson participated in 33 out of 38 matches of Internacional played in Campeonato Brasileiro Série A, i.e. Internacional was obliged to exercise the option right for acquiring the rights of the Player Edenilson in a definitive way, as it effectively did.*
32. *On 25 June 2018, Internacional sent to Udinese the letter, whereby with reference to Art. 3 of the Edenilson Contract informed of its decision to "convert from loan to permanent" the status of the Player Edenilson's transfer.*
33. *Internacional and Udinese agreed in Art. 3 of the Edenilson Contract, that in the event the former fails to pay to the latter on due dates the amounts of the specified fee for the transfer of the Player Edenilson or makes a partial payment only, then the remainder becomes immediately due and payable. In such event an interest rate of 15% p.a. applies starting from the date of default.*
34. *The Edenilson Contract provided for the payment of the Edenilson Transfer Fee in three equal instalments.*
35. *The first instalment of EUR 500,000 due to Udinese by 30 August 2018 was never transferred to the latter's account.*
36. *In this respect, on 21 November 2018, Udinese addressed the default letter by means of which it requested the payment within 10 days as from the receipt thereof of EUR 1,500,000 plus 15% p.a. as from 31 August 2018 until the date of effective payment.*
37. *Internacional did not arrange for the payment sought. Udinese lodged a claim before the FIFA Players' Status Committee.*
38. *The Single Judge of the FIFA Players' Status Committee on 7 March 2019 passed the Decision, which was notified to the parties on 3 April 2019 (hereinafter, "the Edenilson Decision").*
39. *In accordance with the Edenilson Decision, the claim of Udinese was accepted, and Internacional was condemned to the payment of overdue payables in the*

amount of EUR 1,500,000 plus interest at the rate of 15% as from 31 August 2018 until the date of effective payment.

40. *Furthermore, FIFA also ordered Internacional to cover to Udinese CHF 5,000 of the costs of the proceedings before FIFA and imposed disciplinary sanctions on it.*
41. *On 24 April 2019, Internacional appealed against the Edenilson Decision. The case is currently enrolled under the procedural number CAS 2019/A/6263 Sport Club Internacional v. Udinese Calcio S.p.A. & Fédération Internationale de Football Association (FIFA).*
42. *Pursuant to Art. 4 of the Edenilson Contract, if Internacional exercised the option right for a definitive transfer of the Player Edenilson and the Player Edenilson participated for at least 30 minutes each match with the first team of Internacional in 60% of the official matches in the period from 1 July 2018 until 30 June 2019, Internacional shall purchase additional 25% of the Player Edenilson's economic rights held by Udinese for the amount of EUR 850,000 in accordance with the following payment schedule:*
 - *EUR 425,000 by 30 October 2019, and*
 - *EUR 425,000 by 30 April 2020.*
43. *Since the conditions set out in Art. 4 of the Edenilson Contract were met, i.e. the Player was definitively transferred to Internacional, and during the period from 1 July 2018 until 30 June 2019 he participated in at least 30 minutes of over 60% official matches played by Internacional, the amount of EUR 850,000 is due to Udinese at the established dates.*
44. *Clause 5 of the Edenilson Contract is not concerned by the present Agreement. In the event the conditions provided therein will materialize, the amount due will be due separately and in addition to the amounts provided in the present Agreement.*
45. *All amounts due to Udinese are without any withholding or deductions under any heading. The solidarity contribution under the RSTP shall be paid by Internacional in addition to the amounts due to Udinese.*

46. *The Parties wish to conciliate the dispute concerning the two above-mentioned matters under the terms and conditions set out in the present Agreement.*

NOW THEREFORE the Parties agree as follows:

1. *The introduction is integrant and essential part of this Agreement.*
2. *Internacional acknowledges and confirms that on 6 September 2019 the total overdue debt it has towards Udinese amounts to EUR 5,700,243, which is formed as follows:*
 - a. *Player Lopez: EUR 3,544,079 formed as follows:*

- (i) *EUR 3,174,027 as capital (i.e. USD 3,500,000 at the exchange rate of 6 September 2019)*
 - (ii) *EUR 370,052 as interests (i.e. USD 408,057 at the exchange rate of 6 September 2019)*
 - b. *Player Edinilson: EUR 2,156,164 formed as follows:*
 - (i) *EUR 1,925,000 as capital; this amount includes the payment of EUR 425,000 due under point 4a) of the Edinilson Contract on 30 October 2019, which the Parties herewith declare being overdue.*
 - (ii) *EUR 231,164 as interests.*
- 3. *Udinese confirms having received on 9 September 2019 the payment in the amount of EUR 500,000 from Sporting Club de Portugal Futebol SAD made on behalf of Internacional in reduction of the latter's debt. The Parties therefore acknowledge that the total overdue debt that Internacional has towards Udinese amounts to EUR 5,200,243.*
- 4. *Udinese grants to Internacional a discount in the interests due as follows:*
 - a. *For the Player Lopez: from EUR 370,052 to EUR 276,554, i.e. a discount of EUR 93,498;*
 - b. *For the Player Edinilson: from EUR 231,164 to EUR 173,373, i.e. a discount of EUR 57,791.*
 - c. *The aggregate amount of discount is therefore EUR 151,289 (hereinafter, "the Discount").*
- 5. *By deducting the Discount from the amount of EUR 5,200,243, the the [sic] discounted total overdue debt that Internacional has towards Udinese amounts to EUR 5,048,954.*
- 6. *The Parties have agreed to settle the present dispute against the following payments made by Internacional to Udinese:*
 - a. *Internacional proposes to Udinese, who accepts, to pay Udinese the amount of EUR 3,234,315.87 by 25 September 2019 at the latest; this payment can be made either directly by Internacional or through third parties on behalf of Internacional; in the event this payment is not received in full on the bank account of Udinese by 25 September 2019, unless Internacional and Udinese, by mutual agreement and in written, establish another deadlines for the fulfilment of the obligation set forth in the present clause 6.a, then the present Agreement shall automatically become null and void, without any steps being needed by the Parties; any partial payment possibly received by Udinese will be kept by the latter and will reduce the overall debt of Internacional accordingly.*
 - b. *Provided the present Agreement has not automatically become null and void, Internacional proposes to Udinese, who accepts, to pay Udinese the amount of EUR 1,932,713.90 (formed of EUR 1,814,638.13 plus accrued*

interests of EUR 118,075.77) in accordance with the following payment schedule:

- (i) EUR 483,178.49 by 30 March 2020;*
- (ii) EUR 483,178.47 by 30 September 2020;*
- (iii) EUR 483,178.47 by 30 March 2021;*
- (iv) EUR 483,178.47 by 30 September 2021;*

- 7. In the event that Internacional fails to pay to Udinese any of the amounts due under the clause 6.b. above within five working days from the due date or makes only a partial payment, then the whole of the remaining payments provided in this clause shall become immediately due and payable. In such event, the interest rate of 15% p.a. will apply starting from the date of the default of payment; additionally, (i) the Discount granted to Internacional under clause 4 is automatically cancelled and Internacional shall pay to Udinese the amount of EUR EUR [sic] 151,289 within 10 days from the default of payment, failing which default interest of 15% p.a. shall apply and (ii) and Internacional shall reimburse to Udinese CHF 10,000 corresponding to the advance of costs for the two proceedings before FIFA as provided for in the Lopez Decision and in the Ednilson Decision.*
- 8. International acknowledges and confirms that the following amounts shall be paid to Udinese as follows:*
 - a. For the Player Lopez:*
 - (i) USD 1,000,000 on 31 January 2020;*
 - (ii) USD 1,000,000 on 31 July 2020;*
 - b. For the Player Ednilson:*
 - (i) EUR 425,000 by 30 April 2020;*
- 9. In the event that Internacional fails to pay to Udinese any of the amounts due under the clause 8 above within five working days from the due date or makes only a partial payment, then the whole of the remaining payments provided in this clause shall become immediately due and payable. In such event, the interest rate of 15% p.a., regarding the amounts set forth in the article 8.b, and (Player Ednilson), and 10% p.a., regarding the amounts set forth in the article 8.a (Player Lopez), will apply starting from the date of the default of payment.*
- 10. All amounts due to Udinese under the present Agreement are net sums for Udinese and Udinese will receive the full amount free of taxes, charges and solidarity contributions under the RSTP. The solidarity contributions owed to third clubs or national associations which have provided training to the Player Lopez and to the Player Ednilson during the period beginning with the season of the Players' 12th birthdays as specified in the official Players' passports issued by the pertinent football federations shall be calculated and paid by Internacional in surplus and exceeding the amounts mentioned in the present Agreement.*

11. *Internacional undertakes to cover any and all procedural costs before the CAS related to the proceedings CAS 2019/A/6263 & CAS 2019/A/6264 and to hold Udinese harmless from any payment related to these procedural costs. For the avoidance of any doubt, Udinese shall not pay anything in connection with the procedural costs incurred with respect to the foregoing proceedings.*
12. *The Parties shall bear their own costs and expenses (such as attorney, travel expenses, etc.) in relation to the proceedings CAS 2019/A/6263 & CAS 2019/A/6264.*
13. *Subject to the proper and full receipt by Udinese of the amount provided under clause 6.a. above, the Parties shall request the CAS Panel in charge of the procedures CAS 2019/A/6263 & CAS 2019/A/6264 to include the terms and conditions of the present Agreement in a Consent Award, specifically regarding the matters under dispute between Udinese and Internacional. The Parties shall make such request within two days from the receipt by Udinese of the amount mentioned under clause 6.a. above. The notification of this Agreement to the CAS Panel by just one Party is sufficient for this purpose.*
14. *Considering the article 13 above, the parties agree that the present settlement agreement shall not result in the withdrawal by Internacional of the requests to set aside the disciplinary sanctions imposed by FIFA regarding the Edenilson Decision and Lopez Decision, made on the procedures CAS 2019/A/6263 & CAS 2019/A/6264, which is an independent matter from the settlement agreement and shall be examined by the CAS Panel. In this sense, Udinese undertakes to not oppose to the continuation of the arbitration proceedings specifically regarding the requests mentioned in this article.*
15. *This Agreement may not be altered or modified except by a written agreement signed by the Parties. The Parties declare that no other contract or obligation prohibits them of signing this Agreement under these terms and conditions.*
16. *The Parties agree that an emailed digital copy (.pdf format) of this Agreement duly signed by each of them shall be considered as valid and binding.*
17. *If any provision of this Agreement is held null or invalid for any reason or for any purpose, the validity of the remaining provisions of this Agreement shall not be affected and the Parties shall in good faith negotiate a new provision to replace the affected one. Any nullity or invalidity of any provision of this Agreement is not extendable to any other disposition or condition of this Agreement.*
18. *The individuals executing this Agreement on behalf of Internacional and Udinese represent that they have the right, the power, legal capacity and authority to enter into this Agreement on behalf of the respective clubs.*
19. *The terms of this Agreement are strictly confidential and shall at no time be divulged to a third party (other than their respective professional advisors). This clause shall survive after the expiration or termination of the present Agreement.*

20. *This Agreement and any matters arising out of or in connection with it, is governed by and construed in accordance with the laws of Switzerland. Any and all disputes arising out of or in connection with this Agreement shall be submitted either to FIFA or to the Court for Arbitration for Sport.*

21. *Each of the Parties confirms and acknowledges to have read and understood the present Agreement, and that this Agreement is signed voluntarily of its own free will and by its duly authorized representative.*

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorised representatives as of the date above first written.

THE PARTIES

For and on behalf

of Udinese

[illegible signature]

UDINESE CALCIO S.P.A.

Franco Collavino

General Director

For and on behalf

of Internacional

[illegible signature]

***SPORT CLUB
INTERNACIONAL***

Marcelo Feijó de Medeiros

President

33. Enclosed to the Settlement Agreement is an “Annex 1”, dated 31 October 2019, by means of which Internacional and Udinese deviated from the terms of the Settlement Agreement, as follows:

“ANNEX 1

TO THE AGREEMENT DATED 12 SEPTEMBER 2019

THIS ANNEX 1 is made on the 31 October 2019, by and between

(1) Udinese Calcio S.p.A., based in Viale A. e A. Candolini 2, 33100 Udine, Italy, as duly represented by its General Director, Mr. Franco Collavino, who confirms being authorized to sign the present Annex 1 (hereinafter, "Udinese")

and on the other side

(2) Sport Club Internacional, based in Avenida Padre Cacique, n. 891, ZIP Code n. 90810-240, Porto Alegre/RS, Brazil, as duly represented by its President, Mr. Marcelo Feijó de Medeiros, who confirms being authorized to sign the present Annex 1 (hereinafter – "Internacional")

(each referred to as a "Party" and collectively referred to as "the Parties")

WHEREAS

- (a) On 12 September 2019, the Parties entered into the Agreement relating to the various payments due to Udinese by Internacional in connection with the transfer of the player Lopez Nicolás Federico López Alonso and the transfer of the player Edenilson Andrade dos Santos (hereinafter – "the Agreement");*
- (b) In accordance with clause 6.a of the Agreement, Internacional committed to pay to Udinese the amount of EUR 3,234,315.87 by 25 September 2019 at the latest; in the event this payment is not received in full on the bank account of Udinese by 25 September 2019, unless Internacional and Udinese by mutual agreement and in written, establish another deadlines for the fulfilment of the obligation set forth in clause 6.a of the Agreement, then the Agreement shall automatically become null and void;*
- (c) Udinese has received partial payments regarding clause 6.a of the Agreement. Since Internacional required more time for being able to make the payment of the remaining amount related to this clause to Udinese, Internacional has requested Udinese to extend the payment deadline of 25 September 2019 specified in clause 6.a of the Agreement until 30 November 2019.*

NOW AND THEREFORE, it is agreed by the Parties as follows:

- 1. The Recitals are essential and integral part of this Annex 1.*
- 2. Udinese confirms having received on 17 September 2019 the payment in the amount of EUR 950,000 from Sassuolo Calcio made on behalf of Internacional, in accordance with the Settlement Agreement signed between Internacional and Sassuolo, with the consent of Udinese, as part of the payment described in clause 6.a of the Agreement.*
- 3. Udinese also confirms having received on 27 September 2019 the payment in the amount of EUR 49,000 directly from Internacional, as part of the payment described in clause 6.a of the Agreement.*
- 4. In view of the payments described in clauses 2 and 3 above, the total overdue debt regarding clause 6.a of the Agreement corresponds, in this date, to EUR 2,235,315.87.*
- 5. Considering that the payment deadline is extended from 25 September 2019 to 30 November 2019, Internacional shall pay to Udinese for this timeframe default interest in the amount EUR 55.000,00 (fiftyfive thousand//00 Euros).*
- 6. Internacional proposes to Udinese, who accepts, to pay Udinese the amounts of EUR 2,235,315.87 and of EUR 55.000,00 (fiftyfive thousand Euros) due to Udinese in accordance with clause 6.a of the Agreement by Internacional by 30 November 2019 at the latest; this payment can be made either directly by*

Internacional or through third parties on behalf of Internacional. Unless the Parties agree otherwise in writing, if the said payment is not received in full on the bank account of Udinese by 30 November 2019, then the Agreement shall automatically become null and void without any steps being needed by the Parties. Any partial payment possibly received by Udinese will be kept by the latter and will reduce the overall debt of Internacional accordingly.

7. *This Annex 1 amends only clause 6.a of the Agreement. All the other clauses and conditions of the Agreement shall remain unchanged in force and valid.*
8. *The Parties agree that the digital version of this Annex 1 (e.g. pdf, jpg.), fully signed and exchanged via e-mail or via facsimile, will be considered valid and binding between the Parties for all purposes.*
9. *Each of the Parties confirms and acknowledges that it has read and understood the present Annex 1, and that it is signed voluntarily of its/his own free will and by its duly authorized representative.*

IN WITNESS WHEREOF, the Parties have executed this Annex 1 by their duly authorised representatives as of the date above first written.

THE PARTIES

*For and on behalf
of Udinese*

*For and on behalf
of Internacional*

[illegible signature]

[illegible signature]

UDINESE CALCIO S.P.A.

SPORT CLUB INTERNACIONAL

Franco Collavino

Marcelo Feijó de Medeiros

General Director

President

34. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. POSITIONS OF THE PARTIES AND PRAYERS FOR RELIEF

35. In light of the Settlement Agreement concluded between Internacional and Udinese, the written submissions of these two parties in respect of the contractual dispute between them are moot and are not repeated here. The summaries below solely relate to the disciplinary dispute between Internacional and FIFA.

A. The Appellant

36. The submissions of Internacional, in essence, may be summarised as follows:

- The requirements of Article 12bis(2) of the FIFA Regulations on the Status and Transfer of Players (the “FIFA RSTP”) were not fulfilled, which prevented FIFA from imposing disciplinary sanctions on Internacional, in particular because part of the debt did not fall due.
- By considering the decision passed by the Single Judge in Iza 18-02548 (the subject matter in the proceedings referenced *CAS 2019/A/6264*) and determining on this basis that there was a repeated offence, the Appealed Decision sustains a position that is contrary to the law. The Appealed Decision unlawfully considered the existence of a repeated offence for the purposes of applying a more severe penalty in accordance with Article 12bis(6) FIFA RSTP. In this respect, Article 6 of the European Convention on Human Rights (“ECHR”) shall be considered. A person can only be regarded as a repeat offender if a previous decision became final and binding, otherwise the presumption of innocence prevails.
- Therefore, CAS shall set aside the fine imposed on Internacional, and in the worst case, only impose a warning on Internacional.
- If setting aside the fine is not considered appropriate the “*disciplinary sanction immediately graver than a warning, provided in the article 12bis para. 4 of FIFA RSTP*” should be applied, i.e. a reprimand. In not doing so, the Single Judge violated the principle of legality and predictability of sanctions, as well as the principle of transparency.
- If imposing a reprimand is not considered appropriate, the Panel should consider the disproportionality of the fine imposed on Internacional. Three factors were taken into account by the Single Judge: a) the sum due to Udinese; b) the fact that Internacional replied to Udinese’s claim; and c) the existence of a repeated offence.
- CAS only has the power to review and to amend a disciplinary decision when the Panel finds that the relevant judiciary body of FIFA exceeded the margin of discretion accorded to it by the principle of association authority.
- FIFA failed to take into account a) the financial crisis of Internacional; b) that Internacional tried to comply with its financial obligations; and c) the proposal made by Internacional to Udinese to settle the matter.
- Because FIFA does not publish its decisions on its website, it is not possible to verify whether the Appealed Decision respects the parameters normally applied in former decisions issued by the FIFA Players’ Status Committee (the “FIFA PSC”). However, from the decisions that could be obtained by Internacional, it appears that totally different standards are used in the Appealed Decision.

- This is one of those exceptional cases that the Panel can review or amend the disciplinary sanction imposed, particularly because the fine imposed is completely arbitrary.

37. On this basis, Internacional submitted the following prayers for relief in its Appeal Brief:

- “(a) to receive the present Appeal Brief, considering its timeliness, and to proceed with the present arbitration by granting to the First and the Second Respondents a time limit to answer to the appeal, in accordance with article R55 of the CAS Code;*
- (b) to issue a new decision which replaces the decision challenged, to issue a new decision which replaces the decision challenged [sic], in order:*
 - i) to reduce the interests provided in the appealed decision until the default interest rate applied by FIFA (5% p.a.);*
 - ii) to set aside the disciplinary sanctions imposed (warning and fine) on the Appellant.*
 - iii) alternatively, and in the event that the point b.ii above is rejected, to set aside the sanction of fine imposed on the Appellant considering the absence of repeated offence in the present case by the Appellant.*
 - iv) alternatively, and in the event that the point b.iii above is rejected, to substitute the sanction of fine imposed on the Appellant by a [sic] reprimand.*
 - v) alternatively, and in the event that the point b.iv above is rejected, to substantially reduce the fine imposed.*
- e) to condemn the First Respondent to solely bear with the costs established in the appealed decision;*
- f) to condemn the Respondents to solely bear with the costs of the present arbitration;*
- g) to order the Respondents to pay the Appellant a contribution towards the legal fees and other expenses incurred in connection with the present proceedings.”*

B. The First Respondent

38. The submissions and prayers for relief of Udinese are not relevant in respect of the disciplinary dispute between Internacional and FIFA and are therefore not set out here.

C. The Second Respondent

39. The submissions of FIFA, in essence, may be summarised as follows:

- As confirmed by CAS, it is a well-known principle that financial difficulties to satisfy an obligation of payment do not excuse the failure to make the required payment. At the moment Internacional concluded the Loan Agreement with Udinese, it was aware and agreed with its terms and thus, it should have realised the consequences deriving from such agreement, as per the legal principle of *pacta sunt servanda*.
- Turning to the regulations, it is clear and undisputed that Internacional committed an offence under Article 12bis(2) FIFA RSTP, without providing a valid reason. Consequently, Internacional should have expected to be sanctioned in accordance with Article 12bis(4) FIFA RSTP, following which the decision-making body may impose the following sanctions: a) a warning; b) a reprimand; c) a fine; and d) a transfer ban. Such sanctions may be applied cumulatively.
- According to Article 12bis(6) FIFA RSTP, a repeated offence will be considered as an aggravating circumstance and may lead to a more severe penalty. In fact, the Single Judge “*did not consider a repeated offence in the sense of said article, but he took into account that [Internacional] was involved in a second overdue payables matter submitted to him in the same meeting. In this regard, we refer to the wording of the challenged decision in point II.18, which does not refer to a “repeated offence”. In point II.20 of the challenged decision the art. 12bis par. 6 of the Regulations is mentioned, but only as information for [Internacional] for future reference. This should be clear to [Internacional] since the sentence is phrased in future tense, as it reads: “...the Single Judge wished to highlight that a repeated offence will be considered as a an [sic] aggravating circumstance and lead to a more severe penalty in accordance with art. 12bis par. 6 of the Regulations.*” (emphasis added by FIFA)
- The Appealed Decision complies with the procedural rules. According to CAS jurisprudence, only a short reasoning is required that enables the addressee to understand the findings and the reasoning of the association tribunal. With this in mind, the Appealed Decision contains very clear and detailed reasons for the Single Judge’s ultimate finding to impose a sanction on Internacional for its infringement of Article 12bis FIFA RSTP and contains all elements mentioned in Article 14(4) of the FIFA Rules Governing the Procedures of the Players’ Status Committee and the Disputes Resolution Chamber.
- Article 12bis FIFA RSTP gives the deciding bodies of FIFA wide discretion when it comes to the sanctioning of clubs and that the main aim of the aforementioned article is to ensure that clubs properly comply with their financial contractual obligations.
- The imposition of a warning in combination with a fine of CHF 15,000 is proportionate and its imposition is justified by Internacional’s attitude. The

overdue payables remain unpaid up to date even though Internacional had nearly one year to comply with its financial obligations towards Udinese.

- Internacional's references to other decisions of the FIFA PSC must be rejected because the circumstances are different.
- In the matter at hand, the Single Judge took into account the mitigating factors that Internacional replied to the claim and that no previous offence was committed. Furthermore, he also considered that a second case of overdue payables involved Internacional was to be decided upon during the same meeting. Finally, the Single Judge noted the extraordinary high amount of overdue payables, i.e. EUR 1,500,000, which leads to the conclusion that a fine of CHF 15,000 is absolutely proportional. Such fine corresponds to approximately 1% of the overdue payables amount.
- It is interesting to see how Internacional is trying to convince the Panel that its behaviour in the current proceedings was decent and correct. Unfortunately, Internacional seems to forget that, although it "*always tried*" to pay the due amounts and "*solve the matter amicably*", it miserably failed to comply with its financial duties towards its creditor, which is at the base of the current dispute.

40. On this basis, FIFA submitted the following prayers for relief:

"71. To reject the Appellant's appeal in its entirety.

72. To confirm the decision rendered by the Single Judge of the Players' Status Committee on 7 March 2019.

73. To order the Appellant to bear all costs incurred with the present procedure and to cover all the legal expenses of FIFA related to the present procedure."

V. JURISDICTION

41. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) FIFA Statutes (2018 Edition), as it determines 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 receipt of the decision in question" and Article R47 CAS Code. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the Parties.

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

VI. ADMISSIBILITY

43. The Statement of Appeal was filed within the deadline of 21 days set by Article 58(1) FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.
44. It follows that the appeal is admissible.

VII. APPLICABLE LAW

45. Internacional did not make any submissions on the law to be applied in the matter at hand.
46. FIFA submits that, according to Article 57(2) FIFA Statutes, the provisions of the CAS Code shall apply to the proceedings and that CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.
47. Article R58 CAS Code provides as follows:

“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.”

48. Article 57(2) FIFA Statutes provides 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.”

49. In accordance with Article R58 CAS Code and Article 57(2) FIFA Statutes, the Panel finds that the various regulations of FIFA are to be applied primarily, in particular the FIFA RSTP, and, additionally, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. RATIFICATION OF THE SETTLEMENT AGREEMENT

50. Article R56 of the CAS Code determines the following:

“[...] Any settlement may be embodied in an arbitral award rendered by consent of the parties.”

51. Under Swiss law, an arbitral tribunal with its seat in Switzerland has authority to issue an arbitral award embodying the terms of a settlement, if the consenting parties

agree to a termination of their dispute in this manner. In doing so, the parties may incorporate issues in their settlement that do not form part of the scope of the matter in dispute before the arbitral tribunal, subject to the arbitral tribunal's ratification thereof. The arbitral tribunal's ratification of the settlement agreement and its incorporation into a consent award serves the purpose of vesting the settlement with a *res judicata* effect and of enabling the enforcement of their agreement.

52. The Panel is therefore vested with the task of verifying the *bona fide* nature of the Settlement Agreement to ensure that the will of Internacional and Udinese has not been manipulated by them to commit fraud and to confirm that the terms of the Settlement Agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.
53. After reviewing the terms of the Settlement Agreement and the evidence on file, the Panel finds no grounds to object or disapprove the terms of the Settlement Agreement and is satisfied that it constitutes a *bona fide* settlement of the dispute brought to its attention, including the elements that originally did not fall within the scope of these appeal arbitration proceedings.
54. In accordance with the mutual consent of Internacional and Udinese, the Panel hereby directs Internacional and Udinese to fully comply with all the terms of the Settlement Agreement.
55. The above conclusions make it unnecessary for the Panel to consider any other or further motions or prayers for relief submitted by Internacional and Udinese, insofar as it concerns the contractual dispute between these two entities. The Panel is only required to assess the disciplinary dispute between Internacional and FIFA.

IX. MERITS

A. The Main Issues

56. The main issues to be resolved by the Panel are:
 - i. Did Internacional violate Article 12bis FIFA RSTP?
 - ii. Are the sanctions imposed on Internacional disproportionate?

i. Did Internacional violate Article 12bis FIFA RSTP?

57. Article 12bis FIFA RSTP provides as follows:

“Overdue payables

1. *Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements.*

2. *Any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with paragraph 4 below.*
 3. *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).*
 4. *Within the scope of their respective jurisdiction (cf. article 22 in conjunction with articles 23 and 24), the Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge may impose the following sanctions:*
 - a) *a warning;*
 - b) *a reprimand;*
 - c) *a fine;*
 - d) *a ban from registering any new players, either nationally or internationally, for one or two entire and consecutive registration periods.*
 5. *The sanctions provided for in paragraph 4 above may be applied cumulatively.*
 6. *A repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty.*
 7. *The execution of the registration ban in accordance with paragraph 4 d) above may be suspended. By suspending the execution of a registration ban, the deciding body subjects the sanctioned club to a probationary period ranging from six months to two years.*
 8. *If the club benefiting from a suspended registration ban commits another infringement during the probationary period, the suspension is automatically revoked and the registration ban executed; it is added to the sanction pronounced for the new infringement.*
 9. *The terms of the present article are without prejudice to the application of further measures in accordance with article 17 in the event of unilateral termination of the contractual relationship."*
58. Internacional submits that part of its debt towards Udinese is not due and that the requirements for the imposition of sporting sanctions under Article 12bis FIFA RSTP are therefore not fulfilled.
59. The Panel fully adheres to the findings of the Single Judge insofar he concluded in the Appealed Decision that Internacional had a debt towards Udinese in the amount of EUR 1,500,000. Internacional's argument that part of its debt towards Udinese did not yet fall due must not be taken into consideration, because Article 3 of the Loan Agreement contains a so-called "acceleration clause", determining as follows:

“In the event that Internacional fails to pay to Udinese on due dates the amounts indicated above or makes only a partial payment, then the remainder will become immediately due and payable. In such event an interest rate of 15% p.a. will apply starting from the date of default.”

60. Accordingly, although Internacional only failed to comply with its obligation to pay the first instalment of EUR 500,000 to Udinese by 30 August 2018 when Udinese put Internacional in default on 21 November 2018, because of the acceleration clause also the second and third instalment fell due immediately, plus interest.
61. Internacional’s argument that the interest rate provided for in the Loan Agreement was excessive and abusive must not be taken into consideration. The Loan Agreement provides for a default interest rate of 15%. As maintained by Udinese and FIFA, an interest rate of 15% p.a. is not considered excessive under Swiss law. In particular, CAS jurisprudence has accepted a maximum default interest rate of 17% p.a. in commercial contracts as being the maximum (see CAS 2010/A/2128, para. 46-48 of the abstract published on the CAS website). The Swiss Federal Tribunal (the “SFT”) once determined that a default interest rate of 26% p.a. was excessive and reduced it to 18% p.a. (SFT 93 II 191). In view of this jurisprudence, insofar Internacional argues that the imposition of a default interest rate of 15% somehow entitled it to cease performance of its financial obligations towards Udinese, this argument must be rejected.
62. Furthermore, by letter dated 21 November 2018, Udinese duly complied with its obligation to put the debtor in default in writing and provided the latter with a deadline of at least 10 days to comply with its obligations prior to commencing proceedings before FIFA. Since Internacional filed its claim to FIFA on 4 December 2018 it duly complied with the requirements set forth by Article 12bis(3) FIFA RSTP.
63. Consequently, Internacional violated Article 12bis FIFA RSTP and can be sanctioned on such basis.

ii. Are the sanctions imposed on Internacional disproportionate?

64. Internacional submits that the Single Judge unjustifiably took into account the existence of a repeated offence as an aggravating factor, whereas FIFA maintains that although the wording chosen in the Appealed Decision was “*slightly regretful*”, the Single Judge did not actually take into account any alleged repeated offence in the Appealed Decision.
65. The Panel observes that on 7 March 2019, the Single Judge dealt with two disputes involving Internacional and Udinese and that both concerned overdue payables of Internacional towards Udinese. The Single Judge issued decisions in both cases and in both decisions incorporated cross-references to the other procedure. The Appealed Decision contains the following relevant considerations:

“The Single Judge established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on [Internacional]. Therefore, bearing in mind that [Internacional] duly replied to the claim of [Udinese] and taking into account that [Internacional] was also condemned to pay overdue payables to [Udinese] in the case Nr 18-02547, the Single Judge decided to impose a warning and a fine on the Respondent in accordance with art. 12bis par. 4 lit. a) and c) of the Regulations.

Furthermore, taking into consideration the amount due of EUR 1,500,000, the Single Judge regarded a fine amounting to CHF 15,000 as appropriate and hence decided to impose said fine on [Internacional].

In this connection, the Single Judge wished to highlight that a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty in accordance with art. 12bis par. 6 of the Regulations.”

66. Although FIFA argued that it is not entirely clear from the wording of the Appealed Decision whether the Single Judge took into account the alleged “repeated offence” as an aggravating factor in increasing the sanction, or whether he included the reference to “repeated offence” only as a warning that the violations established could be taken into account in future disciplinary proceedings involving Internacional, the Panel finds that the former interpretation is to be followed.
67. The Panel finds it inappropriate for the Single Judge to take into account circumstances that have not become final and binding in determining the appropriate sanction to be imposed, particularly when the proceedings involving two separate contractual disputes pending before the Single Judge are not formally joined.
68. This is particularly so in case both decisions make cross-references to each other in concluding that there was a repeat offence. The Single Judge could arguably have taken into account the argument of a repeat offence in one of the two proceedings, but certainly not in both.
69. In the light of the above conclusions, the Panel finds that the proportionality of the sanctions imposed by means of the Appealed Decision must be assessed without taking into account the aggravating factor that it concerned a repeat offence, i.e. the proportionality of the sanction is to be assessed as if it were a first offence.
70. It is not in dispute between Internacional and FIFA that CAS panels can only replace a disciplinary decision of FIFA if the sanction concerned is considered evidently and grossly disproportionate to the offence.
71. Applying such yardstick, the Panel has no doubt in concluding that the imposition of a warning and a fine of CHF 15,000 on Internacional for failing to respect contractual obligations vis-à-vis Udinese can hardly be considered disproportionate as the fine only comprises 1% of the outstanding amount. Considering in particular the significant sum of EUR 1,500,000 that remained unpaid and the long period of non-

compliance, the Panel does not consider it reasonable to reduce the fine of CHF 15,000 or to impose a reprimand instead of a warning.

72. The precedents relied on by Internacional to corroborate its conclusion that the sanctions imposed on it by means of the Appealed Decision were disproportionate do not support Internacional's case. In such decisions fines of CHF 15,000 were imposed on clubs, despite the fact that such clubs did not respond to the claims filed against them, which is considered by FIFA as an aggravating factor, so in that sense a fine of CHF 15,000 in the present case may look harsh. However, as pointed out by FIFA, Internacional failed to mention that the overdue payables in the precedents cited were significantly lower, i.e. EUR 100,000 and USD 150,000, respectively. Indeed, in such precedents the fines comprised approximately 10% and 15% of the outstanding amount. The fine of CHF 15,000 imposed on Internacional in the matter at hand may therefore even be considered lenient.
73. As to Internacional's arguments that FIFA failed to take into account a) the financial crisis of Internacional and b) that Internacional tried to comply with its financial obligations, the Panel finds that this does not justify any other conclusion, in particular because these arguments remained entirely unsubstantiated by evidence. Internacional did not provide evidence that the financial crisis it was allegedly suffering from was not caused by its own defective financial management. There is also no evidence that Internacional tried to comply with its financial obligations. Indeed, it appears that at least until the start of the present appeal arbitration proceedings before CAS the entire amount of EUR 1,500,000 plus interest was still outstanding.
74. The Panel, however, finds that the final argument of Internacional, i.e. that it tried to settle the matter with Udinese, has more relevance.
75. During the present proceedings, Internacional not only attempted to conclude a settlement with Udinese, but it indeed managed to conclude the Settlement Agreement.
76. When asked by the Panel whether this would have any bearing on FIFA's stance in respect of the proportionality of the sanctions imposed on Internacional, FIFA answered that it did not consider this to be a reason to reduce the fine imposed.
77. The Panel notes that, when sanctioning powers were given to the FIFA Dispute Resolution Chamber (the "FIFA DRC"), the FIFA PSC, the Single Judge and the DRC Judge in the framework of Article 12bis of the FIFA RSTP when dealing with a contractual dispute, it aimed at achieving a general goal ("*The inclusion in the Regulations of a new article on overdue payables aims at establishing a stronger system with regard to overdue payables (towards players and clubs)*") and also a specific goal ("*the aim of this new article is clearly to ensure that clubs comply with their financial contractual obligations*"). (FIFA Circular no. 1468, dated 23 January 2015).

78. The Panel also notes that, in the context of proceedings on the basis of Article 64 of the FIFA Disciplinary Code, the FIFA Disciplinary Committee considers it relevant whether a settlement / payment plan is concluded:

“If the FIFA Disciplinary Committee is not provided with a proof that the payment has been executed or the parties agreed upon a payment plan, it will render a decision imposing a fine on the debtor for failing to comply with a decision and will grant the debtor a final period of grace as from notification of the decision in which to settle its debt to the creditor and/or to FIFA.”
(CAS 2017/A/5058, para. 63, second indent, of the abstract published on the CAS website)

79. The Panel sees no logical explanation why the FIFA Disciplinary Committee’s stance should not be applied by the FIFA DRC, the FIFA PSC, the Single Judge and the DRC Judge, because the rationale behind Article 12bis of the FIFA RSTP is identical to Article 15 FIFA Disciplinary Code (edition 2019), i.e. ensuring that clubs comply with their financial contractual obligations.
80. The Panel finds that the Single Judge could obviously not have taken into account the conclusion of the Settlement Agreement, because it was only concluded after the Appealed Decision was issued. However, CAS adjudicates appeal proceedings on a *de novo* basis and circumstances arising after the issuance of the Appealed Decision can be taken into account.
81. If FIFA considers it relevant whether a settlement / payment plan has been concluded in imposing disciplinary sanctions, this Panel is of the opinion that CAS panels may (and in the appropriate cases should) also take this into account in their assessment in appeals arbitration proceedings.
82. The Panel was informed (also by Udinese) about the efforts of Internacional in concluding the Settlement Agreement with Udinese. The Panel very much welcomed what appeared to be collegial and good relations between Internacional and Udinese in the negotiations and the attempt to reach a settlement agreement (for which also Udinese should be praised) and finds the conclusion of the Settlement Agreement to be a valid mitigating factor in this case. In general, debtors subjected to disciplinary proceedings aimed at strengthening the duty to respect their contractual obligations should at the same time feel encouraged to make good faith attempts to conclude a settlement / payment plan with its creditors, although the latter can obviously not be obliged to agree to such new terms.
83. Taking the conclusion of the Settlement Agreement and the overall circumstances of this case into account, the Panel finds that in this case it is appropriate to reduce the fine imposed on Internacional from CHF 15,000 to CHF 7,500.
84. Consequently, a fine of CHF 7,500 is imposed on Internacional.

B. Conclusion

85. Based on the foregoing, the Panel finds that:

- i) The Settlement Agreement concluded between Internacional and Udinese is hereby ratified.
- ii) Internacional violated Article 12bis FIFA RSTP and can be sanctioned on such basis.
- iii) The fine imposed on Internacional is reduced to CHF 7,500.

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

X. COSTS

87. Article R64.4 CAS Code provides as follows:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,*
- the administrative costs of the CAS calculated in accordance with the CAS scale,*
- the costs and fees of the arbitrators,*
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- a contribution towards the expenses of the CAS, and*
- the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.”

88. Article R64.5 CAS Code provides as follows:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

89. Having taken into account the outcome of these arbitration proceedings, in particular clause 11 of the Settlement Agreement, pursuant to which *“Udinese shall not pay anything in connection with the procedural costs incurred with respect to the foregoing proceedings”*, and that the remainder of Internacional’s appeal insofar as directed

against FIFA was partially upheld, but that the Appealed Decision was by no means wrong or unfair because the Settlement Agreement was only concluded after issuance of the Appealed Decision, the Panel considers it reasonable and fair that the costs of these arbitration proceedings, in an amount that will be determined and notified to the Parties by the CAS Court Office, shall be borne in full by Internacional.

90. Furthermore, pursuant to Article R64.5 CAS Code and in consideration of the complexity and outcome of the proceedings as well as the conduct and the financial resources of the Parties, in particular i) clause 12 of the Settlement Agreement, pursuant to which “[...] *[t]he Parties shall bear their own costs and expenses (such as attorney, travel expenses, etc.) in relation to the proceedings CAS 2019/A/6263 & CAS 2019/A/6264*”; ii) that Internacional’s appeal insofar as directed against FIFA was partially upheld, but that the Appealed Decision was by no means wrong or unfair because the Settlement Agreement was only concluded after the issuance of the Appealed Decision; and iii) that FIFA was not represented by external counsel, the Panel rules that each party shall bear its own legal fees and other expenses incurred in connection with these arbitration proceedings.

XI. CONFIDENTIALITY

91. In accordance with clause 19 of the Settlement Agreement, the Parties shall keep the Settlement Agreement strictly confidential.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The settlement agreement entered into by Sport Club Internacional and Udinese Calcio S.p.A. on 12 September 2019 and as amended on 31 October 2019 is hereby ratified by the Court of Arbitration for Sport with the consent of the Parties and its terms are incorporated into this arbitral award.
2. As to the remaining issues to be decided, the appeal filed on 24 April 2019 by Sport Club Internacional against the decision issued on 7 March 2019 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association*, insofar as it concerns the sanctions imposed on Sport Club Internacional, is partially upheld.
3. The decision issued on 7 March 2019 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is amended as follows:

Sport Club Internacional is ordered to pay a fine in the amount of CHF 7,500 within 30 days of notification of the present decision to the bank account stipulated in the decision issued on 7 March 2019 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association.

4. The costs of the arbitration, to be determined and served on the Parties by the CAS Court Office, shall be borne in full by Sport Club Internacional.
5. Each party shall bear its own legal fees and other expenses incurred in connection with these arbitration proceedings.
6. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 25 May 2020

THE COURT OF ARBITRATION FOR SPORT

Efraim **Barak**
President of the Panel

Rui **Botica Santos**
Arbitrator

Fabio **Iudica**
Arbitrator

Dennis **Koolaard**
Ad hoc Clerk