



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2020/A/7314 Horacio Luis Rolla v. Palermo Football Club S.p.A & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Rui **Botica Santos**, Attorney-at-Law, Lisbon, Portugal
Arbitrators: Mr Miguel **Cardenal Carro**, Attorney-at-Law, Madrid, Spain
Mr José Juan **Pintó**, Attorney-at-Law, Barcelona, Spain

in the arbitration between

Horacio Luis Rolla, Buenos Aires, Argentina

Represented by Mr Daniel Mario Crespo and Mr Cristian Germán Ferrero, Attorneys-at-Law, Buenos Aires, Argentina

Appellant

and

Palermo Football Club S.P.A., Palermo, Italy

Represented by Mr Paolo Lombardi and Mr Luca Pastore, Attorneys-at-Law at Lombardi Associates Limited, Edinburgh, United Kingdom

First Respondent

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios and Ms Marta Ruiz Ayucar, Zurich, Switzerland

Second Respondent

I. PARTIES

1. Mr Horacio Luis Rolla (“Appellant”, “Agent” or “Creditor”) is an intermediary duly licensed as Player’s Agent by the Argentinian Football Federation, which is a member association of Fédération Internationale de Football Association.
2. Palermo Football Club S.p.A. (“First Respondent” or “New Palermo”) is an Italian football club affiliated to the Federazione Italiana Giuoco Calcio (“FIGC”), which is a member association of Fédération Internationale de Football Association.
3. The Fédération Internationale de Football Association (“Second Respondent” or “FIFA”) is an international governing body of football. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials, and players belonging to its affiliates. FIFA is an association under Articles 60 et seq. of the Swiss Civil Code with headquarters in Zurich, Switzerland.
4. The Agent, New Palermo and FIFA are collectively referred to as the “Parties” and New Palermo and FIFA collectively referred to as the “Respondents”.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the Parties’ written submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award (“Award”) only to the submissions and evidence it considers necessary to explain its reasoning.

a. The Appealed Decision

6. This appeal case (“Appeal”) is related to the challenging of the FIFA Disciplinary Committee (“FIFA DC”) decision passed on 21 May 2020 (“Appealed Decision” or “FDC Decision related to the New Palermo”), discharging the New Palermo from the liability concerning the debts incurred by the Italian club US Città di Palermo S.p.A. (“Old Palermo” or “Debtor Club”), on the basis that there is no legal or sporting succession between the referred Italian football clubs. The grounds of the Appealed Decision were notified to the Agent on 2 July 2020.

b. *The origin of the dispute - the dispute between the Agent and the Old Palermo*

7. On 7 May 2014, the Single Judge of the Player's Status Committee ("FIFA PSC") decided to reject a claim filed by the Creditor against the Old Palermo ("FIFA PSC Decision). In these proceedings, the Agent was claiming the amounts related to his professional services for the transfer of the player Edinson Cavani to the Italian club SSC Napoli.
8. On 18 September 2014, the Agent filed an appeal before the Court of Arbitration for Sport ("CAS") concerning the FIFA PSC Decision.
9. On 25 May 2015, the Agent and the Old Palermo decided to settle the dispute ("Settlement Agreement"). The Settlement Agreement replaced the FIFA PSC Decision.
10. The Settlement Agreement was incorporated in a CAS consent award ("CAS Consent Award") and states, among others, the following terms and conditions:

"(...)

1.1 (...) Palermo shall pay the Agent the amount of €1,000,000 (one million euros) (...), inclusive of applicable default interest, arbitration costs and expenses, and without any deduction or set off. For the sake of clarity, this amount corresponds to the amount of €850,000 claimed by the Agent plus 5% per annum default interest calculated as of the due date of the payments relevant to the transfer at the basis of the dispute, plus a contribution towards the legal expense borne by the Agent in the FIFA proceedings.

1.2 The Agent irrevocably acknowledges that, upon receipt of the Settlement Amount, he has no further claim in connection with the Representation Agreement, the Dispute, the CAS proceedings, this Agreement or any other previous agreement between the Parties relating to the Dispute.

(...)

1.7 The present Agreement shall take the form of a CAS Consent Award.

1.8 Palermo's failure to respect the CAS Consent Award will result in the Agent requesting its enforcement to the FIFA Disciplinary Committee pursuant to article 64 of the FIFA Disciplinary Code. In this respect, Palermo hereby confirms and accepts that the consent Award may be enforced by means of article 64 of the FIFA Disciplinary Code and that, accordingly, in case of non-fulfilment of its obligations, disciplinary sanctions may be imposed by FIFA.

(...)”

11. On 22 July 2015, the CAS ruled the following:

“(…)”

1. *The Settlement Agreement submitted to the CAS Court Office by the parties on 15 June 2015 is hereby ratified by the CAS with the consent of the parties and its terms are incorporated into this arbitral award.*
2. *The terms of the Settlement Agreement replace the decision of the Player’s Status Committee of the [FIFA] of 7 May 2014.*

(…)”

12. On 19 October 2018, as per the Agent’s request, FIFA DC passed a decision against the Old Palermo (“FDC Decision against the Old Palermo”), by means of which, among others, it granted a final deadline of 90 days to comply with the Settlement Agreement. The Old Palermo appealed to CAS against this decision.
13. On 30 October 2019, CAS confirmed the FDC Decision against the Old Palermo.
14. On 31 October 2019, the FIGC informed FIFA DC that the Old Palermo had been declared bankrupt by the Ordinary Court of Palermo and that, as of 25 October 2019, it was no longer affiliated to the FIGC.
15. Immediately after, FIFA DC informed the Agent that due to the disaffiliation of the Old Palermo from the FIGC, it was not in position to further proceed with the case. Since Old Palermo lost its indirect membership to FIFA, FIFA DC could not impose sanctions on it.

c. *The dispute between the Creditor and the New Palermo*

16. On 12 November 2019, the Agent requested FIFA DC to start disciplinary proceedings against the New Palermo as sporting successor of the Old Palermo (New Palermo and Old Palermo are collectively referred to as the “Clubs”).
17. The Agent argues that the New Palermo is the sporting successor of the Old Palermo and, for this reason, is liable for the payment of the consolidated obligations of his predecessor since it could not receive his credit.
18. The Agent based its allegations on the findings and evidence that New Palermo was using (i) a similar name; (ii) the same nickname; (iii) the same colours; (iv)

the same logo; (v) the same stadium; (vi) the same contact office; (vii) having the same supporters and historic sports idols; and (viii) the same history and objectives.

19. On 1 April 2020, FIFA DC opened disciplinary proceedings against the New Palermo for alleged sporting successor and potential violation of Article 64 FIFA Disciplinary Code edition 2017 (“FDC”) and Article 15.4 FDC edition 2019. In this context, New Palermo was invited to provide its position regarding the Creditor’s allegations.
20. On 8 April 2020, the FIGC informed FIFA DC about the fact that the New Palermo, which was participating in the amateur league, became an affiliated member of the FIGC on 26 July 2019. Furthermore, FIGC informed that New Palermo was not considered the legal successor of the Old Palermo, since there was no legal connection or continuity between the Clubs.
21. On 10 April 2020, the FIGC passed the information received from the New Palermo that it had no relation whatsoever with the Old Palermo since they both have a different VAT number and a different corporate composition. New Palermo informed the Agent to claim his credit in the bankruptcy proceedings of the Old Palermo.
22. On 30 April 2020, following the correspondence sent by the FIGC on 8 April 2020, FIFA DC requested the FIGC to clarify the division from the Italian national championship in which the Old Palermo was participating before it was excluded from the FIGC, as well as the division on which the New Palermo started its participation in organized football. On this same date, FIFA DC requested the Agent to clarify the actions taken, if any, to recover his credit from the Old Palermo under the bankruptcy proceedings.
23. On 1 May 2020, upon FIFA’s request dated 30 April 2020 about the Appellant’s “*position regarding the legal actions taken, if any, at national level in order to recover his credit from US Citta di Palermo*”, the Agent provided his position in relation to the FIFA DC’s request and confirmed that he has exclusively claimed his credit under the FIFA DC proceedings:

“En respuesta a su comunicación del 29 de abril de 2020, informamos que las acciones del Agente Rolla, pretendiendo el cobro del crédito reconocido en el procedimiento CAS 2014/A/3755, han tenido lugar, con carácter de exclusividad, ante esta Comisión Disciplinaria de FIFA”

English non-official translation:

“In response to your communication of April 29, 2020, we inform that the actions of Agent Rolla, claiming the credit related to the CAS 2014/A/3755 procedure, have taken place, with an exclusive character, before the FIFA Disciplinary Commission”

24. On 4 May 2020, the FIGC informed that the Old Palermo participated in the Serie B Professional Championship during the sport season 2018/2019 and that it was excluded from this Serie in the season 2019/2020 for pending debts; while the New Palermo started its participation in the organized football by playing in the Serie D – Amateur League (organized by the interregional department).
25. On 14 May 2020, the Agent filed further submissions to FIFA DC on the matter.
26. On 21 May 2020, FIFA DC concluded that, based on the information and documentation received, it was not possible to establish the sporting successor between the Clubs. As a result, New Palermo was not responsible for the debt of the Old Palermo and the disciplinary procedure was closed.

d. The grounds of the Appealed Decision

27. The main grounds of the Appealed Decision are the following:

“(…)

17. (...) a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities that operate it, meaning that the obligations acquired by any of the entities in charge of its administration, in relation with its activity, must be respected. (...) the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. These elements allow a club to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognized, even when dealing with the change of management completely different from themselves.

18. (...) CAS considered that a “new” club has to be considered as the “sporting successor” of another one in a situation where a) the “new” club created the impression that it wanted to be legally bound by the obligations of its predecessor (i.e. the “old” club) b) the “new” club took over the licence or federative rights

from the “old” club and c) the competent federation treated the two clubs as successor of one another. By the same token, a “sporting succession” is the result of the fact that 1) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, 2) the “new” club accepted certain liabilities of the “old” club, 3) after the acquisition of the assets of the “old” club, the “new” club remained in the same city and 4) the “new” club took over the licence or federative rights from the “old” club.

19. (...) the issue of the succession of two sporting clubs might be different that if one were to apply civil law regarding the succession of two separate legal entities, in particular, it is important to recall that according to CAS, a club is a sporting entity identifiable by itself that generally transcends the legal entities that operates it. Consequently, elements to consider are, amongst other, the name, the logo, colours, the registration address and/or the managing board of the club.

20. (...) the (...) established jurisprudence from CAS is now reflected in the 2019 FDC edition under art. 15 par. 4. (...) “the sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholder or stakeholders or ownership and the category of competition concerned.

23. (...) the Creditor has (...) demonstrated, the New Club shares a number of similarities with the original Debtor, such as, the same colours, a similar name and logo and the fact that they both played in the same stadium. In addition, the Single Judge also observes that the New Club makes reference in its official website to the founding date and the history of the first football club to represent the city of Palermo and, apparently, adopts the said founding date and history for a certain period of time.

24. (...) the Single Judge considers very unlikely that two different legal entities affiliated to a member association at the same time are the same club or connected somehow between each other. In this sense, and on the Single Judge’s opinion, this is a clear sign that each of the two clubs hold their own federative right and that none of them have taken over the said rights from the other.

25. (...) the New Club had to start competing in the lowest division while the Original Debtor completed its last sporting season in a higher and different division than the one the New Club started participating in, is a unequivocal

evidence that the federative rights of the Original Debtor were not transferred to the Club.

26. (...) it appears that certain elements that constituted the identity of the Original Debtor were taken over by the New Club, while other elements diverge between both clubs. Confronted with this situation, the Single Judge deems that the category of competition, as mentioned in art. 15 par. 4 of the 2019 FDC edition, should, in this particular case, take precedence. Consequently, considering that the New Club began to compete at amateur level and in a lower division than the Original Debtor, and that its participation in this category was not connected with the “sporting relegation” of the Original Debtor, the Single Judge believes that this fact indicates that there is no sporting continuity between the new Club and the Original Debtor.

(...)”

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 23 July 2020, in accordance with Article R47 of the Code of Sports-related Arbitration (“CAS Code”), the Appellant filed its statement of appeal (the “Statement of Appeal”) with the CAS challenging the Appealed Decision.
29. On 23 August 2020, in accordance with Article R51 of the CAS Code and within the time-limit previously extended, the Appellant filed the appeal brief (the “Appeal Brief”) with the CAS.
30. On 24 August 2020, the Respondents were granted 20 days to submit their answers to the Appeal Brief. Said deadline was eventually set aside pursuant to Article R55 (3) of the CAS Code.
31. On 25 August 2020, the Respondents asked for a new deadline to be fixed after the Appellant’s payment of the advanced costs, pursuant to Article R55.3 of the CAS Code.
32. On 15 September 2020, CAS acknowledge receipt of the Appellant’s payment of his share of the advance costs and granted the Respondents 20-day deadline to submit their Answers.

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33. On 30 September 2020, FIFA requested an extension of 10 days to submit its Answer. On this same date, it was granted the requested extension.
34. On 1 October 2020, New Palermo requested an extension of 10 days to submit its Answer. On this same date, it was granted the requested extension.
35. On 15 October 2020, in accordance with Article R55 of the CAS Code, the New Palermo and FIFA filed their respective Answers (the “Answer” or “Answers” if related to both Respondents) with CAS.
36. On 20 October 2020, the CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel had been constituted as follows:

President: Mr Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal
Arbitrators: Mr Miguel Cardenal Carro, Attorney-at-Law, Madrid, Spain
Mr José Juan Pintó, Attorney-at-Law, Barcelona, Spain

37. On 30 October 2020, after consultation of the Parties, the Panel decided to hold a hearing on 20 November 2020 by videoconference.
38. On 30 October 2020, the CAS Court Office issued the Order of Procedure, which was duly signed by the Parties.
39. On 20 November 2020, a hearing was held by videoconference. The Panel met in-person in Madrid (Spain) and the remaining participants attended the hearing by videoconference. In addition to the Panel and Mr Giovanni Maria Fares, as CAS Counsel, the following persons attended the hearing:

1. For the Appellant

- Mr Daniel Mario Crespo – Counsel
- Mr Cristian Germán Ferrero – Counsel
- Ms Marisol Crespo – Interpreter

2. For the First Respondent

- Mr Paolo Lombardi – Counsel
- Mr Luca Pastore – Counsel
- Mr Ian Laing – Counsel
- Mr Rinaldo Sagramola – CEO of New Palermo
- Mr Marco Lai – Head of Legal Affairs, FIGC, Witness
- Ms Samantha Cipollina - Interpreter

3. For the Second Respondent

- Mr Miguel Liétard Fernández-Palacios – Director of Litigation
- Ms Marta Ruiz-Ayucar – Senior Legal Counsel

40. As a preliminary remark, the Parties were requested to confirm not having any objection to the composition of the Panel and to confirm that all relevant documents were in the file.
41. The Parties were given the opportunity to present their case and make their submissions and arguments. The Palermo's witnesses have been examined and cross-examined. After the Parties' closing submissions, the hearing was closed, and the Panel reserved its detailed decision to the Award.
42. Before the hearing has been concluded, the Parties expressly stated that they had no objection to the way that these proceedings have been conducted and that the equal treatment of the Parties and their right to be heard had been respected.
43. On 10 December 2020, the Panel informed the Parties that:

“On 20 October, the Parties were informed that the Panel called to hear the present dispute was chaired by Mr Rui Botica Santos, who accepted his appointment by the Division President without any disclosure,

On 28 August 2020, the CAS Court Office notified the Parties with copy of the “Arbitrators’ Acceptance and Statement of Independence” form completed by Mr José J. Pintó, nominated by the First Respondent with the subsequent agreement of FIFA, together with some disclosures. On this occasion, none of the Parties objected to the nomination of Mr Pintó.

Now, please note that during the deliberation phase, both Mr Botica Santos and Mr Pintó have realized the existence of some facts which, potentially, needed to be disclosed.

In particular, it turns out that Mr Botica Santos was involved in CAS 2012/A/2854 Horacio Luis Rolla v. U.S. Città di Palermo SpA & FIFA (which dates back to 2012) and was nominated by Mr Rolla.

Since all Parties and Counsels in the present proceedings were already involved in the mentioned precedent (except for, of course, the New Club Palermo), it is not necessary to recall that in the framework of said procedure, which involved the same underlying factual background of the present case (i.e. the Appellant's

claim for payment of a commission for the transfer of the player Edinson Cavani), the Panel decided to send the file back to FIFA and no decision on the merits of the dispute was taken.

In addition to the above, the Parties are informed that also Mr Pintó wishes to make the following disclosure in relation with the mentioned precedent:

“I have realized that in the year 2012 a lawyer of my law firm, Mr. Lucas Ferrer, represented Mr. Horacio Luis Rolla in the case TAS 2012/A/2854.

His mandate was limited to the CAS case that finished more than 7 years ago and since then he has not represented Mr Rolla anymore.”

Now, since, as mentioned, all Counsels and Parties were involved in CAS 2012/A/2854, it can be assumed that the Parties knew, or at least could have known, the existence of this information and decided to waive any objection in this regard.

*This notwithstanding, for the sake of good order and subject to Article R34 of the Code, I kindly invite the Parties to renew, **at their earliest convenience**, the statements made at the outset of the hearing held on 20 November 2020 and to confirm that, in light of the above information, there is no objection as to the composition of the Panel to which the present dispute is referred.*

In case of silence of one of the Parties or in absence of any action pursuant to Article R34 of the Code within the relevant deadline, it will be deemed that the Parties waived (respectively already waived) any objection to the composition of the Panel and the conduct of the present proceedings so far.

(...)”

44. *On 14 December 2020, the First Respondent informed that “(...) does not wish to raise any objection based on the information contained within your letter and confirms that it has no objection to the composition of the Panel and the conduct of the present arbitration proceedings. (...)”*
45. *On 16 December 2020, the Appellant confirmed that “(...) he has no objection in relation to the composition of the Panel. (...)”*
46. *On 18 December 2020, the CAS Office sent a notice informing that the Appellant and the First Respondent have not raised any objection with respect to the composition of the Panel and, “[s]ince the Second Respondent remained silent in this regard and did not file any motion pursuant to Article R34 of the Code, it is*

deemed that FIFA as well has no objection with respect to the composition of the Panel appointed in this matter. (...)."

47. On 6 January 2021, following the discussions held during the hearing, and considering the fact that after the hearing it was decided by another CAS panel a similar case related to "Club Parma", the Parties were invited to file Post Hearing Briefs addressing exclusively the following issues:

"1. Relevance of the cases CAS 2011/A/2646 and CAS 2020/A/7092 (the latter, mentioned by FIFA during the hearing) (...) in the present appeal;

2. Whether, under Italian Law, any third party who is not a creditor has, or could have, access to the list of creditors in a bankruptcy procedure;

i. In the affirmative, which efforts have been made by the First Respondent to know this list and the debt situation of US Città di Palermo S.p.A., both before and after the constitution of the new company Palermo Football Club; and

ii. Whether, within the context of the tender procedure, the First Respondent had access e.g. through the Municipality, to such list;

3. Implications (if any) of Article 10 of the FIFA Disciplinary Code (edition 2019) in the enforcement of the Appellant's credit against the First Respondent."

48. On 18 January 2021, FIFA filed its submissions. The Agent and New Palermo have filed their respective submissions on 27 January 2021 and 28 January 2021, within the deadline previously extended. The Parties' Post Hearing Briefs are summarized in the next section of the Award.

49. On 23 April 2021, the Appellant sent a letter to the CAS stating that the Court of the City of Palermo, which was in charge of the bankruptcy proceedings regarding Old Palermo, had determined that, until 23 March 2022, any creditor may claim his/its credit and to be included in the list of creditors. The Appellant attached to this letter the documents which it had presented to the FIFA Disciplinary Committee and aimed to prove that *"the creditor agent has complied with this action [requesting inclusion in the list of creditors] taking into account what was indicated by FIFA in its letter of January 18, 2021"*.

50. On 3 May 2021, the First Respondent presented its comments regarding the Appellant's letter of 23 April 2021, strongly opposing to the admission of such submissions since they were unsolicited and late.
51. On 4 May 2021, the Second Respondent presented its comments regarding the Appellant's letter of 23 April 2021 also objecting the admission of such submissions based on the non-fulfilment of any of the conditions mentioned in Article R56 of the CAS Code, as well as on the argument that the Appellant should have addressed this issue at the appropriate procedural moment. The Second Respondent also attached to its comments a copy of the CAS 2020/A/6846 award, highlighting its paragraph 210:

“The Appellant may not have had knowledge – at least not from an official side – of the ongoing insolvency proceedings of PMFC-SPORT as of 30 September 2016. However, on 22 November 2017 at the latest, he was officially informed by FIFA, that according to the HFF – PMFC-SPORT was “under liquidation”. Still, the Appellant refrained from the possibility to recover his credit through the state channels and remained completely passive in this regard. It is not disputed that it was not until 16 March 2020 and after the Appealed Decision was issued, thus at least more than two and a half years after he was informed about PMFC-SPORT's insolvency proceedings, that the Appellant finally attempted to register his claims before the liquidator. Such passive behaviour does not deserve any legal protection. The resulting legal disadvantages thereof are thus to be fully attributed and borne by the Appellant himself”

52. The Panel notes that the content of the letter sent by the Appellant on 23 April 2021 cannot be taken into consideration regarding the present procedure, since it was not filed in a timely manner and its admission would directly contravene Article R56 of the CAS Code, which reads as follows:

“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer.”

(Emphasis added)

53. In accordance with Article R56 of the CAS Code, the Appellant's unsolicited submissions will not be taken into consideration by the Panel, as well as the

Respondents' submissions in relation to any matter not restricted to the non-admission of the Appellant's unsolicited submissions.

IV. THE PARTIES' SUBMISSIONS

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

A. The Appellant | The Agent

55. The Appellant prayed the below reliefs in its Appeal Brief:

“(…)

I. To accept the appeal against the decision adopted by FIFA on 21 May 2020.

II. Issue a decision establishing that:

- Società Sportiva Dilettantistica Palermo or Palermo Football Club S.p.A, or who, at the time of issuing the decision, becomes de sports successor of US Città di Palermo S.p.A., is responsible for paying Horacio Luis Rolla the sums owned according to the award issued in procedure CAS 2014/A/3755.

- Società Sportiva Dilettantistica Palermo or Palermo Football Club S.p.A, or who, at the time of issuing the decision, becomes de sports successor of US Città di Palermo S.p.A., shall be deemed infringer in the event of non-compliance with the obligations assumed by US Città di Palermo S.p.A. in CAS 2014/A/3755.

- The Respondents shall pay the costs of the present arbitration

- The Respondents shall pay the legal fees and all other expenses incurred by the Appellant in connection with the present procedure.

(…).”

56. The Appellant advanced the following grounds in support of his appeal:

- a. *The sporting successor*
57. The issue of sporting succession should not be limited to the composition of the companies or entities that operate or administer the Clubs. Sports clubs continues to exist if certain essential elements remain unaltered, such as the name, the logo, the colours, the shields, the history, the idols, the headquarters, the stadium where the home matches are played, etc. These elements that were not analysed in the Appealed Decision are precisely those that identify a “club” and differentiate it from others.
58. The Appellant underlines the purposes of Article 15.4 of FDC and the FIFA’s role to protect “financial justice” in the football world. FIFA Circular no. 1681 states, *inter alia*, that: “(...) FIFA will act against the sporting successor of a debtor, a practice that has unfortunately become more common in recent years as club attempt to avoid mandatory financial responsibilities toward other clubs, players, managers, etc (article 15 paragraph 4 FDC). (...)”
59. In support of his arguments, the Appellant invokes the following CAS jurisprudence:

CAS 2013/A/3425

“(..) a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities that operates it (...). (...) a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. These elements allow a club to distinguish from all the other clubs. (...) the prevalence of the continuity and performance in time of the sporting institution in front of the entity that manages it has been recognized, even when dealing with the change of management completely from themselves.” (Par. 139)

Original version in Spanish:

“(...) que un club es una entidad deportiva identificable por sí misma que, por regla general, trasciende a las personas jurídicas que la administran y que, por tanto, las obligaciones asumidas por cualquiera de las sociedades a cargo de su administración en relación con su actividad deben ser respetadas; y, por otro lado, que la identidad de un club la constituyen elementos tales como su nombre, colores, hinchada, historia, logros deportivos, escudo, trofeos, estadio, plantel, ídolos históricos, etc., que permiten distinguirlo de otro club. Así, se ha reconocido la prevalencia de la continuidad y permanencia en el tiempo de la institución deportiva frente al cambio de administrador, aun

tratándose de la alternancia en la administración de sociedades completamente distintas entre sí.” (Par. 139)

TAS 2011/A/2614

“(…) si los “clubes de fútbol” sólo corresponden a un reconocimiento deportivo y no legal, resulta legítimo preguntarse entonces: ¿qué es aquello que los identifica claramente entre sí? La respuesta está dada, en opinión del Arbitro Único, por un conjunto de elementos que se aúnan en su imagen, es decir, su nombre, colores, hinchada, su historia, logros deportivos, su escudo, trofeos, el estadio donde hace de local para disputar sus partidos, su plantel, sus ídolos históricos, etc. Son estos elementos, que en su conjunto, permiten distinguir deportivamente a un equipo de fútbol de otro y por tanto se convierten en factores de importancia superlativa al momento de resolver una disputa de la naturaleza como la sometida al presente arbitraje, desde el momento en que la teoría del caso de cada parte es completamente antagónica en ese aspecto.” (par. 56)

“(…) la historia del club es quizás el elemento de mayor importancia en este contexto, puesto que la misma encierra los hechos ocurridos en el pasado y que destacan los hitos relevantes en la existencia de algo. Así, la fecha de nacimiento del club manifiesta la permanencia y trascendencia del mismo en el ámbito deportivo local e internacional; los logros deportivos como, por ejemplo, títulos de campeonato constituyen probablemente el elemento de mayor distinción de un club por sobre otro y que frecuentemente es mencionado por sus dirigentes y seguidores como un factor de orgullo. Naturalmente que los colores, emblema e hinchada son privativos del club e intransferibles a otro equipo, ya que son parte de la esencia de la adhesión deportiva, que es precisamente aquello que provoca la emoción y apego de un sentimiento pasional y por ende subjetivo, hacia los jugadores que, vistiendo el uniforme de ese club en particular, son quienes semana a semana ingresan al campo de juego a defender los intereses deportivos. Se trata por tanto de elementos extralegales que identifican y distinguen a los clubes de fútbol entre sí, lo que, en todo caso, no significa que por ese sólo hecho se concluya que existe una simbiosis legal entre el equipo deportivo con la persona jurídica administradora, pero sí es un elemento que ilumina el raciocinio que hará el Arbitro Único.” (par. 58)

English non-official translation:

“(…) if “football clubs” only correspond to a sporting and not legal recognition, then it is legitimate to ask: what is the element that clearly identifies them among themselves? The answer is given, in the opinion of the sole Arbitrator, by a set of elements that come together in their image, that is, their name, colours, fans, their history, sporting achievements, their shield, trophies, the stadium where it plays home matches, their squad, their historical idols, etc. And these elements acting as a whole allow one to distinguish one soccer team from another in sports terms and therefore, they become factors of superlative importance when resolving a dispute such as the one submitted to this arbitration, from the moment when the theory of the case of each party is completely antagonistic in this regard.” (par. 56)

“(…) the history of the club is perhaps the most important element in this context, since it contains the events that occurred in the past and that highlight the relevant milestone of the existence of something. Thus, the club’s date of birth shows its permanence and significance in the local and international sports arena; Sporting achievements such as championship titles, are probably the most distinguishing elements of one club over another and that is frequently mentioned by its leaders and followers as a factor of pride. Naturally, the colours, emblem and fans are exclusive to the club and non-transferable to another team, since they are part of the essence of sports adherence, which is precisely what causes emotion and attachment of a passionate and therefore subjective feeling towards players that, wearing the uniform of that particular club, are the ones who enter the field every week to defend sporting interest. There are therefore extra-legal elements that identify and distinguish football clubs from each other, which, in any case, does not mean that by that alone it is concluded that there is a legal symbiosis between the sports team and the managing legal entity, but it is an element that illuminates the reasoning that the Sole Arbitrator will make.” (par. 58)

CAS 2013/A/3425; CAS 2018/A/5618; CAS 2016/A/4550 and CAS 2016/A/4576 the Appellant also identifies these CAS awards, pointing out that:

“The sporting successor of a former, no longer existing club can, as a matter of principle, be liable to meet the financial obligations of that former club notwithstanding that the successor is not a party to any agreement, arrangement or understanding pursuant to which the financial obligations arose or a privy of any of the parties to any such agreements, arrangements or understanding and regardless of whether there has been a change of management or corporate structure or ownership of the club in question.” (Par.29 of the Appeal Brief)

b. *Elements assessed in the Appealed Decision*

60. The Appealed Decision rejected the Agent's claim based – in essence – on three grounds:

- a. Both Clubs have a different VAT number and a different corporate composition;
- b. Both Clubs were affiliated to the FIGC at the same time; and
- c. The New Palermo had to start competing in the lowest division and this fact is pointed out as an “*unequivocal evidence that the federative rights of the Original Debtor were not transferred to the [New Palermo].*”

61. The Appellant states that the above findings are irrelevant, because:

1. Both Clubs are different legal entities, and they could never have the same VAT and corporate composition.
2. Both Clubs were affiliated at FIGC only for 4 months. This is purely an administrative issue without any relevance, since from the affiliation of New Palermo to the disaffiliation of Old Palermo, the latter entity was unable to participate in the competitions by express decision of FIGC. This issue could be relevant if both Clubs had competed at the same time.
3. It was FIGC that suggested Palermo's Mayor to get a new entity to be registered according to Article 52.10 of Norme Organizzative Interne Della FIGC/Internal Organizational Rules of FIGC (“NOIF”). Article 52 of NOIF states, *inter alia*, the following:

“Titolo Sportivo

1. *Il titolo sportivo è il riconoscimento da parte della F.I.G.C. delle condizioni tecniche sportive che consentono, concorrendo gli altri requisiti previsti dalle norme federali, la partecipazione di una società ad un determinato Campionato.*

(...)

10. In caso di non ammissione al campionato di Serie A, Serie B e di Serie C il Presidente Federale, d'intesa con il Presidente della LND, previo parere della Commissione all'uopo istituita, potrà consentire alla città della società non ammessa di partecipare con una propria società ad un Campionato della LND, anche in soprannumero, purché la stessa società: (...).

(...)"

English non-official translation:

"Sports title

1. The sports title is the recognition by FIGC of the technical sports conditions that allow together with the other requirements provided by the rules of the federation, the participation of a society to a certain Championship.

(...)

10. In case of non-admission to championships of A Series, B Series and C Series, the President of the Federation, jointly with the President of the LND, prior report of the Commission created for this purpose, may allow the city of the non-admitted society to participate with its own society in an LND Championship, even in supernumerary, provided that said society: (...)"

c. *Elements omitted by FDC in the Appealed Decision*

62. The Appellant recognizes that the Clubs are separate commercial entities with different VAT numbers. However, the question of the sporting succession is related to the concept of "club", beyond the companies that administer the rights, assets or elements that identify the club.

63. FDC needed to take into consideration the following relevant elements:

a) **Historical Roots:** The club Palermo was founded on 1 November 1900 under the name Anglo-Palermitan Athletic and Foot-Ball Club. The New Palermo changed its name to Palermo Football Club and mentions in its website: *"old values, new glory. It is a plunge into the past, given that for the first time Palermo adopted the name Foot-Ball Club in 1907. (...) a pink thread between today's Palermo and the Palermo of all time, which honors 120*

years since its foundation (...).” There is a natural continuity between the Clubs, through cultural heritage. The President of New Palermo Dario Mirri recognized the continuity of the sports entity on 1 November 2019 at its first anniversary.

- b) **Similar Name**: Old Palermo changed several times its name, but always kept the reference to “Palermo”, the name of the city where the club has always had its headquarters. This was an essential condition for those interested to continue a football club in the city;
- c) **Nickname**: the New Palermo continues to be identified by the nickname “Rosanero”, derived from the colours pink (rosa) and black (nero) and “Aquile” (Eagles) in reference to the eagle of the official logo;
- d) **Colours**: since 1921 to date Palermo clubs used the traditional colours of pink and black. This has been imposed by the Municipality of Palermo;
- e) **Logo**: New Palermo has also presented its shields respecting the image of an eagle in a pink and black background. The new logo also respects the golden eagle and coats of arms since 1932;
- f) **Stadium**: New Palermo continues to use the Renzo Barbera stadium, located in Palermo;
- g) **Contact Offices**: New Palermo uses the same premises / offices of the Old Palermo;
- h) **Supporters and historic sports idols**: the official presentation of the team for 2019/2020 season was held on 28 August 2019 at the Renzo Barbara stadium. 20,000 supporters attended and a friendly match was played with some of the historic players, including Fabrizio Miccoli, Josip Ilicic, Cristian Zaccardo and Luca Toni;
- i) **History and Objectives**: New Palermo planned the creation of a museum under the slogan “*Una casa per la nostra storia, #SIAMOAQUILED (QUASI) 120 ANNI*” (in English, “A HOUSE for our history, we are eagles for (almost) 120 years”). Supporters are asked to collaborate with the handling of objects related to the history of “Palermo”, specifically it says: “*anything else that can attest to the passion for Palermo through the culture of animating and collecting throughout the years.*” This information is also

contained in the New Palermo's website. New Palermo endorses the club's historical idols, calling them to their official presentation and planning a hall of fame, where, by choice of supporters, the eleven most representative players in the Palermo's history will be defined.

j) **The CEO (Chief Executive Officer) of New Palermo:** The current CEO is Mr. Rinaldo Sagramola who is presented on the website as "*CEO during the best 8 years of Palermo's football history. (...) so as to lead Palermo back to Italy's Serie A (League A) within three years.*" Mr. Sagramola was "*Administratore Delegato e Direttore Generale*" of Old Palermo from September 2004 to June 2012.

64. All the above elements show that the history of "Palermo" is only one and indivisible in time, regardless of the identity of the company that had managed it during different periods.

65. New Palermo "*(...) itself recognizes that the club was founded at the beginning of the 20th century, it is because it makes the institution's past its own, since its origin, and, within that past, is the transfer of the player Edinson Cavani, which motivated the debt of the Agent, who have continued to claim it for over 10 years (...).*" (par. 102 of the Appeal Brief)

66. Finally, the Appellant concludes that "*(...) we practical facing a federative and politically institutionalized sporting succession procedure. For this, it is enough to see the "Public Notice" of the Palermo Commune to achieve the interest of the "successor" to "assure the city, the workers, the economic operators and the many passionate about this sport, the continuation of the activity from the first team of the city of Palermo.*" (par. 107 of the Appeal Brief)

67. Therefore, the Appellant asks the Panel to analyse and compare the elements that have historically identified Old Palermo with those of New Palermo and decide that this latter is the sporting successor and liable to pay the Agent the amounts recognized in the Settlement Agreement.

B. The First Respondent | The New Palermo

68. The First Respondent filed its Answer to the Appeal Brief and made the following prayers for relief:

"(...)

- a) *REJECTING the Appellant's requests to their entirety;*
- b) *CONFIRMING the FIFA Decision;*
- c) *ORDERING the Appellant to cover the First Respondent's legal cost related to these proceedings, in the highest amount that is deemed appropriate."*

69. The submissions of Palermo, in essence, may be summarise as follows:

- a. *The Appellant lacks standing in these proceedings*

70. The Appellant lacks a direct legal interest in the present matter, since it was a merely third party in the FIFA disciplinary proceedings. The notification of the FIFA Decision to the Appellant does not give him the right to appeal to CAS.

71. In the scope of the FIFA disciplinary proceedings, the Appellant merely has a right to report an alleged non-compliance, rather than a right for a debtor to be sanctioned.

72. Article 58(1) FDC 2019 states “[a]nyone who has been a party to the proceedings before the Disciplinary Committee may lodge an appeal with the Appeal Committee, provided this party has a legally protected interest in filling the appeal.”

73. Basically, New Palermo states that:

“(...) any person wishing to file an appeal at CAS against a FIFA disciplinary decision must (a) have been a party before the Disciplinary Committee and (b) have a legally protected interest in filling the appeal.

These two conditions are cumulative, and, in this context, CAS has, on a number of occasions, confirmed that a creditor was not deemed to be a party in Article 64 FDC (currently Article 15 FDC) proceedings:

“River Plate was not a party to the subsequent proceedings conducted before the FIFA DC. The proceedings before the FIFA DC were solely a matter of a disciplinary nature in the relationship between the Appellant and FIFA relating to the application of FIFA Statutes and regulations and, therefore, do not concern the obligation already imposed by CAS on the Appellant to pay the outstanding amount to River Plate. (...) The Panel therefore finds that River Plate is not covered by the scope of the appealed Decision and is not a party to the Decision.” (CAS 2011/A/2377 par. 7.6 of the Order on provisional measures).

“Therefore, if a party, although the facto indirectly interested in the outcome of the arbitration, was not a party in the FIFA proceedings leading to the appealed

decisions, it is not considered to be bound by the arbitration agreement within the meaning and for the purpose of Article 41.4 of the CAS Code.” (CAS 2019/A/6287 paras. 113 & 116)

74. The First Respondents concludes that the first element required for the standing to appeal has not been met.

b. The foundation of New Palermo and the bankruptcy of the Old Palermo

75. On 12 July 2019, the FIGC Federal Council rejected the application from the Old Palermo to obtain the national license for the 2019/2020 football season to compete in the Italian Serie B.

76. In this context, the municipality of Palermo made a public announcement to show interest for the registration of a football club based in Palermo in the Serie D championship for the 2019/2020 football season pursuant to Article 52 par. 10 NOIF. The public announcement explicitly provided several conditions to be accepted by the applicants, among which:

i. The use of “Palermo” in the name of the club, which has historically been distinguished by the colors pink and black; and

ii. The use of the stadium Renzo Barbera, according to the terms and conditions agree in April 2011 with the Old Palermo.

77. Palermo Società Sportiva Dilettantistica RL was incorporated on 24 July 2019. This entity was an amateur sports organization having the form of a limited company under the Italian law. The only owner of Palermo Società Sportiva Dilettantistica RL was the limited company Hera Hora S.r.L

78. On 26 July 2019, Società Sportiva Dilettantistica applied to participate in the Serie D championship and, on 31 July 2019, the FIGC accepted the application under certain conditions. On this date, Old Palermo was still an active legal entity.

79. Old Palermo’s bankruptcy was only declared on 18 October 2019, i.e. *“for almost three months both [Old Palermo and New Palermo] were affiliated to the FIGC.”*

80. At the end of 2019/2020 football season, New Palermo was promoted to Serie C championship and, on 17 July 2020, Società Sportiva Dilettantistica changed its name to Palermo F.C. S.p.A., adopting the name of the first historical football club in Palermo.

c. *New Palermo has no connection to the Old Palermo*

81. There is no sports continuity between New Palermo and Old Palermo. They are two different legal entities with different registration number, VAT and corporate composition.
82. The two entities are independent, autonomous from each other and with no legal relationship whatsoever.
83. Palermo is the name of the city of both clubs and it is not a distinguishing word or brand.
84. In order to emphasize the independence of the Clubs, New Palermo gives as example the relation between AC Milan and Inter Milan or Manchester United and Manchester City. New Palermo gives also the example of Liverpool FC that in 2019 failed an attempt to trademark the word “Liverpool” because of its geographical significance.
85. The reference “Palermo” in the club’s name was a mandatory condition requested by the public announcement by the municipality of Palermo.
86. The use of the stadium Renzo Barbera was also another mandatory condition. The stadium is owned by the Municipality of Palermo and, for this reason, should not be a surprise the mandatory use of such stadium and the establishment of its headquarters in these facilities.
87. The public announcement was also clear about the requirement to use the pink and black as colours of the club. The Palermo’s basketball and volleyball teams also use the same colours.
88. Since New Palermo became the main club of Palermo, it took advantage to exploit commercial opportunities and capitalize from the “history” of the past main clubs of Palermo.
89. The eagle is the symbol of the Municipality of Palermo. The use of a regional symbol, as with the use of the word Palermo in the First Respondent’s name, only proves that the Clubs are originated from the same city and that they wanted to have a link with the city and the region.

90. The fact that 20,000 fans attended the official presentation of the team prior to 2019/2020 season, was due to the vacuum created in the region by the bankruptcy of the Old Palermo.
91. New Palermo considers to be “(...) *a poor argument to sustain, that a new club, in a geographic area with a passionate football supporting population cannot attract a large support from inception.*” (Par. 75 of the Appeal Brief). “*The willingness of football players to return the support of fans that they have formed a bond with, in a city they have lived in, is simply proof of the enduring bonds sport creates, nothing more.*” (par. 77 of the Appeal Brief).
92. The appointment of Mr Rinaldo Sagramola as CEO of the New Palermo is also an irrelevant argument. Executives move club on a regular basis and Mr Sagramola has an excellent curriculum for the job. He has also been employed as an executive by other Italian clubs, such as U.C Sampdoria, Brescia Calcio and L.R. Vicenza.

d. The legal status of New Palermo according to Italian Law

93. It is a basic and universal legal principle that a legal entity is liable for its own obligations.
94. New Palermo shall only be liable for its debts. Under Italian Law the “acquisition” or “transfer” of debts between legal entities only occurs in two scenarios: (i) transfer of a business (*cessione d’azienda*) regulated by Article 2560 of the Italian Civil Code; and (ii) in the sports industry “(...) *when together with a sporting company, the football association authorized the transfer of the so-called “titolo sportivo”, which is defined by the FIGC Internal Regulations (“NOIF”) as “the recognition by the F.I.G.C of the technical sporting conditions that allow, together with the other requisites provided by the federative regulations, the participation of a company in a specific championship.*” (Article 52 par. 1 NOIF)
95. New Palermo did not acquire the business of the Old Palermo nor has it acquired the latter’s “*titolo sportivo*”.

C. The Second Respondent | FIFA

96. FIFA filed its Answer to the Appeal Brief and made the following prayers for relief:

“(…)

- (a) *Confirm that the Appellant lacks the required standing to appeal and therefore to reject the appeal on this basis;
Alternatively to point (a);*
- (b) *Reject the Appellant's appeal in its entirety;*
- (c) *Confirm the decision rendered by the FIFA Disciplinary Committee on 21 May 2020;
In any case*
- (d) *To order the Appellant to bear all costs incurred with the present procedure and to order the Appellant to make a contribution to FIFA's legal costs.*

97. The submissions of FIFA, in essence, may be summarise as follows:

a. *The Appellant lacks standing to appeal*

98. The background of this appeal is related to the enforcement of the Settlement Agreement against the New Palermo on the basis of sporting succession.

99. As per article 58.1 FDC 2019 “*Anyone who has been a party to the proceedings before the Disciplinary Committee may lodge an appeal with the Appeal Committee provided this party has a legally protected interest in filling the appeal.*”

100. The dispute “*at stake is not the consequence of “enforcement proceedings” as such, but the result of an alleged non-compliance with a decision and the disciplinary consequences thereof. (...) In the context of the disciplinary sanctioning system put in place by FIFA, the Appellant only has the right to report an alleged incompliance, as opposed to obtaining a right for the debtor to be sanctioned. The Appellant is (...) entitled to be informed of the outcome of the proceedings while it does not have the right to appeal considering it was not a party to the proceedings.* (paras. 39 and 40 of the FIFA's Answer)

101. At CAS 2008/A/1658 it is stated that: “*The FIFA rules do not provide a specific provision as to who is entitled to lodge an appeal against decision by FIFA to the CAS. (...) there is a provision regulating who is entitled to file an internal appeal within the instances of FIFA. Article 126 FDC provides (...) that “anyone who is affected and has an interest justifying amendment or cancellation of the decision may submit it to the Appeal Committee”. In principle, there is a presumption that the question of standing to appeal is regulated in a uniform manner throughout all internal and external channels of review. Since the Appellant is at least indirectly affected by the decision of FIFA*

this would speak in favour of accepting a standing to appeal to the benefit of the Appellant.” (Par. 29 abstract published by CAS)

102. At CAS 2017/A/6287 the panel found that the appellant was not covered by the scope of the appealed decision and was not considered a party to the decision. In this CAS case the panel states that “(..) *if a party, although de facto indirectly interested in the outcome of the arbitration, was not a party in the FIFA proceedings leading to the appealed decisions, it is not considered to be bound by the arbitration agreement within the meaning and for the purposes of Article 41.1 of the CAS Code.*” (Par. 113)
103. Considering the current applicable provisions and CAS jurisprudence, it follows that whoever wishes to file an appeal at CAS must (i) have been a party before the FDC and (ii) have a legally protected interest in filing the appeal.
104. The first element required for the standing to appeal as per the FDC rules has not been met. FIFA emphasizes that the “*creditor’s right to have disciplinary proceedings opened against the debtor and to be informed of the outcome therefore does not by any means turn the creditor into a party to the proceedings, and much less into a directly interested party*” (...).” (Par. 45 of the FIFA’s Answer).
105. The Appellant does not have a direct and legal interest worthy of being protected. In FIFA’s position, there is a “(..) *direct interest when the imposition of sanction directly leads to the compliance with the decision. (...) the purposes of FIFA’s system is to have a useful mechanism that ensures compliance with its decisions and those of CAS. The mere fact that a decision is passed against a non-compliant party does not guarantee in itself that such decision is eventually fully respected. From a strictly legal perspective, this means that the creditor (...) does not have a direct interest in having sanctions imposed on the debtor. (...).*” The Appellant’s direct interest is to receive its credit. “*As a result, a prayer for relief with the ultimate goal of having (sporting) sanctions (fine, transfer bans etc.) imposed on the debtor (be it directly requested to CAS or through the referral of the case back to the Disciplinary Committee) only has indirect consequences on the creditor. This clearly demonstrates the absence of a direct legal interest.*” (Par. 48 of the FIFA’s Answer)

b. *The bankruptcy of Città di Palermo S.p.A*

106. Old Palermo was declared bankrupt on 17 October 2019 and on 25 October 2019 it was disaffiliated from FIGC and all its players released from their professional relationship with it.
107. At the end of July 2019, knowing the bankruptcy status of the Old Palermo, *“the Municipality of Palermo published a public notice informing of the preliminary procedure for the expression of interest by sports companies for the registration of a football club of the City of Palermo, called “Palermo” to participate in the Serie D 2019/20 championship.”* (Par. 55 of the FIFA’s Answer)
108. New Palermo was only incorporated on 24 July 2019 and affiliated to FIGC on 26 July 2019.
109. New Palermo completed their Serie D campaign in first place and, only after, was promoted to Serie C.
110. New Palermo has only changed its name from Palermo Società Sportiva Dilettantistica a Responsabilità Limitata to Palermo Football Club on 16 July 2020.
 - c. *New Palermo is not the sporting successor of Old Palermo*
111. As alternative and precaution argument, FIFA is also rejecting the existence of sporting succession between New Palermo and Old Palermo.
112. Article 15(4) of the FDC details some of the relevant criteria that FIFA can follow in establishing the sporting succession between two clubs. However, each case should be analysed individually and in accordance with the specific circumstances of the case, i.e. on a case by case basis, taking into consideration all its specific circumstances.
113. The Agent seems to focus only on some elements while disregards other equal important considering the circumstances of the case.
114. FIFA confirms to be undisputed that New Palermo is using the same team colours of Old Palermo (pink and black); that plays in the same stadium of Old Palermo, and that has a similar logo of the Old Palermo (the eagle’s head, the symbol of City of Palermo).

115. FIFA considers that these elements are not relevant factors when assessed with other relevant circumstances, such as:
- a. Legal form: the Clubs have a different legal form. Old Palermo was a professional football club and the New Palermo was (started) as an amateur sports association.
 - b. Players: the roster of player are completely different. Only Andrea Accardi moved from Old Palermo to New Palermo. With Old Palermo's liquidation and disaffiliation from FIGC all the players' employment contracts were terminated.
 - c. Ownership: according to the public information available, New Palermo's owner is Hero Hora S.r.L that never had any interest in the Old Palermo.
 - d. Management: the Clubs have a different management team.
 - e. Championships: the Clubs competed in different divisions. New Palermo has not acquired the federative rights of Old Palermo.
116. The above elements must be assessed together with the sporting discontinuity of the Clubs which was the main element on which the FDC grounded its decision.
117. New Palermo started competing from the amateur league (Serie D) and Old Palermo lost its title in Serie B when it was disaffiliated from the FIGC due to its bankruptcy. FIFA points out that the FDC considered the sporting relegation of the Old Palermo as a fact that indicates that there is no sporting continuity between the Clubs.
118. This case is different from the case related to CAS 2011/A/2646, because in this case the new club acquired the federative rights of the "old club", i.e. "*the "new club" took the position and activities performed by the former one with the consent and approval of the Chilean Football Association.*" (par. 10 abstract published by CAS).
- d. Conclusion
119. FIFA maintains that there is no sporting continuity between the Clubs and, therefore, there is no obligation for New Palermo to pay the debts of Old Palermo in result of its bankruptcy.
120. FIFA restate its position in the Appealed Decision and confirms that FDC correctly applied FIFA and CAS jurisprudence.

D. The Post Hearing Briefs

D.1. The Appellant | Agent

121. CAS 2011/A/2646 and 2020/A/7092 deals with the issue of sporting succession of the sports club and both reached different conclusions based on the evidence produced.
122. CAS awards are not binding precedents and the issue of sporting succession should be assessed on a case-by-case basis and in accordance with the evidence and arguments presented.
123. If sporting succession is established, the new entity is directly responsible, without any other condition or requirement: *“The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision”*. If the decisions of CAS and FIFA are not complied on a voluntary basis, FDC must determine the corresponding sanctions.
124. The Appellant does not know if New Palermo requested and/or had access to the Old Palermo’s list of creditors. The bankruptcy of Old Palermo and the creditors should verify their credits until expiration of the period corresponding to that effects.
125. Article 10.3 of the FDC has no implication in this matter. The statute limitation has not elapsed. The breach of Old Palermo occurred in March 2016 and New Palermo did not comply with the payment when it was notified in 2020. Since March 2016 actions or proceedings were carried out that implied the interruption of the statute of limitations.
126. This appeal case is exclusively related to the issues: 1) whether or not the Appellant has standing to appeal; and 2) whether the New Palermo is or not the sporting successor. If both questions are affirmative, it will be with FDC to determine the responsibility and scope of any disciplinary measures against the sporting successor.

D.2. The First Respondent | The New Palermo

127. The cases CAS 2011/A/2646 and CAS 2020/A/7092 are extremely relevant for this appeal decision.

128. By applying *a contrario* the principles adopted in the case CAS 2011/2646, it must be concluded that there is no sporting succession, because New Palermo:
- Did not purchase any asset of the Old Palermo
 - Did not acquire the federative rights of the Old Palermo
 - Did not replace the Old Palermo in Serie B
 - Did not take the position of, or resume activities performed by the Old Palermo
 - Has always been considered and treated by the Italian national football federation as an independent entity with no relation with the Old Palermo, as confirmed by Mr Lai in the hearing
129. The case CAS 2002/A/7092 is even more clear. The panel of this case analyse several elements of the new club and concluded that the large majority of “important elements” pointed against the sporting succession. By applying the same criteria, it must be concluded that there is no sporting succession, because all the elements considered important point against: (i) players; (ii) shareholders, stakeholders or ownership; (iii) management; (iv) category of competition; and (v) reliance on credits of the bankruptcy club.
130. The relevant elements that could link the Clubs are elements related to the city of Palermo, such as (i) reliance on the bankruptcy club’s history; (ii) the colours; (iii) the use of the eagle symbol; (iv) the reference of “Palermo” in the name; and (v) the use of the same stadium. Elements and conditions that have been imposed by the Municipality of Palermo in the tender to select the new club of the city.
131. The concession contract by which New Palermo leases the stadium was done on arm-length terms without any advantage in relation to the previous contract with Old Palermo.
132. The Palermo Museum is just a homage to the history of football in Palermo, and not a museum of the history of New Palermo.
133. As an additional evidence of the independency of the Clubs, is the fact that the liquidator appointed in the bankruptcy proceedings refused to lend to New Palermo memorabilia, trophies and other assets related to Old Palermo that could have been displayed in the museum.
134. Nothing suggests that New Palermo was incorporated to avoid financial responsibilities of the Old Palermo. As underlined in case CAS 2020/A/7092

“it is the task of [the panel] to try and distinguish (...) potential contemplated set-up from a genuine bankruptcy of Parma FC and the initiative to set-up a new football club in the city of Parma that, merely in order to increase its chances of becoming an economic and sporting success over time, identifies itself with the past of Parma FC to attract fans and sponsorship”. (para. 79)

135. Under Italian law, a third party who is not a creditor does not have access to the list of creditors in a bankruptcy procedure and New Palermo was not entitled to access such list. Moreover, New Palermo had no obligation to consult the list of creditors, since it had no obligation towards Old Palermo. Also, for the same reasons, no access was granted by the Municipality of Palermo in the context of the tender procedure, because the tender has not established any legal succession between the Clubs.
136. The statutory time limits referred to under Article 10 of the FDC do not concern New Palermo because the Appellant only tried to enforce the CAS award against Old Palermo. Therefore, the relevant question is moot.
137. New Palermo states that the questions from the Panel to be addressed in the Post-Hearing Briefs fall within the scope of the powers under Article R57 of the CAS Code (“*de novo review*”).
138. According to well-established jurisprudence of the Swiss Federal Tribunal (the “SFT”), the principle “*iura novit curia*” applies also to arbitration tribunals having their seat in Switzerland (cf. Decision of the SFT dated 19 December 2001, 4P.114/2001, para. 5.a; Decision of the SFT dated 2 March 2001, 4P.260/200, para. E.5.b; BERGER/KELLERHALS, *International Domestic Arbitration in Switzerland*, 2006, para. 1310, p. 374; KAUFMANN-KOHLER/RIGOZZI, *Arbitrage International – Droit et pratique à la lumière de la LDIP*, 2nd ed., 2010, para. 654^a, p. 421).

D.3. The Second Respondent | FIFA

139. CAS jurisprudence is not a binding precedent. Any analysis of a sporting succession “*is to be made on a case-by-case basis, i.e. elements present in a certain case may tip the balance in one direction, whereas elements present in a lesser or higher degree in another case, may tip the balance in the opposite direction.*” (CAS 2020/A/7092, para. 69)
140. CAS award 2011/A/2646 introduced the requirement of the diligence of the creditor whenever the debtor has undergone an insolvency/bankruptcy procedure. FIFA fully respects and supports the conclusions of this CAS case, which it is

applied by FDC. Such principles and conclusions would only be relevant to this case in the event that the Panel concludes that New Palermo is the sporting successor of Old Palermo.

141. Regarding the limitation period for prosecution, FIFA deems that it has no implication *in casu*, because the limitation period of five years has been repeatedly interrupted by different procedural acts, among others, with (i) the Settlement Agreement of 22 July 2015; (ii) the FDC decision of 19 October 2018; (iii) the CAS Award of 30 October 2019; and (iv) the Appellant's statement of claim of 12 November 2019.

V. JURISDICTION OF THE CAS

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

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

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.”

143. The jurisdiction of CAS is based on Article 58.1 of the FIFA Statutes (2018 Edition) and is not disputed by the Parties. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by the Parties.

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

VI. ADMISSIBILITY

145. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

146. Article 58 of the FIFA Statutes read as follows:

Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.

147. The Panel notes that the admissibility of the Appeal is not contested by the Parties. The grounds of the FIFA Decision were notified to the Appellant on 2 July 2020 and that the Statement of Appeal was filed on 23 July 2020, *i.e.* within the 21-day deadline fixed under Article 58 of the FIFA Statutes.

148. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

149. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

"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."

150. In addition, Article 57(2) of the FIFA Statutes stipulates 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."

151. As such, the Panel is satisfied to primarily apply the various regulations of FIFA, in particular the FIFA Disciplinary Code and, subsidiarily, Swiss law shall be applied should the need arise to fill a possible gap or *lacuna* in the various regulations of FIFA. However, and considering the specificities of the current appeal case, in matters related to national bankruptcy proceedings, Italian law is applicable; and matters related to the affiliation and disaffiliation of the Clubs, the FIGC regulations are applicable.

VIII. MERITS OF THE APPEAL

152. This Appeal has been filed against the Appealed Decision by which the FDC decided to close the Appellant's requested disciplinary proceedings against the New Palermo, based on the fact that there is no sporting succession between the Clubs.
153. The Respondents have raised – as preliminary legal issue for the Panel's determination –, the Appellant's lack of standing to appeal. In case this issue is dismissed, then the Panel will address the main substantive legal issue, *i.e.* whether the New Palermo is the sporting successor of Old Palermo and, if so, whether New Palermo is responsible to pay the Agent's "*sums owed according to the award issued in procedure CAS 2014/A/3755.*"

VIII.1 Does the Appellant lack standing to appeal in these proceedings?

154. FIFA and New Palermo claim that the Appellant lacks the required standing to appeal and challenge the Appealed Decision before CAS.
155. The lack of standing to sue or standing to appeal is an issue related to the merits of the case – CAS 2009/A/1869; CAS 2015/A/3959; CAS 2015/A/4131 and Swiss Federal Tribunal ("SFT") jurisprudence: SFT 128 II 50, 55 –.
156. The Respondents state that Article 58.1 establishes two requirements for the appeal of a FDC decision. The cumulative requirements are: (i) the Appellant must have been a party in the FIFA disciplinary proceedings; and (ii) the Appellant must have a direct legal protected interest in filing the appeal.
157. The Panel emphasizes that it is not in question the prerequisite of the two requirements but only whether the said requirements are met in the present case.
158. The Panel's views are the following:

a.1. Did the Appellant participate in the FDC proceedings?

159. The Panel highlights the following findings:
- i) On 12 November 2019, the Appellant filed a claim, on the basis of the sporting succession, asking FDC to pass a decision against New Palermo to recognize this latter to be liable for the payment of the amounts due under the Settlement Agreement.

- ii) On 1 April 2020, FDC opened disciplinary proceedings against New Palermo in respect of a potential violation of Article 64 FDC 2017 / Article 15 FDC 2019.
 - iii) On 1 May 2020, the Appellant provided its further observations on the matter.
 - iv) On 14 May 2020, the Appellant send his further submissions on the case.
 - v) On 21 May 2020, FDC Decision against New Palermo was notified to the Appellant with the observation that he could request the grounds of the decision within 10 days deadline. The Appellant requested the grounds of the Appeal Decision; and
 - vi) On 2 July 2020, the grounds of the FDC Decision against New Palermo were notified to the Appellant with the following observation at the end of the decision: “*NOTE RELATING TO THE LEGAL ACTION*” informing that “*(...) this decision may be appealed against before the Court of Arbitration for Sport (...).*”
160. As per the above procedural acts and actions the Appellant participated, and he was treated, as a party during the FIFA disciplinary proceedings. The Appellant was involved in the FDC decision making process and, moreover, he was also invited to appeal the decision to CAS (cf. last page of the Appealed Decision). The Appellant was not treated as a third-party in the FIFA disciplinary proceedings.
161. As explained in CAS 2016/A/4837 and CAS 2017/A/5359, disputes taken by FIFA bodies can be qualified of (i) “horizontal” disputes – where FIFA intervenes as an adjudicatory body in a dispute involving two or more direct or indirect members of FIFA and FIFA’s prerogatives or disciplinary powers are not in question; and (ii) “vertical” disputes – where FIFA is involved in the application of disciplinary sanctions.
162. In the present case, the dispute at FDC involved both “**horizontal**” and “**vertical**” disputes, because FDC has been requested to decide about the sporting succession of the Clubs and the enforcement of the Settlement Agreement against New Palermo.
163. FDC was not only requested to enforce a previous “obligation already decided” but was also asked to decide on a substantive issue related to the existence or not

of sporting successor between the Clubs. This explains the reason why the Agent was treated as a “party” to the FDC proceedings.

164. The above conclusion is not in contradiction with the case CAS 2011/A/2377. The Panel highlights that in this case, the creditor’s club was not a party to the proceedings conducted before the FDC. The proceedings before FDC were solely related to a matter of a disciplinary nature and did not concern the discussion of potential liability of the club under “investigation”.

a.2. Did the Appellant have a direct interest in the FDC proceedings?

165. The Panel understand the Respondents arguments that the FDC system is a mechanism to enforce FIFA and CAS decisions. The rationale behind Article 64 of the FIFA Disciplinary Code is to provide FDC with a “tool” to comply a party to accept, on a voluntary basis, a FIFA/CAS decision. The Panel agrees that the primary and main objective of the FDC mechanism is not to assist creditors in recovering their credits. This is only a secondary aspect (and one of the intended results) of the disciplinary system put in place by FIFA. There should be no doubts that the crucial objective of the system is to protect the full compliance by the affiliates of the decisions rendered by FIFA. However, this is correct on the assumption that FDC is called to have a pure disciplinary intervention. As further explained in the case CAS 2011/A/2377, disciplinary proceedings before FDC should be restricted to matters of a disciplinary nature in the relationship between a party and FIFA.
166. Looking to the Appellant’s prayers for relief, the Panel concludes that there are also requests against New Palermo and not exclusively against FIFA. FDC addressed and dismissed the Agent’s claim related to the sporting succession of the Clubs. To conclude that there is no sporting succession, FDC acted as a FIFA’s adjudicatory body and not as a simple FIFA’s disciplinary body. FIFA decided the “horizontal” dispute between the Agent and the New Palermo, and this explains the Appellant’s direct interest in the present appeal.
167. Even if the Panel would consider that the Appellant is not the direct addressee of the Appealed Decision it is clear that from a material point of view the FIFA decision affected him. The closing of the FIFA disciplinary proceedings without allowing the creditor to appeal – concluding that New Palermo was not the successor of the Old Palermo – would cause *res judicata* on the issue without any possibility of revision of the decision. The Creditor would loss any change to recover its debt by the sporting successor of its non-compliant debtor. This result

would be unacceptable within the sporting system and against the principle of revision of the decisions.

a.3. Conclusion

168. Considering the above determinations, the Panel concludes that the two cumulative requirements are met, and that the Appellant has standing to appeal. This understanding is also supported by the fact that the omission of the FIFA Disciplinary Code as to who has standing to appeal a FIFA DC decision rendered under Article 15.4 FDC 2019 / 64 FDC 2017 directly to CAS should be interpreted in a way to guarantee the creditors access to justice in their interest to obtain enforcement of a FIFA or CAS decision. This interpretation is also in line with the principle of *in dubio contra stipulatorem*.
169. Furthermore, the Panel highlights that the Appellant's standing to sue derives also from: (i) Article 75 Swiss Civil Code in the way that the Appellant is affected by a decision of an association; and (ii) the principle of good faith, as the grounds of the Appealed Decision were issued on the Creditor's request.
170. To be consistent with FIFA's answer in these CAS proceedings, FDC would need to reject the Agent's request based on the fact that his claim was not related to the pure enforcement of a FIFA/CAS decision but rather to the enforcement of a CAS consent award that required a previous decision on the sporting succession of the Clubs. A dispute that required the intervention of FIFA as an adjudicatory body. This was the reasoning behind of the case *CAS 2017/A/5460*, in which the Sole Arbitrator concluded that CAS had no jurisdiction to decide the appeal. The main grounds are summarized as follows:

“[b]efore a player can request the FIFA Disciplinary Committee (and later the CAS) to turn its attention away from a club which went into insolvency and instead put pressure on its apparent successor, to pay the insolvent club's debt to the player, the latter should bring his (new) claim against the apparent successor club (a different legal entity) following Article 22 of the FIFA Regulations on the Status and Transfer of Players (RSTP), through the FIFA DRC (not the FIFA Disciplinary Committee), respecting the time limitations of the RSTP. He should then seek to convince the FIFA DRC that the apparent successor club is actually the successor of the insolvent club and should, somehow, be responsible for the debt of the insolvent club. If the FIFA DRC finds against him, then he has a right to appeal that decision to the CAS.”
(para 3 of the abstract published on the CAS website)

171. In CAS 2017/A/5460 the creditor only introduced the alleged successor club at CAS proceedings. CAS jurisdiction was rejected, and the sole arbitrator suggested to return the matter to FIFA DRC to determine if it was a sporting succession. This case was different because FIFA DC has not taken any decision on sporting succession and the alleged successor club was not involved in the FIFA proceedings.
172. The fact that the “sporting succession” provision is integrated in Article 15 of the FIFA Disciplinary Code and its wording referring the “sporting successor” as a non-compliant party may suggest that FIFA has enlarged FDC’s competence to decide on the matter. Otherwise, the “sporting succession” regime would be inserted and treated in the RSTP. It will be positive if FIFA clarifies this unclear matter.
173. Nevertheless, the fact that FDC acted as an adjudicatory body has no legal consequences, since CAS have the power to decide *de novo* (Article R57 of the CAS Code). The Panel does not see grounds to follow similar approach of the case CAS 2017/A/5460 because, opposite to this case, the Parties were involved in the disciplinary proceedings and FIFA concluded the investigated claim and issued a decision subject to appeal.

VIII.2 Is the New Palermo the sporting successor of Old Palermo?

(A) Scope of the Appeal

174. The key issues in the present appeal proceedings are (i) whether New Palermo is the sporting successor of the Old Palermo and, if so, (ii) whether New Palermo is liable for paying the Agent the sums owed according to the Settlement Agreement.
175. In this appeal proceedings is neither in dispute the revision of the Agent’s credit of EUR 1,000.000 nor the determination of any sporting sanctions in case the Panel finds that there is “sporting succession” between the Clubs and that New Palermo is responsible to pay the Agent the sums established in the Settlement Agreement. The Panel underlines that only FIFA has the exclusive jurisdiction and powers to determine and impose sporting sanction(s) of a non-compliant party. CAS has only jurisdiction and powers to revise such determination and imposition.

(B) The Burden of Proof and the Applicable Standard

176. There is no doubt that the Appellant carries the burden of proof in establishing the New Palermo is the sporting successor of Old Palermo and that New Palermo is liable to pay the sums established in the Settlement Agreement. This understanding is confirmed by Article 8 of the Swiss Civil Code (“SCC”) which establishes that “[u]nless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact.” The same principle applies under Article 36 of the FDC that says “[a]ny party claiming a right on the basis of an alleged fact carry the burden of proof. During the proceedings, the parties shall submit all relevant facts and evidence of which they are aware at that time, or of which they should have been aware if they had exercised due care.”
177. As it is referred by CAS Arbitrator Jordi López in the article published in CAS Bulletin 2020/2 “(...) the existence of succession cannot simply be assumed or taken for granted, for which purpose it is necessary to deploy the appropriate evidentiary activity, which must be more or less intense depending on the circumstances of the case and the greater or lesser obviousness of the succession. It is therefore the interested party who claims the declaration of succession and the emergence of its consequences who must prove that it has taken place. (...) The fact that in the absence of evidence to the contrary provided to the procedure, there are no reasons to understand that one entity should assume the obligations of another.” To conclude further “even on some occasions the formations have gone further, and even assuming or acknowledging the existence of similarities between the supposedly successor and succeeded entity, they have understood after evaluating the evidence that it is not appropriate to declare the succession at sight of other important differences between the two.¹”
178. Having noted the above the Panel will now asses the applicable standard of proof. General speaking, the three most common standards of proof which are applied in CAS proceedings are, by hierarchy of degree of requirement, “beyond reasonable doubt”, “comfortable satisfaction” and on the “balance of probabilities”. In the

¹ Original text in Spanish: “(...) La existencia de sucesión no podemos simplemente asumirla o darla por descontada, siendo preciso para ello el despliegue de la oportuna actividad probatoria, que deberá ser más o menos intensa dependiendo de las circunstancias del caso y de mayor o menor obviedad de la sucesión. Es por tanto el interesado que pretenda la declaración de sucesión y el surgimiento de sus consecuencias el que debe acreditar que la misma ha tenido lugar. (...) el hecho de que a falta de prueba en contrario aportada al procedimiento, no hay motivos para entender que una entidad deba asumir las obligaciones de otra. Incluso en algunas ocasiones las formaciones han ido más allá, y aun asumiendo o reconociendo la existencia de semejanzas o similitudes entre las dos entidades supuestamente sucesora y sucedida, han entendido tras valorar la prueba que no proceda declarar la sucesión a la vista de otras importantes diferencias entre ambas.” Jordi López Batet, “La sucesión deportiva de clubes de fútbol: consideraciones a la vista de la jurisprudencia del TAS en la materia”, in CAS Bulletin 2020/2, page 36

context of this matter, the Panel defines as appropriate standard “comfortable satisfaction”. Comfortable satisfaction is generally defined as a standard of proof that is higher than the civil law standard of “balance of probability” but lower than the criminal law standard of proof “beyond a reasonable doubt”. In practical terms, the party bearing the burden of proof must establish the facts having in mind the seriousness of the invoked allegations. Depending of the elements that integrate the criteria to establish “sporting succession”, the proof required to “comfortable satisfy” the Panel can vary along a sliding scale being closer to “balance of probability” (for less relevant “elements”) or close to “beyond a reasonable doubt” (for more relevant and important “elements”).

(C) **Status Limitation – is the Agent’s credit still enforceable against the New Palermo?**

179. The Panel observes that none of the Respondents has raised any observation or issue in relation to possible status limitation of having FIFA analyzing and deciding to enforce the Settlement Agreement – incorporated into a CAS Consent Award dated 22 July 2014 – against New Palermo.
180. As per Article 10.1 of the FDC 2019 “[i]nfringements may no longer be prosecuted in accordance with the following periods ... five years for all other offences” and per Section 2 of the same provision “the limitation period runs (...) from the day on which the decision of the ... (CAS) becomes final and binding”, i.e 30 days after the issued date (30 August 2014).
181. As per the documents on the file, the Panel observes that the Appellant requests FIFA DC to enforce the decision against New Palermo for “sporting successor” on 12 November 2019, i.e more than 5 years after the issue of the CAS Consent Award.
182. Article 10.3 FDC 2019 states that “[t]he limitation periods set out above are interrupted by all procedural acts starting afresh with each interruption.”
183. The Panel understands that all procedural acts of the Appellant before FIFA – after 25 July 2015 – in trying to enforce the Settlement Agreement against Old Palermo have interrupted the 5-year limitation period and for this reason no status limitation applies in having FIFA DC to decide the Appellant’s request. The status limitation would only apply if the Appellant had during 5-years period abstained from doing any action to recovery his credit, which was not the case. This understanding was also confirmed by the Parties in their Post-Hearing Briefs.

(D) The Rationale of Article 15.4 of the FIFA DC 2019

184. Most jurisdictions recognize in their legal systems, as a rule, that a legal entity is not responsible for obligations incurred by a third party.

185. However, there are still legal systems that have introduced the figure of “disregarding the legal personality” in order to be able, in a balanced and effective way, to hold entities that, fraudulently or in abuse of rights, use different identities to avoid the fulfilment of their obligations. Similarly, FIFA also understood well - following a little the aforementioned legal figure of the disregard of the legal entity and in order to protect sports creditors in good faith - to institute the rule of Article 15.4 FDC. This rule aims to provide legal protection to certain sports creditors who, from one moment to the next, due to the submission of the debtor club to insolvency / bankruptcy, extinction or simply dissipation of assets, no longer enjoy FIFA protection. for the good collection of their credit(s)).

186. Article 15.4 FDC states as follows:

“The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned.”

187. Article 15.4 FDC provides a sporting creditor with efficient means to obtain the payment of monetary claims against the “sporting successor” of a non-compliant debtor. This provision is also the result of the codification of FIFA and CAS jurisprudence

188. The concept of “sporting succession” was mainly implemented to avoid abuse. This rationale is clear in FIFA Circular 1681 which states “*FIFA will act against the sporting succession of a debtor, a practice that has unfortunately become more common in recent years as clubs attempt to avoid mandatory financial responsibilities towards other clubs, players, managers, etc.*”

189. As referred by Jordi López “(...) the claim of succession: in a good number of cases the transfer of assets or football activity from one entity to another has been carried out in order to avoid the payment of the debts contracted by the

“transferor” with players intermediaries and any other type of third parties. The shadow of malice or fraud of creditors is protected in such transactions, in claims filed by those who understand that the club, or rather its owners and / managers, using certain tricks, seek in a tortuous way to evade the fulfilment of obligations validly contracted and legally enforceable [free translation]”.²

190. Although the manifestation of an “abusive situation” is not provided for in Article 15.4 FDC, the understanding that this subjective element is required is somehow supported and underlined by FIFA and CAS jurisprudence:

- CAS 2020/A/7902 “[i]t is the task of this Panel to try and distinguish such potential contemplated set-up from a genuine bankruptcy of [the old club] and the initiative to set-up a new football club in the city of [A] that, merely in order to increase its chances of becoming an economic and sporting success over time, identifies itself with the past of [the old club] to attract fans and sponsorship.” (para. 78)
- FIFA DC decision 150129 PST of 25 November 2019 that “(...) sporting succession is the result of the fact that 1) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, 2) the “new” club accepted certain liabilities of the “old” club, 3) after the acquisition of the assets of the “old” club, the “new” club took over the licence or federative rights from the “old” club.” (para. 18)

191. The cases related to “sporting succession” are mostly cases where shady practices have been followed with the sole and clear aim that the club and/or its owner(s) avoid(s) the payment of outstanding and/or agreed amounts to players, coaches and other protected sporting creditors. This is also obvious from one of the latest announcement from FIFA and FIFPro (the World Player’s Union), where it is clearly mentioned the idea, as also envisaged in Article 15.4 FDC, to tackle and fight cases where shady practices have been followed. Cases in which the new clubs were formed with the aim of avoiding paying players their overdue salaries,

² Original text in Spanish:

“(…) la pretensión de sucesión: se desliza en un buen número de casos que la transmisión de activos o de la actividad futbolística de una entidad a otra se ha efectuado con la finalidad de evitar el pago de las deudas contraídas por la “cedente” con jugadores, intermediarios y cualquier otro tipo de terceros. La sombra del dolo o el fraude de acreedores se proyecta sobre tales transacciones, en reclamaciones que interponen quienes entienden que el club, o más bien sus propietarios y/ gestores, valiéndose de determinados artificios, buscan de un modo torticero eludir el cumplimiento de obligaciones válidamente contraídas y jurídicamente exigibles.” Jordi López Batet, “La Sucesión deportiva de clubes de fútbol: consideraciones a la vista de la jurisprudencia del TA en la materia”, in CAS Bulletin 2020/2, page 32.

or as the president of FIFPro put it, case of clubs that “*have shut to avoid paying outstanding wages immediately re-forming as so-called new clubs*”.

192. In light of the above mentioned, the Panel is of the view that to assess the existence of “sporting succession” it is also important to understand the reasons and the subjective motivations that led to the emergence of the new club. This is exactly the reason why the provision contained in Article 15.4 FDC does not create a general and strict obligation for all cases of new clubs, but set indicatively some criteria that are being taken into consideration by FIFA and CAS in order to decide whether a club shall be deemed as a sporting successor of another club or not, that is, whether succession exists or not shall be decided on a case by case basis.

(E) Is New Palermo the “sporting successor” of Old Palermo?

i. Preliminary remarks

193. The Panel does not consider itself to be bound by prior decisions of FIFA and CAS regarding this matter, because the analysis of “sporting succession” should be made on a case-by-case basis. As stated in CAS 2020/A/7902 “(...) *elements present in a certain case may tip the balance in one direction, whereas elements present in a lesser or higher degree in another case, may tip the balance in the opposite direction.*” (Para. 69)
194. However, the Panel considers that it is important to take previous CAS decisions, which are relevant to this decision, into due consideration, for reasons of legal predictability and stability. Consistency of interpretations is desirable whenever possible and justified, in order to establish and increase the level of confidence and legal certainty of the existing system.

ii. Brief analysis of the components of the factors that should comprise “sporting succession”

195. Before commencing a detailed analysis of the specific relevance of the factors, which must be comprised in the criterion for the determination of the “successor club”, in this case, the Panel will make a summary identification of the objective factors referred to in Article 15.4 of the FDC, which should be taken into consideration in this decision.
196. Article 15.4 of the FIFA DC includes the following non-exhaustive list of factors that should be taken into account in the criteria when making the assessment of “sporting succession”:

- Headquarters
 - Name
 - Legal Form
 - Team Colours
 - Players
 - Shareholders, stakeholders, ownership, management
 - Category of competition concerned
197. However, the abovementioned factors are not the exclusive ones that can be taken into consideration. The relevant provisions state, “*among others*” and, the Appellant invokes the following in support of his allegations:
- Reference to the founding year
 - History and objectives
 - Intention of New Palermo in identifying itself with the history of the city’s club: “Club Palermo”
 - Nickname
 - Team crest / logo
 - Stadium
 - Contact offices
 - Supporters and historic sports idols, including the social media and the inauguration of the “Palermo Museum”
198. New Palermo pleads other arguments in support of the rejection of the existence of sporting succession, which the Panel must also take into consideration. One of these additional factors is the “co-existence of the Clubs during a certain period”.
199. The Panel shall now turn to consider the guidelines, which have been invoked and which should be adopted.
200. As Jordi López states, the starting point for the analysis of sporting succession must be the meaning of “sports club”, taking into consideration that “a club has a series of specific features that identify and distinguish it from other clubs, including its name, clothing colours, crests and other emblems, fans, history, sports achievements, its town or city and stadium, among other factors. Such circumstances or characteristics develop over a long period of time and tend to be permanent and shape an image of what the general public understands or considers to be a club” [free translation]³.

³ Original text in Spanish: “Un club tiene una serie de rasgos propios que lo identifican y distinguen respecto de los demás clubes, entre otros su nombre, los colores de la indumentaria, escudos y otros emblemas, sus aficionados, su historia, su palmarés deportivo, o su localidad y estadio, entre otros. Tales circunstancias o características se gestan durante un periodo de tiempo prolongado, tienen vocación de permanencia y configuran una imagen de lo que el común del público entiende o considera como club.” Jordi López

201. Later in the said article, the said author identifies the following main characteristics of a “sports club”, which can be summarized as follows [free translation]:

- The new entity refers publicly to the date of the founding of the previous entity, adopt the history and attainments of the previous entity, continue to play matches in the same city and stadium, with colours and other emblems that are similar to those of the entity succeeded.
- The entity that supposedly succeeds and the entity that is succeeded have the same registered office and CEO.
- The name of the new entity includes parts of the name of the old entity or can be confused with, or is identical to, the name of the old entity.
- There is a certain coincidence between the squads and technical staff of the two entities.
- The contact details of both entities, such as their telephone number, fax number or postal address are the same.

These factors should be considered, in an open and careful manner, “*on a case by-case basis*”, as stated above.

iii. The (ir)relevance of CAS 2020/A/7092

203. CAS 2020/A/7092 concerns a similar case. The case concerns alleged sporting succession between two Italian clubs with links to the city of Parma. In that case, CAS concluded that there was no sporting succession between “Club Parma Calcio 1913” and the “Parma FC S.p.A.”. This conclusion is essentially based on the following arguments:

Batet, “La sucesión deportiva de clubes de fútbol: consideraciones a la vista de la jurisprudencia del TAS en la materia”, in CAS Bulletin, 2020/2, page 33.

⁴ Original text in Spanish: “(…)”

- Que la nueva entidad se refiera públicamente a la fecha de fundación de la entidad anterior, haga suya la historia y palmarés de ésta, siga disputando sus partidos en la misma localidad y estadio, y sus colores y otros emblemas se sigan asociando a los de la entidad sucedida;
- Que las entidades pretendidamente sucesora y sucedida tengan el mismo domicilio social y director general
- Que la nueva entidad incorpore en su denominación elementos de la denominación de la antigua o sea confundible o idéntica a aquella.
- Que exista una cierta coincidencia entre los planteles y staff técnico de las dos entidades.
- Que determinados datos de contacto de ambas entidades, como el número de teléfono o fax o la dirección postal, sean los mismos.
- Que una asociación nacional haya tratado en la práctica a un club como el sucesor de otro o que el suceso haya adquirido los derechos a participar en la competición que tenía el sucedido.

(…)”.

Jordi López Batet, “La sucesión deportiva de clubes de fútbol: consideraciones a la vista de la jurisprudencia del TAS en la materia”, in CAS Bulletin 2020/2, page 35

“(…) Parma Calcio 1913 took a large risk in identifying itself with the history of Parma FC, which may well have tipped the scale in favor of considering Parma Calcio 1913 as the sporting successor of Parma FC. Indeed, the more a new club associates itself with the bankrupt club, such as using the same colors, logos, and history, the larger the risk that it will be considered the sporting successor of the bankrupt club.” (Para. 152)

“(…) [the creditor] only requested the FIFA DC to open disciplinary proceedings against Parma Calcio 1913 on 30 August 2019, whereas Parma Calcio 1913 was created on 30 June 2015. The Panel finds that, although [the creditor] had genuinely believed that Parma Calcio 1913 was the sporting successor of Parma FC, it would have approached the FIFA DC earlier. Generally, whether or not a club is the sporting successor of another club is not something that is to be judged four years later, just because the new club had some sporting success.” (Para. 153)

“Considering that the large majority of “important factors” point against, and although the majority of “relevant factors” point in favour, the Panel finds that, on balance, Parma Calcio 1913 is not to be regarded as the sporting successor of Parma FC.” (Para. 154).

204. In very general terms, the factors identified as (ir)relevant and the corresponding relative importance given to them by the Panel, was as follows:

- Important factors that favours sporting succession: (i) Reliance on the Bankrupt Club’s History.
- Important factors against sporting succession: (i) Players; (ii) Shareholders, Stakeholders and Management; (iii) Category of competition concerned and (iv) Reliance on credits of bankrupt club.
- Factors of relevance that favours sporting succession: (i) Name; (ii) Team Colours, (iii) Team Crest, Emblem and Logo; and (iv) Social Media.
- Factors of relevance against sporting succession: (i) Legal Form; (and (ii) Acquisition of sporting assets
- Factors of minor importance to declare sporting succession: (i) Headquarters; and (ii) Stadium and Training Centre.

- Factors of no additional relevance: (i) FIGC serial number; and (ii) Technical Staff.

iv. Analysis and consideration of the factors identified as relevant in terms of the existence, or non-existence, of sporting succession between Old Palermo and New Palermo

205. In light of the background referred to, the Panel now turns to assessing the relevance of each of the said factors, before coming to its decision. As in case 2020/A/7092, the Panel opts to rank the factors identified into three categories, i.e.: (i) minor importance; (ii) relevant; and (iii) important.

206. The Panel makes the following assessment, evaluation and ranking of the factors identified, in this case:

iv.1. Headquarters

207. It is not in dispute that the registered offices and New Palermo's main premises are located at the same address as Old Palermo. This is because both Clubs used the same Stadium where the headquarters are located.

208. It is perfectly understandable both from a practical point of view and from a rational incurring and saving of expenditure view, that New Palermo makes use of the former premises of its predecessor club. This fact is even more easily understood when it is taken into consideration that the use of Stadium was one of the conditions imposed by the Municipality of Palermo in the selection of a new club for the city.

209. The Panel is of the view that this is a factor of minor importance in favour of considering New Palermo as the sporting successor of Old Palermo. The same relevance was also attributed in case CAS 2020/A/7902.

iv.2. Name and Nickname

210. The Clubs' names are not exactly the same, but the differences are minimal. It is undeniable that the similarity of the names increases the likelihood that the Clubs' name will be confused. This similarity is even more marked because the Clubs have the same nickname "Rosanero" and because the central focus of their name is the name of the city in which they are based, i.e. "Palermo".

211. The similarity of names and the fact that both clubs are considered to be the clubs of the “city of Palermo”, does not give New Palermo an identity, which is new and autonomous from the identity of the previous club.
212. From the point of view of spectators in general, and even of Old Palermo's fans, differences of identity between the Clubs are even more obscured by the fact that both were and are commonly referred to as “Club Palermo”.
213. It is true that the inclusion of the name of the city Palermo was not one of the conditions and requirements in the procedure for the selection of the new city club. Indeed, such a condition would have denied the members of New Palermo the freedom to decide the club's name. However, this fact should have no practical relevance in terms of the disregard of “sporting continuity” between the Clubs.
214. Just as decided in case CAS 7902, this Panel also considers that the similarity of names and identity is a relevant factor that favours the recognition of New Palermo as the sporting successor of Old Palermo.

iv.3. Legal Form

215. The Panel notes that the legal form of Old Palermo was a Società Sportiva Dilettantistica (an “SSD”), which is an amateur non-profit organisation. The SSD was subsequently converted into a Società a Responsabilità Limitada (an “S.r.L.”), a limited liability company, whereas New Palermo was registered as a Società per Azioni (an “S.p.A.”).
216. The legal structures of the Clubs differ. The Panel has also observed that the VAT number and the registration number of the Clubs at FIGC are also different.
217. The Panel considers that the legal form of the Clubs is a relevant factor against considering New Palermo as the sporting successor of Old Palermo.

iv.4. Team Colours

218. The Panel notes that the team colours of the Clubs are the same: pink and black.
219. This requirement was also included in the conditions of the procedure for the selection of the new club for the city and it could therefore also be argued that the relevance of this factor should be substantially reduced as the team colours in question show a strong link with the colours of the crest of the city of Palermo. In

any event, New Palermo could always, in the exercise of the autonomy granted to it, have sought an identity that differentiated it from Old Palermo.

220. The Panel considers in that regard that the colours of the main kit and of the club emblem (pink and black) do not even coincide with the colours of the city of Palermo (red and yellow) or even with those of Sicily (red), which is clear evidence of a clear and declared wish to retain factors of continuity with Old Palermo.
221. As in case CAS 7092, this Panel also considers that this factor is relevant and favours the recognition of New Palermo as the sporting successor of Old Palermo.

iv.5. Team crest / emblem / logo

222. The Panel notes that New Palermo crest bears a strong resemblance with Old Palermo's crest. In choosing its crest, New Palermo could have distinguished itself from Old Palermo, but it opted not to do so.
223. However, the mere fact that the crest has certain similarities with the crest of the city of Palermo makes no difference, as it is by no means required to limit the club's crest to the crest of the city where a club is based.
224. The Panel finds this to be a relevant factor in favour of considering New Palermo the sporting successor of Old Palermo.

iv.6. Transfer of Players & Technical Staff

225. The Panel notes that only one player has moved from Old Palermo to New Palermo. To the best of the Panel's knowledge, all the other players of Old Palermo have been released from their contracts, as provided by the applicable regulations.
226. The Panel considers that this is an important factor that mitigates against considering New Palermo as the supporting successor of Old Palermo, as the players are the greatest and main assets of a football club.
227. Another equally relevant factor in the evaluation and confirmation of sporting succession, which is also absent in this case, would be the possible transfer of the "Technical Staff". Here too, the Panel concludes that the transfer of the technical staff between the Clubs has not been proved. As discussed at the hearing, all that has been proved is the transfer of a group of employees from Old Palermo to New

Palermo, who had neither administrative duties nor duties related to the maintenance of Stadium. The said employees were transferred in consequence of the conditions imposed by the Municipality of Palermo and by the assignment of the lease of the Stadium. The Panel finds that the transfer of the “employees” related to the Stadium has some additional relevance in terms of the analysis to be made.

iv.7. Shareholders, stakeholders, ownership and management

228. The main shareholders of New Palermo, information disclosed during the procedure to select the city’s football club, is the limited company named Hera Hora S.r.l., with registered address in Palermo, via Malta no. 15.
229. The existence of shareholders, who are common to both Clubs, cannot be concluded or inferred on the basis of the evidence in these proceedings. The New Palermo investors apparently have no connection with Old Palermo’s shareholder base. The Panel stresses “apparently” because the shareholder of New Palermo is a public limited company, and its main and final beneficial owners are unidentified. The burden to prove these matters lay with the Appellant, who could, at least, have applied for evidentiary measures regarding these matters.
230. It follows therefore that the shareholders and stakeholders factor does not favour the existence of sporting succession between the Clubs.
231. A different conclusion could be drawn in relation to the management factor, as the CEO of New Palermo, Mr Rinaldo Sagramola, was involved in Old Palermo between September 2004 and June 2012, as its “*Amministratore Delegato e Direttore Generale*”.
232. Whether or not this is a coincidence, it is undeniable that Mr Sagramola had a professional link with Old Palermo for almost 8 years. The relevance of this fact may also be more pronounced when it is read on the New Palermo website that:

“(…)

3. COMPETENCY AND RELIABILITY

The professional figure of Rinaldo Sagramola, formally the creator, as CEO during the best 8 years of Palermo’s football history (...).”

233. At the hearing held, Mr Sagramola had the opportunity to inform the Panel he joined New Palermo solely for reasons related to his qualities and professional experience. His return to Palermo was a coincidence based on his professional curriculum. The fact of Mr Sagramola was absent from Old Palermo between 2012 and 2019 (approximately 7 years) and was a director of other Italian clubs (U.C. Sampdoria, Brescia Calcio and L. R. Vicenza), leads the Panel to conclude that this factor is not relevant to the issue of sporting succession between the Clubs.
234. Considering that no shareholders, stakeholders and/or board members of Old Palermo were “transferred” to New Palermo, the Panel finds this to be an important factor against considering New Palermo as the sporting successor of Old Palermo.

iv.8. Category of competition concerned

235. The Panel notes that, at the time of the bankruptcy / end of the season 2018/19 – Old Palermo was relegated from Serie A to the Serie B, whereas New Palermo started competing at Serie D championship, an amateur league, which it is the lowest category within the Italian Football system played at national level. New Palermo did not acquire the so-called “*titolo sportivo*” of Old Palermo and it was admitted to Serie D through a different and independent procedure under the FIGC internal regulations.
236. If there had been any intentional abuse by the Clubs, New Palermo would probably have tried to take advantages of Old Palermo’s achievements in the past and to start competing in Serie B.
237. The Panel notes that Article 52 of NOIF, the applicability of which is undisputed, provides a robust regulatory framework that sets out the preconditions under which the sporting title of a club can be awarded to another club. Article 52.3 NOIF states as follows:
- “(…) 3) *that it has taken over and settled all sporting debts of the club whose affiliation has been revoked or that it has guaranteed the payment of the same issuing a first call bank bond security (…).*”
238. Article 52.3 of NOIF has not been followed and, as a consequence, New Palermo could not invoke Old Palermo’s sporting title in order to be permitted to play in Serie B. For this reason, New Palermo needed to start at amateur level.

239. As stated in CAS 7092:

“113. One may question whether it was fair that [the old club] was permitted to start at the highest possible amateur level, i.e. in the Serie D, or whether it should have started from the bottom. However, the Panel finds that Article 52(10) NOIF provides discretion to permit clubs not admitted to the professional championships to participate in a “National Amateur League”, which includes the Serie D. The Panel further notes the reference to “the town whose club was barred from participating”, which is considered relevant because this justifies the favourable treatment of a club from the city of Parma over clubs from their cities because of the non-admission from another club from the city of Parma.

114. The Panel finds that Article 52(3) and (10) NOIF create a distinction between a situation where the sporting title is awarded to another club and where this is not the case. The regulatory framework of the FIGC does not consider the situation of [old club] and [the new club], which was confirmed by the witness/expert (...).”

240. The Panel is of the view that the “category of competition concerned” – is one of the most relevant factors to establish or not a link for the sporting succession. As stated in CAS 7092, “... if certain shareholders and/or the Board of Directors would largely remain the same, this could be considered an important indication that it may have been the intention to eliminate the debts of the old club so as to enable the new club to be in a better position to achieve economic and/or sporting success, as the expense of the creditors of the old club, while certain natural or legal persons behind the new club would remain the same, as opposed to a genuine bankruptcy. Also here, generally, this is a sliding scale; the more shareholders and/or board members continue being involved in the new club, the more likely it is that this club is considered the sporting successor of the old club.” (Para. 105)

241. In light of the above, the Panel finds this to be an important factor against considering New Palermo the sporting successor of Old Palermo.

iv.9. Stadium & Training Centre

242. It is an undisputed fact that the Clubs use the same stadium. It is also an undisputed fact that the use of the Stadium was a requirement of the procedure to select a new city club.

243. The Panel does not consider particular relevance to this factor. This conclusion is achieved because of the convenient location of the Stadium, the lack of other suitable alternative stadiums and the imposition of its use by the rules of the procedure.
244. The use of the Stadium is not a result of any assignment by Old Palermo but rather the imposition of a new rental agreement from the Municipality of Palermo. It cannot be expected from a newly established club that it should necessarily use a stadium different from the one used by the bankrupt club, while the stadium used by the bankrupt club remains vacant.
245. The Panel finds that the use of the Stadium is a factor of minor importance in favour of considering that New Palermo is the sporting successor of Old Palermo.

iv.10. Reliance on the bankrupt club's history and memory

246. The Appellant puts particular emphasis on the fact that New Palermo, in its official media channels, refers to the history of “Palermo” and associates itself with that history and memory. New Palermo refers to certain former players of “Palermo clubs” as its leading scorers and exhibits trophies won by “Club Palermo” during its 120 years of existence.
247. It is well known that New Palermo has taken advantage of the history and memory of the clubs formerly linked with the city of Palermo. This conclusion is supported by the slogan used by New Palermo: “(...) *Palermo FC: old values, new glory. It is a plunge into the past, given that for the first time Palermo adopted the name Foot-Ball Club in 1907. (...) A pink thread between today's Palermo and the Palermo of all time, which honors 120 years since its foundation. Old values, precisely, for a new glory.*”
248. This is even more obvious and relevant with regard to the opening of the “Palermo Museum”, on 1st November 2020, when it was stated in a news item on the museum's website that “*Palermo FC is 120 years old.*”. Likewise, all communications via social media stress the sporting continuity between the various Palermo clubs.
249. The Panel also notes, in the context of its consideration of this factor, that the importance given on social media to sporting continuity between the Clubs is a relevant factor in terms of the existence or non-existence of sporting succession. Both institutional communication and communication to the sports community

are focused on the existence of sporting continuity between the Clubs. This view seems to us to be a generally accepted and to be an important factor, which favours considering New Palermo to be the sporting successor of Old Palermo.

iv.11. Reliance on the same supporters and historic sports idols

250. The Appellant invokes the argument that New Palermo and Old Palermo share the same supporters and historic sports idols. These facts have been demonstrated by the Appellant by reference to the official presentation of the team for 2019/20 season held in the Stadium with 20,000 supporters and with a friendly match played with some historic players such as: Fabrizio Miccoli, Josip Ilicic, Cristian Zaccardo and Luca Toni.
251. The Panel also notes that Mr Rinaldo Sagramola confirmed at the hearing answering to a question posed by the Panel that just a couple of months after its creation, the club already had even more fans affiliated to the club than the ones that the Old Palermo had and therefore seems reliable to conclude that the great majority of the affiliated fans of the Old Palermo continued been affiliated to the New Palermo once it was created.
252. Confirmation of this factors seem to us to be a social reality and to support the contention that New Palermo is the sporting successor of Old Palermo.

iv.12. The acquisition of sporting assets from the bankrupt club

253. It has neither been proved nor demonstrated that New Palermo has acquired any property or assets from Old Palermo.
254. As stated in Case CAS 2020/A/7092, this factor could lead us to different conclusions. Firstly, it could strengthen the identification of the new club with the history of the club that it succeeds, but this can also be considered to be an argument to the contrary, to the extent that the assets could legally have been purchased on equal terms with other third parties, which is evidence that the assets potentially acquired did not belong to the new club and that they were only acquired in consequence of a legal transaction unrelated to the emergence of the new club.
255. Although the Parties did not adduce evidence for or against, the Panel was left with the impression that all relevant sports assets of Old Palermo, e.g. its trophies, must have been retained by the Municipality of Palermo, which has placed on display in the museum of the history of Palermo. This being so, such a finding

would be an important factor against considering New Palermo to be the sporting successor of Old Palermo.

iv.13. The reliance on sporting credits of the bankrupt club

256. So far as the Panel is aware, New Palermo has not benefitted from any credits that Old Palermo had or would be entitled to due to its sporting activity, such as credits resulting from training compensation and solidarity mechanisms resulting from transfers of players of Old Palermo. This fact was clarified and confirmed by the witness Mr Lai during the hearing.
257. The Panel finds that this could be an extremely relevant factor, which favours a finding that New Palermo is the sporting successor of Old Palermo. However, in this appeal there is no evidence that New Palermo has benefitted from any sporting credit that Old Palermo was entitled to claim in the future (e.g. in consequence of any training compensation or solidarity mechanism related to players registered by Old Palermo).
258. For the above reasons, this finding is an important factor against considering New Palermo as the sporting successor of Old Palermo.

iv.14. Co-existence of the Clubs during the same period

259. New Palermo claims the fact that the Clubs co-existed during the period between 24 July 2019 and 18 October 2019 and that, during this period, shared the same offices and the Stadium. According to New Palermo, this fact shows that the Clubs were two different and distinct legal entities that remained autonomous, i.e. they had neither a contractual nor a *de facto* relationship.
260. The Clubs existed for almost 3 months after the incorporation of New Palermo and for almost two months after New Palermo started playing in the Serie D championship.
261. So far as this argument is concerned, the Panel adopts the reasoning in Case CAS 2019/A/6461 “(...) *two separate legal entities operating simultaneously over a certain period of time is not a decisive factor to rule out sporting succession.* (...)” (para. 52)
262. The legal and *de facto* co-existence of the Clubs does not exclude the possibility that one is the sporting successor of the other. On the contrary, the fact that they

co-exist and share the same premises and “values” could be evidence of what is commonly referred to as a “handover period” between one club and the other. In any event, it is the opinion of the Panel that the effect of this factor on the analysis and decision regarding the existence of sporting succession between the clubs, is neutral.

263. Moreover, there is no evidence that Old Palermo competed during that period, which renders the temporal co-existence of the two clubs irrelevant.

iv.15. The reason(s) behind the appearance of the new club

264. The Panel considers that it is also important to consider the motive and *raison d'être* of the appearance of New Palermo.

265. It is clear to us that the said motive is unrelated to any intention to evade or frustrate performance by Old Palermo of its pecuniary responsibilities.

266. The appearance of New Palermo is not based on what could be identified as the reason for Article 15.4 FDC, i.e. prevention of the “replacement” of clubs, in order to resolve a club's financial problems via a declaration of bankruptcy, and the emergence of a new club to occupy and give continuity to the insolvent club.

267. The emergence of New Palermo is not based on such improper aims, which are almost always identified as the reason for Article 15.4 FDC, but is based on the desire, willingness and efforts of the Municipality of Palermo to select, support and promote a new club in the city of Palermo, which could replace and give continuity to the sporting project of Old Palermo.

268. It is clear to us that the intention of the Municipality of Palermo was to identify a sports club that could give continuity to and defend the values of the city of Palermo. This situation is an additional complication that does not assist New Palermo to prove the absence of sporting continuity between the Clubs.

269. For the above reasons, this finding is an important factor that favours a finding that New Palermo is the sporting successor of Old Palermo.

iv.16. Summary of the assessment of the factors identified

270. The above assessments can be summarised as follows:

<u>Factor</u>	<u>Minor Importance</u>	<u>Relevant</u>	<u>Important</u>
Headquarters	(+)		
Name / Nickname		(+)	
Legal Form		(-)	
Team Colours		(+)	
Team Crest / Logo		(+)	
Transfer of Players / Technical Staff			(-)
Shareholders, Ownership & Management			(-)
Category of Competition Concerned			(-)
Stadium / Training Centre	(+)		
Reliance on the bankrupt club's History and Memory			(+)
Reliance on the same Supporters and Historic Sports Idols			(+)
Acquisition of sporting assets from the bankrupt club			(-)
Reliance on the sporting credits of the bankrupt club			(-)
Co-existence of the Clubs in the same period	(0)		
The reason(s) behind the appearance of the new club			(+)
Total	2 +	3 + 1 -	3 + 5 -

(+) = in favour of sporting succession

(-) = not in favour of sporting succession

(0) = neutral / irrelevant

v. **The existence of sporting succession – conclusion**

271. The issue in this case, as pleaded by the Appellant, is whether the Panel should, or should not, consider the sporting succession between the Clubs on the basis of the following factors, to be both proved and relevant, i.e.: (i) the use of same headquarters; (ii) the use of similar name and same nickname; (ii) the use of the same team colours; (iii) the use of similar team crest, emblem or logo; (iv) the use of the same stadium; (v) the reliance on the same history, objectives and memory; (vi) the reliance of the same supporters and historic sports idols; and (vii) the impositions from the Municipality of Palermo to “transform” the New Palermo in the city’s club of Palermo. The following of the said factors are selected and ranked as follows:

- **Important** (the following 3 factors): (i) reliance on the same history, objectives and memory; (ii) reliance of the same supporters and historic sports idols; and (iii) the reasons behind the appearance of New Palermo.
- **Relevant** (the following 3 factors): (i) name/nickname; (ii) team colours; and (iii) logo.
- **Minor importance** (the following 2 factors): (i) the use of the same contacts, facilities, headquarters; and (ii) the use of the same stadium and training centre.

272. So far as the case to the contrary is concerned (i.e. the case against sporting succession), the factors are selected and ranked as follows:

- **Important** (the following 5 factors): (i) lack of transfer of players and/or technical staff; (ii) lack of a shared shareholder base and management; (iii) no replacement of the old club in the same sports category in the national championship; (iv) non-acquisition of assets and/or equipment of Old Palermo; and (v) non-transfer of sporting credits from Old Palermo to New Palermo
- **Relevant**: the different “legal form” of the Clubs.

273. The Panel could also add an additional (or complementary) intangible criterion, which the Panel considers to be of great importance: i.e. the transfer or use, by New Palermo, of a significant part of Old Palermo's goodwill, as there can be no doubt that a very substantial part of the said goodwill, e.g. public recognition and the support of the supporters was clearly transferred, either voluntarily or involuntarily, from Old Palermo to New Palermo. This goodwill defines much of

what a football club is, and the fact is that New Palermo has benefitted from the said goodwill factors since it started to operate, and has done nothing to expressly distance itself from or differentiate itself in relation to Old Palermo.

274. In CAS 2020/A/7092, the reasoning used was based on the consideration, ranking and counting of the number of relevant factors for and against the existence of sporting succession. Were the Panel to adopt the same approach, it would be concluded that there is no sporting succession between the Clubs, as most of the factors classified as “important” so indicate.
275. However, in this case, the adoption of a simple arithmetic approach makes little sense. In our opinion, the reasoning and criterion to be followed should not be the counting and comparison of the factors identified for and against the existence of a sporting succession, but should rather be based on a criterion based on the overall and qualitative assessment of the factors which are indicative of the existence of sporting succession. In that case, the important thing, in this case, is to establish whether the important and relevant factors that indicate the existence of sporting succession, do, or do not, suffice to comply with the requirements of Article 15.4 FDC and establish sporting continuity between the Clubs.
276. Stated in greater detail, this means mere confirmation whether the existence of some factors classed as “important” can, because of their intensity, be a sufficient basis for a determination that sporting succession exists, in this case. The most evident examples are the transfer of federation rights between clubs (cf. CAS 2007/A/1355⁵) or the transfer of a significant number of players, which gives the new club a continuity with the identity of the old club.
277. In this case, the factors considered to be important and relevant are, in the Panel's opinion, a sufficient basis for a determination that sporting continuity between the Clubs exists.
278. The Panel is aware that this case reflects a new reality, which has never been addressed by FIFA, i.e. sporting continuity between Clubs by virtue of their umbilical connection with the history and memory of the city in which they are based and the special link between them and their supporters.

⁵ “A legal person with separate judicial personality from the Club bound by a CAS decision may equally be bound thereby, if it acquired the rights of the Club (...) to participate in Liga 1 (Romania), if it was for all practical purposes the successor of the legal person and if the original CAS Award envisaged that the award might be enforceable against a successor to the Club.” (Para. 2 of the summary of the published award)

279. The Panel unanimously recognises that there is no evidence or indication that the new club arose in improper circumstances, or with the intention to evade the “weight” of the old club's financial obligations.
280. The aim of New Palermo, as a club in the city of Palermo, is to give continuity to the values and memories of the clubs that have “served” the city of Palermo, which include Old Palermo. This effect and objective may not be present in the intention of the shareholders of New Palermo, but is clearly visible in the intention of the Municipality of Palermo, because of the terms and conditions it imposed regarding the selection of the club of the city of Palermo.
281. The Panel has no doubt that it was the status of a “city club” that gave New Palermo extra visibility and sporting success in such a short period of time.
282. By requiring the club selected to assume the identity of a city of Palermo club (including certain distinctive aspects of the former club), the Municipality of Palermo ensured that New Palermo would assume the values, history and memory of the city's former club. These were the basic conditions for the award of the licence. The new club had to take on the “city's” identity and assume and adopt the city's historical symbols and values.
283. In this case, sporting succession was not a consequence of a movement linked to or associated with the old club's supporters. In this case, the sporting succession is a consequence of a requirement imposed by the Municipality of Palermo, which New Palermo consciously accepted. This imposition took care to protect all financial interests of the Municipality of Palermo (e.g. the transfer of the overheads and the responsibility for the management of the Stadium and for the Stadium employees), but did not take into consideration the interests of others possibly prejudiced by the bankruptcy of Old Palermo. Likewise, it probably did not take into consideration the consequences for the Club, of the identity “allocated” to it, or even “imposed” on it, in terms of the applicable FIFA regulations.
284. Although, it is true that the said identity enabled New Palermo to make sport-linked financial gains. As a consequence of the sporting succession, New Palermo was able to assume, acquire, capture and enjoy a number of potential benefits and synergies. These benefits and synergies are associated with the economic and social dynamics of the city of Palermo and were reflected, inter alia, in the rapid attraction of a significant number of supporters, the increased value of its image and brand as a club of the city, increased ticketing revenue, the attraction of sponsorship and advertising and merchandising revenues.
285. This approach is in line with the decision in CAS 2011/A/2611 [free translation]:

“(…) If the "football clubs" require only sports recognition rather than legal recognition, it is legitimate to ask: what then is it that clearly distinguishes one from the other? In the opinion of the Single Arbitrator, the answer lies in a series of factors that are comprised in the club's image, i.e. its name, kit design, supporters, history, sporting achievements, emblem, trophies, the stadium where it plays its matches, its team, historical idols, etc. These are the factors, which together make it possible to distinguish one football team from another and which therefore become factors of superlative importance in the resolution of a dispute such as that in this arbitration (…)” (Para. 56)

“This Sole Arbitrator considers that the club's history is perhaps the most important factor in this context, since it includes the past events that highlight the relevant milestones in the existence of something. Accordingly, the date of the club's foundation demonstrated its permanence and transcendence in the local and international sports arena; its sports achievements, such as championship titles, are probably what most distinguishes one club from another, and are often referred to the club's leaders and supporters as a matter of pride. (...) These are therefore extra-legal factors that identify football clubs and distinguish them from each other, which, in any event, does not mean that it can be concluded, for this reason alone, that there is legal symbiosis between the sports team with the managing legal person, but this is nevertheless an aspect that will illuminate Sole Arbitrator's reasoning.” (Para. 58)⁶

286. For all the reasons stated above, the Panel considers that the prerequisites for the existence of sporting succession between the Clubs, appear to be complied with. However, even if the Panel does not make the same analysis as the FIFA DC, such findings are not decisive per se, considering that the main issue to be solved is to determine whether or not the Appellant has been diligent enough, whether or not

⁶ The original text in Spanish: *“(…) si los “clubes de fútbol” sólo corresponden a un reconocimiento deportivo y no legal, resulta legítimo preguntarse entonces: ¿qué es aquello que los identifica claramente entre sí? La respuesta está dada, en opinión del Árbitro único, por un conjunto de elementos que se unían en su imagen, es decir, su nombre, colores, hinchada, su historia, logros deportivos, su escudo, trofeos, el estadio donde hace de local para disputar sus partidos, su plantel, sus ídolos históricos, etc. Son estos elementos, que, en su conjunto, permiten distinguir deportivamente a un equipo de fútbol de otro y por tanto se convierten en factores de importancia superlativa al momento de resolver una disputa de la naturaleza como la sometida al presente arbitraje (…)” (Para. 56)*

“Para este Arbitro Único, la historia del club es quizás el elemento de mayor importancia en este contexto, puesto que la misma encierra los hechos ocurridos en el pasado y que destacan los hitos relevantes en la existencia de algo. Así, la fecha de nacimiento del club manifiesta la permanencia y trascendencia del mismo en el ámbito deportivo local e internacional; los logros deportivos como, por ejemplo, títulos de campeonato constituyen probablemente el elemento de mayor distinción de un club por sobre otro y que frecuentemente es mencionado por sus dirigentes y seguidores como un factor de orgullo. (...) Se trata por tanto de elementos extralegales que identifican y distinguen a los clubes de fútbol entre sí, lo que, en todo caso, no significa que por ese sólo hecho se concluya que existe una simbiosis legal entre el equipo deportivo con la persona jurídica administradora, pero sí es un elemento que ilumina el raciocinio que hará el Árbitro Único.” (Para. 58)

New Palermo could be sanctioned pursuant to Art. 15 FDC and whether or not FIFA was right in not imposing disciplinary sanctions to New Palermo.

(F) **Is New Palermo responsible for paying the Agent the sums related to the Settlement Agreement?**

287. In the Appellant's submissions dated 27 January 2021, the Appellant states that the "*issues under debate*" are (i) standing to appeal and (ii) the existence or not of sufficient factors to consider the sporting succession between the Clubs.
288. However, the Panel notes that the Appellant's prayers for relief in item II of his Statement of Appeal and Appeal Brief contains two cumulative requests, i.e. that CAS should "*issue a decision establish that (...) [New Palermo] (...) becomes the sports successor of [Old Palermo], is responsible for paying [the Agent] the sums owed according to the award issued in procedure CAS 2014/A/3755.*" These two legal issues are within the scope of the Appealed Decision, since FIFA DC discharged New Palermo from the liability concerning the debts incurred by the Italian club US Città di Palermo S.p.A. on the basis that there is no legal or supporting succession between the Clubs.
289. Accordingly, and the existence of sporting succession between the Clubs having been established, the Panel must now consider whether New Palermo is liable to pay the debt owed by Old Palermo to the Agent. In other words, what are the regulatory consequences of this sporting succession for New Palermo?
290. In order to clarify this issue, the Panel heard the Parties regarding the importance and relevance of CAS 2011/A/2646, both at the hearing, and in the Post-Hearing Briefs.
291. The Panel will now consider how this legal issue should be decided.
292. If, on the one hand, there is a bona fide creditor, whose credit must be assumed by the successor club, on the other hand it must also be considered that that there is a bona fide entity that appears to have been "surprised" by the appearance of the unknown credit. Surprised, because it was only on 12 November 2019, that New Palermo was joined as a party in FIFA proceedings for payment of a debt, which had been at issue in FIFA since at least 2014.
293. The answer to this issue is complex, but cannot ignore the general principle of good faith, and the general principles of legal certainty and the predictability of the law. All the more so because in this case, unlike almost all sporting succession cases in the case law, New Palermo did not act in a suspect manner in order to circumvent the law and regulations and to avoid its responsibilities, while having the benefit of the enjoyment and use of the assets or benefits of the old club. For

that reason, there are decisions of FIFA and CAS, which although they hold for the existence of sporting succession, find that this should not give rise to any liability on the part of the successor club, because of a lack of improper conduct on the part of the new club, or because of a manifest lack of diligence on the part of the creditor with regard to the claiming and safeguarding of its credit.

294. The upholding of the Agent's credit right must be considered to be an “alternative” procedure of last resort. An alternative subsidiary procedure that cannot and must not be seen as an opportunity for creditors to refrain from pursuing the recovery of debts owed to them from the original debtor.
295. According to the principles of good faith and legal certainty, even if New Palermo had been aware of the potential risk arising from the assumption of liabilities in consequence of the sporting succession, it had no way to be aware of the existence of the Agent's credit. Firstly, because the credit was not claimed in the bankruptcy proceedings; and secondly, because there was no mention of the credit within the ambit of the procedure launched by the Municipality to select the new club.
296. The Agent could not, and should not, have been unaware of the legal relevance of the measures required in order to claim credits in bankruptcy proceedings.
297. In addition to not having taken any steps to claim his credit in the Old Palermo bankruptcy proceedings, the Agent also failed to take any extra-judicial steps to claim or safeguard his credit, prior to filing his claim with FIFA.
298. The foreseeability of conduct, which in this case is manifested negatively by the Agent's failure to claim his credit in the bankruptcy proceedings, must be taken into consideration to the creditor's discredit. Only then would the new club hypothetically be in a position to be subsumed to the creditor's rights and to seek to be indemnified by and to recover the payment of the debt from the original debtor.
299. This approach is in line with the case law in CAS 2011/A/2646⁷, which ruled in a case of actual succession of clubs that, notwithstanding the succession, the player was not allowed to request that disciplinary sanctions to be imposed on the new club that took over from the bankrupt club, because the said player had not claimed his outstanding salaries in the bankruptcy proceedings. The Panel in that case has explained that “(...) *the Panel cannot ascertain if the Player would have received the sum of his credit in case he had duly claimed for it in the bankruptcy*”

⁷ “If a player has not claimed his outstanding salaries in the bankruptcy proceedings, he is not allowed to request that disciplinary sanctions be imposed on this specific ground to the new club that took over from the bankrupt club, as there is at least a theoretical possibility that he could have recovered his claim in the bankruptcy proceedings and the FIFA sanction would have become *groundless*”. (para. 3 of the extract of the published decision).

proceedings, but it was at least a feasible theoretical possibility that could have happened (...). The Panel is of the view that the Player should have explored such possibility, should have communicated his credit in the bankruptcy proceedings as he previously announced, should have tried to get the money and not simply remain passive, additionally pretending that disciplinary sanctions are imposed irrespective of his diligence or negligence in trying to achieve a result (recovery of the debt) that would remove the «grounds of the sanction.» (para. 31 of the Award).

300. As decided in Case 2011/A/2646, lack of diligence on the part of the creditor in the claiming and safeguarding of its credit in the bankruptcy proceedings, led the majority of the Panel to conclude that the said credit could not be raised against and recovered from New Palermo.
301. This position was confirmed by the decision in CAS 2019/A/6461, which confirmed that the creditor's lack of diligence should not contribute to failure to comply with the decision of FIFA, in this case, the decision of the CAS. As stated in para. 59 of this CAS decision, “[t]here is no doubt that a creditor is expected to be vigilant and to take prompt and appropriate legal action in order to assert his claims. So, in principle, the Panel agrees with the general stance taken by other CAS Panels and by the FIFA Disciplinary Committee, that no disciplinary sanctions can be imposed on a new club as a result of succession, should the creditor fail to claim his credit in the bankruptcy proceedings of the former club, as there is a theoretical possibility, he could have recovered his credit, instead of remaining passive (CAS 2011/A/2646 paras. 20-31). To the understanding of the Panel, in such instances it is necessary to examine whether a creditor has shown the required degree of diligence to recover the amounts he is owed. Yet, there is no blanket rule, and this assessment should be based on the specific circumstances of each particular case” (CAS 2019/A/6461 para. 59)
302. In essence, the position of the new club must be protected when the creditor has not adopted a sufficiently active and cautious manner to defend and safeguard its credit in the bankruptcy proceedings with regard to the original debtor club. This position has also been adopted by FIFA (cf. FIFA Decision 171380 PST of 15 October 2019, 190044 PST of 7 November 2019 and 170528 PST of 20 November 2019).
303. As a final remark, the Panel underlined that this decision must be based on the evidence which has been available to it at the time of the Appeal. Even if the Appellant could still register his credit under the pending bankruptcy proceedings of Old Palermo, this fact cannot be taken into consideration to disregard his lack of diligence.

(G) **Conclusion**

304. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the majority of the Panel comes to the following conclusions:

- There are sufficient objective element to consider New Palermo as the sporting successor of the Old Palermo;
- The New Palermo has not acted in bad faith to avoid liabilities from the Old Palermo;
- The New Palermo is not responsible for paying the Appellant the sums owned according to the Consent Award issued in the procedure CAS 2014/A/3755, due to the Agent's lack of diligence in claiming his credit under the Old Palermo bankruptcy proceedings.

305. As a consequence, the appeal and all further claims or requests for relief are dismissed. For the avoidance, the Panel notes that the Appellant is not requesting the imposition of sporting sanctions on the New Palermo.

IX. COSTS

306. Article R64.4 of the CAS Code provides the following:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of the 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.”

307. Article R64.5 of the CAS Code reads 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, 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.”

308. Having taken into account the outcome of the arbitration, in particular the fact the appeal has been dismissed, but also that the arguments of the Appellant regarding the existence of a sporting succession have been upheld, the Panel finds it reasonable that the Appellant and the First Respondent shall each pay 50% of the costs of the arbitration, in an amount that will be determined and notified by the CAS Court Office.
309. As a general rule, the award shall grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. Considering the outcome of these proceedings each Party shall bear its own legal fees and other expenses incurred in connection with these arbitration proceedings.

ON THESE GROUNDS


The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Horacio Luis Rolla on 23 July 2020 against the decision issued by the FIFA Disciplinary Department on 21 May 2020 is dismissed.
2. The decision issued by the FIFA Disciplinary Department on 21 May 2020 is confirmed.
3. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne 50% by Mr Horácio Luis Rolla and 50% by Palermo Football Club S.p.A.
4. Each Party shall bear its own legal fees and other expenses incurred in connection with these arbitration proceedings.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 12 April 2023

THE COURT OF ARBITRATION FOR SPORT


Rui Botica Santos
President of the Panel


Miguel Cardenal Carro
Arbitrator


José Juan Pintó
Arbitrator