



TAS / CAS

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

CAS 2024/A/11103 Al Gharafa Sports Club v. SC Fotbal Club FCSB SA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Espen Auberg, Attorney-at-law in Oslo, Norway

Arbitrators: Prof Petros Constantinos Mavroidis, Professor of Law in New York,
United States of America

Prof Ilias Bantekas, Professor of Law in Doha, Qatar

in the arbitration between

Al Gharafa Sports Club, Qatar

Represented by Ms Krevania Pillay, Mr George Vlavianos and Mr Daniel Engel, Attorneys-at-law, Doha, Qatar

- Appellant -

and

SC Fotbal Club FCSB SA, Romania

Represented by Ms Madalina Diaconu, Attorney-at-law, Neuchâtel, Switzerland

- Respondent -

I. PARTIES

1. Al Gharafa Sports Club (the “Appellant” or “Al Gharafa”) is a professional football club registered with the Qatar Football Association (“QFA”), which in turn is affiliated with the Asian Football Confederation (“AFC”), and the Fédération Internationale de Football Association (“FIFA”).
2. SC Fotbal Club FCSB SA (the “Respondent” or “FCSB”) is a professional football club, registered with the Romanian Football Federation (“FRF”), which in turn is affiliated with Union des Associations Européennes de Football (“UEFA”), and FIFA.
3. The Appellant and the Respondent are hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a summary of the dispute. Additional facts may be set out, where relevant, in connection with the legal analysis. While the Panel has considered carefully all the facts and evidence submitted by the Parties in the present proceedings, this Award refers only to the facts and evidence considered necessary.

A. Background Facts

5. On 22 June 2024, Al Gharafa sent an email to FCSB’s President, Mr Valeriu Argăseală, to the mail addresses Valeriu@fcsb.ro and office@fcsb.ro. The email contained a letter where Al Gharafa offered to pay EUR 5,000,000 by 31 July 2024 for the transfer of the player Florinel Teodor Coman (the “Player”) from FCSB to Al Gharafa.
6. On the same day 22 June 2024, Mr Argăseală replied to Al Gharafa, allegedly from the same email address, informing that the Player had a termination clause of EUR 5,000,000. In the same email FCSB provided its bank details to Al Gharafa, which included information about its bank account with the Romanian bank Transilvania. Still on the same day, 12 minutes after the email had been sent from Mr Argăseală’s email address, Al Gharafa received an email from the email address info.koelnstadtwald@leonardo-hotels.com with the same content and enclosure as the email sent from Mr Argăseală’s email address.
7. On 24 June 2024, Al Gharafa sent an email to FCSB’s email addresses Valeriu@fcsb.ro and office@fcsb.ro reiterating the proposal to pay the amount of EUR 5,000,000 for the transfer of the Player.

8. On 27 June 2024, following discussions between the Parties regarding when the transfer fee was to be paid, Al Gharafa sent an email with an enclosed letter to FCSB's email address Valeriu@fcsb.ro with a proposal to include a penalty clause of EUR 1,000,000 in case the transfer fee was not paid by 31 July 2024. The letter states, *inter alia*, as follows:

“In this respect, following also today's communications over the phone with the esteemed FCSB President, and in addition to the terms proposed as per our 24 June 2024 letter, we hereby suggest the application of a contractual penalty of EUR 1,000,000 in case the payment of the Release Clause is not made to FCSB by Al Gharafa FC by 31 July 2024.”

9. On 28 June 2024, Mr Argăseală, sent an email, allegedly from his email address Valeriu@fcsb.ro, to Al Gharafa, stating that the proposal regarding the transfer of the Player was accepted.
10. On 30 June 2024, Al Gharafa sent an email to FCSB's email address Valeriu@fcsb.ro with the first draft of a transfer agreement, regulating the terms for the transfer of the Player.
11. On 1 July 2024, Mr Argăseală replied to Al Gharafa, allegedly from his email address Valeriu@fcsb.ro, to Al Gharafa with amendments to the draft for the transfer agreement.
12. On 2 July 2024, Al Gharafa sent an email to FCSB's email address Valeriu@fcsb.ro, enclosing a signed version of the transfer agreement.
13. On 3 July 2024, Ms Simona Niculescu-Mizil, Assistant Manager of FCSB, sent an email, allegedly from the email address simona@fcsb.ro, to Al Gharafa, copying the email addresses valeriu@fcsb.ro and office@fcsb.ro, with a signed version of the transfer agreement (the “Transfer Agreement”).
14. The Transfer Agreement stated, *inter alia*, as follows:

“3.1. In consideration for the transfer of the Player, Al Gharafa herein undertakes to pay to FCSB a transfer fee of EUR 5,263,500/- (Five Million Two Hundred and Sixty-Three Thousand Five Hundred Euros) (the “Total Transfer Fee”).

3.2. The Parties herein agree that the payment of the Total Transfer Fee is inclusive of any amount whatsoever due as solidarity contribution for those clubs, which trained and educated the Player (cf. Art. 21 of the FIFA RSTP). As such, Al Gharafa shall be entitled to retain - and therefore deduct from the Total Transfer Fee under clause 3.1 thereto - an amount equal to 5% of the Total Transfer Fee for solidarity contribution purposes and undertakes to pay all clubs that trained and educated the Player In accordance with the FIFA RSTP.

3.3 After 5% of the Total Transfer Fee has been deducted for solidarity contribution payments under the RFA RSTP, the total net amount to be paid by AI Gharafa to FCSB shall be EUR 5,000,000 (Five Million Euros) net to be paid by no later than 31 July 2024 (the "Net Transfer Fee").

3.4. Any payment(s) related to this Agreement shall be made by AI Gharafa, upon issuance of a valid invoice, to FCSB's bank account below:

Beneficiary: S.C. FOTBAL CLUB FCSB SA

Bank: Banca TRANSILVANIA

Bank Branch/Address: Bucuresti, Unirii

Bank account: RO04BTRLEURCRT0212499301

IBAN: RO04BTRLEURCRT0212499301

Swift: BTRLRO22

[...]

3.5. If Al Gharafa fails to make the payment of the Net Transfer Fee due to FCSB under this Agreement by the due date established herein under clause 3.3., a penalty of EUR 1,000,000/- (One Million Euros) shall be due and payable by Al Gharafa to FCSB.

4. NOTICES

4.1. Notices between the parties relating to this Agreement must be in writing and must be delivered personally or sent by prepaid first-class post, prepaid air mail post or first- class courier to the addresses indicated on the preamble of this Agreement or to the e- mail addresses below, unless alternative mailing details have been informed by a party to the other for the purposes of this clause:

ALGHARAF:

E-mail: algharafafcc@qsl.com.qa

FCSB:

E-mail: office@fcsb.ro: valeriu@fcsb.ro

5. AMENDMENT

5.1. No modification, amendment or waiver of the provision of this Agreement shall be effective unless made in writing and signed by the Parties hereto.

]...]

10 MISCELLANEOUS

10.1. This Agreement shall come into effect upon signature of the Parties.

10.2. The Parties warrant that they each have the full power and capacity to enter into (and to exercise its rights and perform its obligations under) this Agreement and that no judicial or administrative decision prevents them from being able to do so.

10.3. The Parties agree that the electronic version or the digitally signed version of this Agreement shall be as valid as the original. The parties also agree that the copy delivered through email shall be as valid as the original.

11. APPLICABLE LAW AND JURISDICTION

11.1. This Agreement shall be governed by and construed in accordance with FIFA's laws and regulations and Swiss Law on a subsidiary basis.

11.2. Any disputes or controversies arising out of or in connection with this Agreement shall be settled by FIFA's competent bodies, currently the FIFA Football Tribunal. Any decision made by FIFA shall be submitted exclusively by way of appeal to the Court of Arbitration for Sport in Lausanne, Switzerland, which will resolve the dispute definitively in accordance with the Code of sports-related arbitration. The language to be used in any arbitral proceedings shall be English.”

15. In the following, paragraph 3.5 of the Transfer Agreement, will be referred to as “the Penalty Clause”.
16. Still on 3 July 2024, Al Gharafa received an email from the email address simona@fscb-ro.com, with a signed copy of the Transfer Agreement. In this email, the following email addresses were copied: office@fscb-ro.com and valeriu@fscb-ro.com. For the sake of clarity, the Panel notes that email addresses ending with “fscb-ro.com” are not legitimate email address of FCSB.
17. Also on 3 July 2024, Al Gharafa received an email from valeriu@fscb.ro, with a signed copy of the Transfer Agreement. In this email, the following email addresses were copied: office@fscb-ro.com and simona@fscb-ro.com.
18. On 9 July 2024, Al Gharafa sent an email to FCSB, to the email address valeriu@fscb.ro, with copies to the email addresses simona@fscb-ro.com and office@fscb-ro.com, informing FCSB that the Player had successfully passed the medical test, and requested the initiation of the International Transfer Certificate (ITC).

19. On 10 July 2024, Al Gharafa sent an email, with identical content as the email sent on 9 July 2024, to the email address Valeriu@fcsb.ro with copies to the email addresses office@fcsb.ro and sorin.pitu@fcsb.ro.
20. On 11 July 2024, a transfer report was inserted in TMS by FCSB. In the TMS transfer report, the bank details of FCSB were those stated in clause 3.4 of the Transfer Agreement, i.e. of FCSB's legitimate bank account in Romania.
21. On the same date, Al Gharafa received an email, allegedly from the email address simona@fscb-ro.com, with copies to the email addresses office@fscb-ro.com and valeriu@fscb-ro.com. A copy of the TMS transfer report was enclosed. The email stated, *inter alia*, as follows:

"Pls confirm the exact date you will effect the payment

Payment can only be made upon issuance of a valid invoice (section 3.4)

we are likely updating the payment details.

Also pls do send to us a number we can reach your chairman or responsible person on whatsapp or telegram."

22. Also on the same date, Al Gharafa received an email, allegedly from the email address valeriu@fcsb.ro, with copies to the email addresses simona@fscb-ro.com and office@fscb-ro.com. In this email, the TMS report was enclosed.
23. On the same date, Al Gharafa sent an email from to email address valeriu@fcsb.ro, with copies to the email addresses simona@fscb-ro.com and office@fscb-ro.com. In this email, Al Gharafa stated that the instructions had been successfully synchronized on the TMS system.
24. On 14 July 2024, the international transfer certificate (ITC) for the Player was issued.
25. On 15 July 2024, an email was sent, allegedly from simona@fscb.ro, to the email address algharafafcc@qsl-qa.com, which is not the legitimate email address of Al Gharafa, with copy to valeriu@fcsb.ro, enclosing an invoice regarding the transfer of the Player.
26. Also on 15 July 2024, Al Gharafa received an email, allegedly from valeriu@fcsb.ro with simona@fscb-ro.com and office@fscb-ro.com in copy. The email stated, *inter alia*, as follows:

"Dear Sir,

Please find attach the invoice for the transfer of the player Coman Florinel.

Payment should be made with the bank details on the invoice (s3.4)

Also we updated the contract agreement.

Best regards,

President Valeriu Argăseală”

27. The enclosed invoice included the following bank details:

“All payments made to our below account:

BENEFICIARY: Fotbal Club FCSB SA Company Limited

BANK NAME: MSB BANK

BANK ADDRESS: MSB - Cao ốc c van phong 3 Bees Tower, so 281 D. Nguyen Van Troi, Phuong 10, Phu Nhuan, Ho Chi Minh, Vietnam

SWIFT CODE: MCOB NVX

USD ACCOUNT NO: 80000161592

EURO ACCOUNT NO: 80000161654

ACCOUNT NAME: Fotbal Club FCSB SA Company Limited

ADDRESS: 108 Tran Dinh Xu, Phuong Nguyen Cu Trinh, Quan 1, Thanh pho Ho Chi Minh, Vietnam”

28. Further, clause 3.4. of the enclosed amended Transfer Agreement stated as follows:

“3.4. Any payment(s) related to this Agreement shall be made by AI Gharafa, upon issuance of a valid invoice, to FCSB's bank account below:

BENEFICIARY: Fotbal Club FCSB SA Company Limited

BANK NAME: MSB BANK

BANK ADDRESS: MSB - Cao ốc van phòng 3 Bees Tower, số 281 D. Nguyễn Văn Trôi,

Phu'àng 10, Phú Nhuận, Hồ Chí Minh, Vietnam.

SWIFT CODE: MCOB NVX

USD ACCOUNT NO: 80000161592

ACCOUNT NAME: Fotbal Club FCSB SA Company Limited

ACCOUNT: 108 Trần Đình Xu, Phường Nguyễn Cư Trinh, Quận 1, Thành phố Hồ Chí Minh, Việt Nam”

29. Also on 15 July 2024, Al Gharafa received another email, allegedly from valeriu@fcsb.ro with simona@fscb-ro.com and office@fscb-ro.com in copy, including another invoice with the same information as the invoice sent earlier the same day.
30. On 17 July 2024, Al Gharafa received an email, allegedly from valeriu@fcsb.ro with simona@fscb-ro.com and office@fscb-ro.com in copy, requesting confirmation of the payment. Similar emails were sent, allegedly from the same email address, on 28, 29 and 30 July 2024.
31. On 31 July 2024, Al Gharafa made a payment of EUR 5,000,000. This payment was made to the bank account in Vietnam provided in the emails allegedly sent from the email address valeriu@fcsb.ro on 15 July 2024. Following the payment, Al Gharafa sent an email to valeriu@fcsb.ro, with copies to the email addresses simona@fscb-ro.com and office@fscb-ro.com, enclosing a screenshot of the bank's approval of the payment. Subsequently, on the same day, Al Gharafa received an email, allegedly from valeriu@fcsb.ro with simona@fscb-ro.com and office@fscb-ro.com in copy, confirming that the screenshot of the payment approval had been received.
32. On the same day, in a Whatsapp conversation between Mr Argăseală and Mr Ettore Mazzilli, who represented Al Gharafa as a lawyer, Mr Mazzilli sent a message to Mr Argăseală with a screenshot of the bank's approval of the payment. Mr Argăseală replied to the message with "Thanks".
33. On 9 August 2024, Al Gharafa received an email from simona@fcsb.ro. The email stated, *inter alia*, as follows:

"Please find attach, the email sent to Al Gharafa with the invoice issued by our club, representing the Transfer of the player Florinel Coman, and the email received from Al Gharafa confirming that they received the invoice.

The invoice that was sent to Mr Argaseala by you (see attached) , it is very clear that Al Gharafa made a false invoice to cover mistake (Al Gharada didn't respect the term of the payment), you can see very clear that our invoice is not the same with the invoice send by you, your invoice is visible modified, and this is a criminal offence."
34. Enclosed to the email sent on 9 August 2024 was a pdf file of email correspondence between simona@fscb-ro.com, valeriu@fcsb.ro and algharafafcc@qsl-qa.com, sent on 11 and 15 July 2024.

35. On 13 October 2024 Al Gharafa's bank issued a letter, where it confirmed that the payment of EUR 5,000,000 on 31 July 2024 had not been returned to Al Gharafa's account.
36. On 30 January 2025 the company HKA Global Limited, a global consultancy offering forensic services, issued a report (the "HKA Report"), which revealed, *inter alia*, that emails originating from the domain fsbc-ro.com did not come from the official mail server of FCSB, but from a Google mail server.

B. Proceedings before the FIFA Players' Status Chamber

37. On 12 August 2024, FCSB filed a claim against Al Gharafa before the FIFA Player's Status Chamber of the FIFA Football Tribunal ("FIFA PSC").
38. Al Gharafa submitted its reply to FIFA PSC on 10 October 2024.
39. A decision of the single judge of FIFA PSC was rendered 5 November 2024 (the "Appealed Decision") and notified to the Parties on 10 December 2024.
40. A summary of the FIFA PSC's reasoning in the Appealed Decision is as follows:
 - The FIFA PSC noted that the dispute concerned a claim of a club against another club for the payment of a transfer fee and a contractual penalty, arising from the Transfer Agreement, and that the Parties disputed whether the payment of the transfer fee was made to the correct bank account. In this context, FIFA PSC acknowledged that its task was to analyze whether Al Gharafa had complied with the Transfer Agreement.
 - In this regard, FIFA PSC noted that on 22 June 2024, which was the first time that FCSB provided Al Gharafa with the bank details, the bank account referred to was the Romanian bank account.
 - Further, FIFA PSC noted that the Romanian bank account was also included in clause 3.4. of the Transfer Agreement, and that the Romanian bank account was provided by FCSB in TMS.
 - Consequently, FIFA PSC concluded that the Parties originally agreed that the payment was to be made to the Romanian bank account.
 - FIFA PSC then analyzed whether amendments of the bank accounts were made correctly. In this regard, FIFA PSC pointed out that clause 4 of the Transfer Agreement established that the valid emails from FCSB were office@fcsb.ro and valeriu@fcsb.ro, and that clause 5.1. of the Transfer Agreement stipulated that no modification, amendment or waiver of the Transfer Agreement would be effective unless made in writing and signed by the Parties.

- With regards to Al Gharafa's position that the Transfer Agreement was amended on 15 July 2024, when FCSB's President allegedly sent an email with an amended agreement and an invoice, including the Vietnamese bank account, FIFA PSC noted that the amended Transfer Agreement sent on 5 July 2024 was exactly the same agreement signed by the parties dated 1 July 2024, but the bank details from the Vietnamese bank account seem to have been pasted over, and that the amended Transfer Agreement was still dated 1 July 2024. Against this background FIFA PSC held that there was no mutually signed new agreement including new payment information, and that there was a deviation from the formal amendment process outlined in the Transfer Agreement.
- Consequently, FIFA PSC concluded that the alleged amendment of the bank information was made in breach of the terms established between the Parties and should not be taken into consideration.
- Further, FIFA PSC noted that Al Gharafa, as the debtor, bore the obligation of proving that it had complied with the due process in making the relevant payment to the correct bank account, and that such step was backed by adequate due diligence. In this context, FIFA PSC considered that the emails received by Al Gharafa contained inconsistencies, and that Al Gharafa did not verify the validity of the transaction, despite the new bank account provided being from Vietnam. Against this background, FIFA PSC considered that Al Gharafa's behavior was not diligent.
- FIFA PSC concluded that the failure of Al Gharafa to conduct adequate due diligence when making the payment to new bank coordinates that was based in a different jurisdiction than where the creditor was based, cannot act as a valid justification to not have to remit the amount for a second time, and that the payment made by Al Gharafa was not in accordance with the Transfer Agreement, nor with the information contained in TMS, which stipulated that FCSB's bank account was from Romania.
- Consequently, FIFA PSC decided that Al Gharafa should be ordered to pay EUR 5,000,000 net of the transfer fee.
- With regards to the Penalty Clause, FIFA PSC noted that as Al Gharafa failed to pay the amount to the correct bank account by the due date, the Penalty Clause had been triggered and that, based on the principle *pacta sunt servanda*, it should be granted to FCSB.

41. The operative part of the Appealed Decision reads as follows:

"1. The claim of the Claimant, SC Fotbal Club FCSB SA, is accepted.

2. The Respondent, Al Gharafa SC, must pay to the Claimant the following amounts:

- EUR 5,000,000 net as outstanding amount;

- EUR 1,000,000 as contractual penalty.

3. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.

4. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.

2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.

5. The consequences shall only be enforced at the request of the Claimant in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.

6. The final costs of the proceedings in the amount of USD 25,000 are to be paid by the Respondent to FIFA. FIFA will reimburse to the Claimant the advance of costs paid at the start of the present proceedings (cf., note relating to the payment of the procedural costs below)."

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

42. On 30 December 2024, Al Gharafa filed a Statement of Appeal with CAS, pursuant to Article R48 of the Code of Sports-related Arbitration (2023 edition) (the "CAS Code"), against the Appealed Decision. In the Statement of Appeal, Al Gharafa nominated Professor Ilias Bantekas, Professor of Law at Hamad bin Khalifa University (Qatar Foundation), residing in Doha, Qatar, as arbitrator.
43. On 9 January 2025, FCSB nominated as arbitrator Professor Petros Constantinos Mavroidis, Professor at Columbia Law School, New York City, residing in Commugny, Switzerland.
44. On 30 January 2025, after having received extensions further to Article R32 of the CAS Code, Al Gharafa filed an Appeal Brief in accordance with Article R51 of the CAS Code. In the Appeal Brief, Al Gharafa, *inter alia*, requested for the Panel to order

FCSB to produce additional evidence in the form of email correspondence between FCSB and illegitimate email addresses referred to in the Appeal Brief.

45. On 3 February 2025, the CAS Court Office informed the Parties about the constitution of the Panel as follows:

President: Mr Espen Auberg, Attorney-at law, Oslo, Norway;

Arbitrators: Prof Ilias Bantekas, Professor of Law in Doha, Qatar;

Prof Petros Constantinos Mavroidis, Professor of Law, Commugny, Switzerland.

46. On 3 March 2025, FCSB filed its Answer pursuant to Article R55 of the CAS Code. In its Answer, FCSB, *inter alia*, addressed Al Gharafa's request for additional evidence, and stated that FCSB had no connection to the illegitimate domain names, and that the correspondences in FCSB's possession had already been filed by Al Gharafa before CAS.
47. On 13 March 2025, following consultation with the Parties, on behalf of the Panel, the CAS Court Office confirmed that a hearing would be held on 28 May 2025 at the CAS Court Office in Lausanne, Switzerland, pursuant to Article R44.2 of the CAS Code.
48. On 20 March 2025 Al Gharafa was invited by the CAS Court Office to file its comments on FCSB's remarks on the evidentiary request.
49. On 25 March 2025 Al Gharafa filed its comments on FCSB's remarks on the evidentiary request, and reiterated its request for the Panel to order FCSB to make available the information in its possession, custody or control as specified in the Appeal Brief.
50. On 28 March 2025 FCSB filed a letter to the CAS Court Office, where it stated that logs from the email server of FCSB was only kept for 30 days, and that FCSB did not possess any correspondence between its legitimate email addresses and the illegitimate email addresses referred to in the Appeal Brief.
51. On the same day, on 28 March 2025, the CAS Court Office informed the Parties that the Panel had decided to reject Al Gharafa's request for production of evidence, and that the reasons of this decision would be communicated in the final award.
52. On 31 March 2025, the CAS Court Office issued an Order of Procedure, which was duly signed and returned by FCSB on 1 April 2025 and by Al Gharafa on 7 April 2025.

53. On 26 May 2025, after consultation with the Parties, the CAS Court Office sent the Parties a tentative hearing schedule, proposed by the Panel.
54. On 28 May 2025, a hearing was held in the CAS Court Office in Lausanne, Switzerland. In addition to the Panel and CAS Counsel Mr Francisco Mateo Pavia, the following persons attended the hearing:

For Al Gharafa:

Mr George Vlavianos, Counsel;
Mr Krevania Pillay, Counsel;
Ms Lara Shehadah, Counsel;
Mr Daniel Engel, Counsel.

For FCSB:

Ms Madalina Diaconu, Counsel;
Mr Dan Idita, Counsel.

55. In the course of the hearing, the Panel heard expert testimony from Mr Darren Mullins, a partner at HKA. Mr Mullins was invited by the President of the Panel to tell the truth subject to the sanction of perjury and confirmed that he would tell the truth. The Parties and the Panel had full opportunity to pose their questions to Mr Mullins.
56. The Parties were given full opportunity to present their cases, submit their arguments in closing statements and to answer the questions posed by the Panel.
57. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

58. This section of the Award does not contain an exhaustive list of the Parties' contentions. Its aim is to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. Al Gharafa's Submissions

59. Al Gharafa's submissions, in essence, may be summarized as follows:

Al Gharafa complied with its obligation to pay the transfer fee

- The change in banking details constitutes an amendment to the Transfer Agreement in accordance with its clause 5.
- Parties to a contract may contractually agree on a form for contracts that are not subject to any statutory formal requirement. A form can be stipulated not only for the conclusion of the contract itself, but also for all legal transactions that are carried out as part of the implementation and execution of the contract in question, such as amendments, additions or terminations. The contractual formal requirement can be waived at any time without any formal requirements. Amendments are also possible without requiring a specific form.
- In Article 5.1. of the Transfer Agreement, the Parties agreed that no modification, amendment or waiver of the provisions of the Agreement shall be effective unless made in writing and signed by the parties hereto. However, even qualified formal requirements can be waived informally by the Parties.
- The unilateral changes of the Transfer Agreement, with regards to the bank details, were made electronically by Mr Argăseală, the President of the FCSB, in the email he sent on 15 July 2024, where he enclosed an updated Transfer Agreement and invoice, with information about the Vietnamese bank account and issued a payment instruction. With this email, FCSB expressly declared its willingness to waive the modification requirements pursuant to Clause 5.1. of the Transfer Agreement.
- With regards to FCSB's request for payment in an alternative jurisdiction, such request is not uncommon in international transfer deals. Al Gharafa had no reason whatsoever to suspect that the bank account in Vietnam did not belong to FCSB.
- Al Gharafa has complied with Mr Argăseală's request for payment and as such accepted FCSB's request to waive the modification requirements.
- Mr Argăseală, as the highest-ranking official of FCSB, gave instructions and communications which were binding on FCSB. Throughout all the communications with FCSB, Al Gharafa communicated exclusively with Mr Argăseală via his official email address.
- Mr Argăseală's email address is formally registered in the FIFA TMS and serves as the recognized point of communication for all official matters relating FCSB. For this reason, all communications and instructions from Mr Argăseală's email address could be relied upon by Al Gharafa. Consequently, any instructions, modifications, or amendments communicated from Mr Argăseală's email address must be treated as valid and authoritative. Mr Argăseală's instructions regarding the amended bank details are valid and enforceable under both the contract and Swiss law and are legally binding on FCSB.

- Clause 10.3 of the Transfer Agreement confirms that copies of the Transfer Agreement delivered through email are as valid as the original Transfer Agreement itself. Al Gharafa had no reason to question the legitimacy of the amended Transfer Agreement or the payment instruction provided by Mr Argăseală.
- When communicating with Al Gharafa on 31 July 2024 Mr Argăseală failed to exercise diligence regarding checking the accuracy of the information and reviewing the bank details displayed on the proof of payment prior to expressing confirmation of receipt and thanks. Had he done so, Al Gharafa would have been able to take the necessary steps to immediately halt the transfer of the funds.
- Article 2. paragraph 2 of the Swiss Civil Code (“SCC”) stipulates that the manifest abuse of a right is not protected by law. FCSB’s conduct constitutes an abuse of rights and therefore does not deserve protection. Mr Argăseală himself disregarded the formal requirement by way of his emails sent on 15 July 2024, and he can no longer subsequently invoke this formal requirement.
- Clause 4.1 of the Transfer Agreement states that official communication between the Parties should be conducted using the designated email addresses, hereunder Mr Argăseală's email address, valeriu@fcsb.ro, as a legally recognized and binding method for delivering official notices and amendments in terms of the Transfer Agreement. Consequently, the email correspondence reflecting the amended bank details in the Transfer Agreement are legally valid and enforceable. Al Gharafa's reliance on these communications was plausible, justified, credible and compliant with Clause 4.1 of the Transfer Agreement.
- Clause 10.3 of the Transfer Agreement states that any electronic version or email copy of the agreement is considered equally valid as the original signed document. The amended Transfer Agreement, which was sent from Mr Argăseală's official email address is therefore enforceable.
- Al Gharafa acted diligently and in good faith by following the explicit payment instructions issued by Mr Argăseală, being the authorized representative of FCSB, to ensure timely payment of the transfer fee in compliance with its contractual obligations.
- Al Gharafa never received an invoice reflecting the bank details in the original Transfer Agreement, as allegedly sent by Ms Niculescu-Mizil on 15 July 2024, as such information was only received after the payment had been proceeded, on 9 August 2024. The emails were clearly sent by Ms Niculescu-Mizil to an email address which differs from the correct email address.
- Mr Argăseală copied the unofficial and compromised email addresses into communications with Al Gharafa. Al Gharafa reasonably assumed that these addresses were legitimate, internal email addresses of the FCSB due to the sensitive

nature of the documents transmitted therein, in particular the TMS instruction report and the Agreement.

- The HKA Report reveals, *inter alia*, that the emails containing the amended the bank account details and followed up with transfer confirmations were all sent from the legitimate email address of Mr Argăseală.

Subsidiarily the amount under the Penalty Clause should be reduced

- FCSB's claim for the contractual penalty of EUR 1,000,000 is unjustified, as no breach of the Transfer Agreement has occurred. Al Gharafa has acted in full compliance with its contractual obligations, and any claim to the contrary is baseless.
- If one were to assume that Al Gharafa breached the Transfer Agreement, FCSB would not be entitled to demand the contractual penalty of EUR 1,000,000.
- Where a penalty is promised for failure to comply with the stipulated time or place of performance, the creditor may claim the penalty in addition to performance provided he has not expressly waived such right or accepted performance without reservation. As Mr Argăseală unconditionally confirmed receipt of the proof of payment on 31 July 2024, he accepted performance without reservation. FCSB is therefore not entitled to demand the penalty in addition to the fulfilment of the contract.
- CAS must reduce excessively high contractual penalties at its discretion. The contractual penalty is excessive if there is an obvious disproportion between the amount and the creditor's interest in maintaining the entirety of his claim. The penalty must also be reduced if it is higher than the presumed loss suffered by the creditor. The penalty amount of EUR 1,000,000 bears no relation to FCSB's interest in the fulfilment of the Transfer Agreement. Nor has it been established or proven in any way that FCSB has suffered damages in the amount of EUR 1,000,000 as a result of the breach of the Transfer Agreement.
- When considering the reduction of the penalty amount, it must be taken into account that no intentional failure by Al Gharafa to breach the main obligation has been established.
- In light of the above, FCSB's claim for the contractual penalty must be entirely dismissed. Alternatively, in the highly unlikely event that the penalty is considered, it must be significantly reduced to reflect the principles of equity and proportionality.

60. On this basis, Al Gharafa made the following request for relief:

“The Appellant requests that the appeal be allowed, that the Decision of the Players' Status Chamber be set aside in its entirety and all of FCSB's claims be dismissed or, alternatively, that the matter be heard de novo.

The Appellant further requests that the CAS order that the Respondent pays for the costs of the appeal arbitration proceedings and all costs with respect to the proceedings before the Single Judge, including AGSC's costs incurred in defending the claims, on the basis of legal costs reasonably incurred as between attorney and client, as determined pursuant to article R 64. 5 of the CAS Code. Such costs are to include the costs of any witness and expert testimony.”

B. FCSB's Submissions

61. FCSB's submissions, in essence, may be summarized as follows:

Al Gharafa is responsible for paying the transfer fee

- Scams in football are not unusual, and FIFA warned against such scams in a Circular Letter as early as 2012. On the FIFA Legal Portal FIFA warns all interested parties of such scams and urge them to check suspicious information, especially related to financial issues, before making any payments. As such scamming happens often in international football, parties need to pay special attention to suspicious details such as sudden and inexplicable changes into bank account details.
- Pecuniary debts must be paid at the place where the creditor is resident at the time of performance. If the payment is to be made over an invoice with the details of the creditor's bank account, the place of performance is the bank that has the creditor's bank account. The transferring debtor thus bears the risk of loss until the transfer reaches the creditor bank. In the present case, the payment of the transfer fee was to be made by invoice, duly sent by FCSB, which contained the details of its Romanian bank account. Thus, the place of performance is FCSB's beneficiary bank. Accordingly, Al Gharafa bears the risk of loss until the amount is credited to the account.
- Since FCSB's bank never received the transfer fee, Al-Gharafa is not discharged from its contractual obligation to pay the due transfer fee and the contractual penalty.
- The conclusion of a contract leads to principal and secondary obligations. A secondary obligation is the obligation of due diligence while performing the agreement. The obligation of due diligence forms part of the contract without a mutual expression of intent being required. While performing the Transfer Agreement, Al Gharafa had to act diligently, especially when receiving the email on 15 July 2024, containing the modified Transfer Agreement and an invoice.

- The modified Transfer Agreement was grossly altered, clumsily executed as it was just overwritten on the original agreement while keeping the initial date and signatures on every page. The amendment was not in accordance with clause 5.1 of the Transfer Agreement, which stipulated that no modification, amendment or waiver of the Transfer Agreement would be effective unless made in writing and signed by the Parties.
- The invoice sent on 15 July 2024, referring to the Vietnamese bank account, was clearly altered and was not signed by any party. This document should have triggered a verification enquiry from Al Gharafa, before paying EUR 5,000,000 in such strange change of circumstances.
- Al Gharafa failed to fulfil its principal and secondary contractual obligations, payment and due diligence, and must be obliged to cover FCSB's damage.
- Concerning Mr Argaseala's email address, valeriu@fcsb.ro, FCSB is not aware if this real address has been potentially hacked, "shadowed" and mixed into the chain of fake emails. However, Mr Argaseala has always insisted on sending and receiving signed and stamped correspondences and documents, in order to minimize the risk of third-party interference by unauthorized emails.
- FCSB was not aware of the fact that on 22 June 2024, Al-Gharafa allegedly received from the email address of Hotel Leornado in Köln the same notice which Mr Argaseala had previously sent. This email address does not appear to have been used by any of the parties. FCSB is not aware of any previous hacking activity concerning this hotel. However, had Al Gharafa exercised diligence when it received such email, this apparent scam could have been easily avoided.

The Penalty Clause is enforceable

- An agreed penalty is due even when the creditor did not incur any damage following the non-fulfilment of the debtor's main obligation. The court may not intervene and diminish such penalty unless the amount of the penalty is such that it surpasses any reasonable degree, to the point of being incompatible with the law and equity.
- Clause 3.5. of the Transfer Agreement establishes that, in case of non-payment by the due date, Al Gharafa is obliged to pay FCSB a penalty of EUR 1,000,000. This penalty was proposed by Al Gharafa, and it fulfils the criteria of proportionality.
- As such the penalty is due in the present case.

62. On these grounds, FCSB made the following requests for relief:

"1. Dismiss the Appeal in its entirety.

2. *As a consequence, oblige the Appellant to pay to the Respondent:*

2.1 *the net sum of EUR 5,000,000 as outstanding transfer fee, plus 5% interest since August 1st, 2024 until the effective date of payment, and*

2.2 *the net sum of EUR 1,000,000 as contractual penalty, plus 5% interest since August 1st, 2024 until the effective date of payment.*

3. *Oblige the Appellant to bear the costs of these arbitration proceedings.*

4. *Oblige the Appellant to cover the Appellant's legal fees and other expenses incurred in connection with these arbitration proceedings."*

V. JURISDICTION

63. The Panel notes that the Appealed Decision was issued by the FIFA PSC. The jurisdiction of CAS derives from Article R47 of the CAS Code, which reads:

"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."

64. Furthermore, Article 50(1) of FIFA's Statutes (May 2024 Edition), determines as follows:

"Appeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question."

65. The jurisdiction of CAS is not contested by FCSB and is further confirmed by the Order or Procedure duly signed by the Parties.

66. It follows that this CAS Panel has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

67. Article R49 of the CAS 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document."

68. The FIFA Statutes provide that appeals must be made within 21 days of receipt of the decision being appealed.
69. The Appealed Decision was communicated to the Parties on 10 December 2024.
70. Al Gharafa filed its Statement of Appeal on 30 December 2024 and, therefore, within 21 days from the communication of the Appealed Decision. Al Gharafa completed its appeal per the terms of Article R48 and R51 of the CAS Code and within the deadline set by the CAS Court Office for it to do so. The appeal complied with all of the requirements of Article R47 et seq. of the CAS Code, including the payment of the CAS Court Office fee.
71. It follows that the appeal is admissible.

VII. APPLICABLE LAW

72. Article R58 of the CAS Code provides as follows:

“Law Applicable to the merits. 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.”

73. Article 11.1 of the Transfer Agreement states as follows:

“This Agreement shall be governed by and construed in accordance with FIFA's laws and regulations and Swiss Law on a subsidiary basis.”

74. The Appealed Decision was issued by the FIFA PSC in accordance with Article 49, paragraph 2, of the FIFA Statutes, which provides as follows:

“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.”

75. Applying these principles to the present matter, the dispute shall primarily be decided according to the applicable regulations, i.e. the various regulations of FIFA. Considering that the Transfer Agreement was concluded on 3 July 2024 and that the dispute was brought to FIFA on 12 August 2024, the June 2024 edition of FIFA RSTP shall apply on the basis of the transitional provision contained in Articles 26 and 29 of said FIFA Regulations. Swiss law shall be considered subsidiarily in case of lacuna in the various regulations of FIFA.

VIII. PRELIMINARY ISSUE – AL GHARAFa’S REQUEST FOR ADDITIONAL EVIDENCE

76. In the Appeal Brief, Al Gharafa requested the Panel to order FCSB to produce additional evidence in the form of email correspondence between FCSB and illegitimate email addresses referred to in the Appeal Brief.
77. FCSB denied having copies of any email correspondence between FCSB and illegitimate email addresses referred to in the Appeal Brief, and stated that logs from the email server of FCSB was only kept for 30 days.
78. The Panel notes that Pursuant to Article R44.3 of the CAS Code, which is also applicable in appeal proceedings, a party can request the CAS panel to order the other party to produce documents in its custody or under its control, if the party seeking such an order can demonstrate that the documents in question are likely to exist and are relevant to the case.
79. The Panel holds that FCSB’s explanation that it does not have copies of any email correspondence between FCSB and illegitimate email addresses referred to in the Appeal Brief is credible, and that Al Gharafa has not demonstrated that the documents in question are likely to exist.
80. Consequently, the Panel concludes that Al Gharafa’s request for the Panel to order FCSB to produce additional evidence shall be dismissed.

IX. MERITS

A. The Main Issues

81. The Panel notes that it is not disputed between the Parties that they have validly concluded the Transfer Agreement, or that the transfer fee, as agreed by the Parties in the Transfer Agreement, was paid by Al Gharafa to an illegitimate bank account in Vietnam, and not to FCSB’s bank account in Romania. It is neither disputed that FCSB has not received the said transfer fee or that the amount has been returned to Al Gharafa.
82. The dispute, in essence, concerns whether Al Gharafa has complied with its obligation to pay the transfer fee as agreed in the Transfer Agreement. In this regard, the Panel must assess which of the Parties that is responsible for the transfer fee being paid to an illegitimate bank account in Vietnam, and not to FCSB’s bank account in Romania.
83. Furthermore, Al Gharafa subsidiarily claims that the fee stipulated in the Penalty Clause should not be enforced or, alternatively, reduced.
84. Consequently, the main issues to be resolved by the Panel are:

- i. Has Al Gharafa complied with its obligation to pay the transfer fee?
 - ii. If Al Gharafa has not complied with its obligation to pay the transfer fee, should the fee stipulated in the Penalty Clause be enforced or reduced?
85. The Panel will address these issues in turn.
86. However, before turning to these issues, the Panel notes that the Parties have different views concerning the facts of the case. In this regard, Article 8 of the Swiss Civil Code (“SCC”) provides with respect to burden of proof that: *“Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right.”*
87. This principle has been applied in previous CAS awards, for example in the case CAS 2020/A/6796, where the panel stated as follows (paragraph 98).:

“[I]n CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (...). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence”
88. In this respect, pursuant to Article 8 of the SCC, it is the party that wishes to establish a fact that has the burden of proving the alleged fact that it relies its claim upon.
 - i. **Has Al Gharafa complied with its obligation to pay the transfer fee?**
89. In accordance with the Transfer Agreement, Al Gharafa was obliged to pay the transfer fee related to the transfer of the Player to FCSB, in the amount of EUR 5,000,000 plus training compensation, no later than 31 July 2024. As the transfer fee was paid by Al Gharafa to an illegitimate bank account in Vietnam instead of FCSB’s bank account in Romania, the central issue is whether Al Gharafa, by paying the transfer fee to the illegitimate bank account in Vietnam, has fulfilled its contractual obligation to pay the transfer fee.
90. Al Gharafa’s payment of the transfer fee to an illegitimate bank account in Vietnam instead of FCSB’s bank account in Romania must be seen in connection with the email allegedly sent from Mr Argăseală’s email address on 15 July 2024, in which Al Gharafa was informed that FCSB had updated the Transfer Agreement, and requested to pay the transfer fee in accordance with the information contained in the enclosed invoice. The enclosed invoice and the enclosed updated Transfer Agreement both included information about an illegitimate Vietnamese bank account. The Panel holds that Al Gharafa’s payment of the transfer fee to an illegitimate bank account in Vietnam was a direct consequence of the information contained in this email, and its enclosures.

91. In this regard, the Panel notes that the HKA Report states that the said email was sent from Mr Argăseală legitimate email address, which was also confirmed in Mr Mullin's testimony. Although it appears likely that Argăseală's email account was hacked or compromised and that the email sent on 15 July 2024 was not sent by Mr Argăseală himself, the Panel holds that Al Gharafa has sufficiently established that the email sent on 15 July 2024, including an amended Transfer Agreement and an invoice, was indeed sent from Mr Argăseală's email address.
92. However, the Panel notes that the Parties, in the Transfer Agreement, validly agreed that the transfer fee should be paid to FCSB's bank account in Romania. Furthermore, the Parties validly agreed that the provisions of the Transfer Agreement could not effectively be modified, amended or waived unless made in writing and signed by the Parties, and that notices between the Parties relating to the Transfer Agreement must be delivered either personally or sent by, *inter alia*, specified email addresses, hereunder Mr Argăseală's email address.
93. In this regard, the Panel holds that the email sent by Mr Argăseală on 15 July 2024, including an amended Transfer Agreement and an invoice, fulfils the Transfer Agreement's requirement with regards to how notices between the Parties regarding the Transfer Agreement should be sent, and, in principle, is binding on FCSB.
94. However, the amended Transfer Agreement that was enclosed to the said email sent on 15 July 2024 was still dated 1 July 2024 and did not contain any new signatures. As such, the Transfer Agreement's requirement that it could not effectively be modified, amended or waived unless made in writing and signed by the Parties, was not fulfilled. The Panel does not agree with Al Gharafa that formal requirements regulated in the Transfer Agreement can be waived informally in the case at hand, as Article 5.1 of the Transfer Agreement explicitly states that provisions in the Transfer Agreement cannot be waived unless made in writing and signed by the Parties.
95. Consequently, the Panel holds that the email sent by Mr Argăseală on 15 July 2024, including an amended Transfer Agreement, did not effectively modify or amend the Transfer Agreement. As such, the Panel holds that when the time limit to pay the transfer fee expired, i.e. on 31 July 2024, the Transfer Agreement had not validly been modified or amended.
96. Furthermore, in accordance with Article 3.4 of the Transfer Agreement, the payment of the transfer fee was subject to FCSB issuing a valid invoice to Al Gharafa. For the sake of good order, the Panel notes that FCSB's issuing of a valid invoice was not subject to the same requirements as the Transfer Agreement, i.e. that it could not effectively be modified, amended or waived unless made in writing and signed by the Parties. As such, a valid invoice could, in principle, be issued to Al Gharafa, provided that it was issued in accordance with the notices requirements, as regulated in Article

4.1 of the Transfer Agreement, i.e. that it could, *inter alia*, be sent by email from Mr Argăseală's email address.

97. Prior to the time limit to pay the transfer fee on 31 July 2024 FCSB only once attempted to issue a valid invoice containing FCSB's Romanian bank account to Al Gharafa, i.e. by the email sent on 15 July from simona@fscb.ro, to the email address algharafacc@qsl-qa.com. The recipient's email address was an illegitimate email address that did not belong to Al Gharafa. In other words, a valid invoice with FCSB's Romanian bank account was never issued to Al Gharafa prior to the time limit to pay the transfer fee.
98. As such, the only invoice Al Gharafa had received prior to the time limit to pay the transfer fee on 31 July 2024, was the invoice enclosed to the email sent by Mr Argăseală on 15 July 2024, an invoice that included the bank details of the illegitimate bank account in Vietnam.
99. To summarise, at the time the transfer fee was paid by Al Gharafa, the Transfer Agreement, in relation to information about FCSB's bank account, had not validly been amended or modified, and as such the Transfer Agreement's provisions regarding FCSB's bank account in Romania remained valid. On the other side, Al Gharafa had, in accordance with the notices requirements stipulated in the Transfer Agreement, received from FCSB an invoice with the illegitimate Vietnamese bank account.
100. As the information Al Gharafa had received about FCSB's bank account, as stipulated in the valid Transfer Agreement and in the invoice issued by FCSB, was contradictory, the issue of which of the Parties that is responsible for the transfer fee being paid to an illegitimate bank account in Vietnam, and not to FCSB's bank account in Romania, must be assessed taken into account the context in which the payment was made.
101. In this regard the Panel notes that in accordance with CAS jurisprudence, in particular CAS 2020/A/7442 (paragraph 128 et seq) with further references to Article 99 of the Swiss Code of Obligations ("SCO"), parties to a contract are obliged to act with due diligence when complying with their financial obligations.
102. With regards to Mr Argăseală's email sent on 31 July 2024 and the message he sent on Whatsapp the same day, where he confirmed that he had received the email and the Whatsapp message from Al Gharafa, which confirmed that the payment for the transfer of the Player had been made, the majority of the Panel notes that although the screenshots of the payment approval enclosed in the email and Whatsapp message sent to Mr Argăseală contained information about the bank account of the Vietnamese bank, Mr Argăseală cannot be blamed for not verifying if the bank account in the screenshots corresponded to the legitimate bank account of FCSB. The email and Whatsapp message sent to Mr Argăseală must be seen in context with the previous correspondence

between the Parties, where Mr Argăseală had requested a confirmation of the transfer fee being paid. The screenshots of the payment approval must, in this context, be considered simply as a confirmation that the payment had been made, and not as a request from Al Gharafa to Mr Argăseală to verify that the payment had been made to the correct bank account. Furthermore, Mr Argăseală had no reason to suspect that the payment would be paid to a different bank account than FCSB's legitimate bank account, and as such had no reason to verify that the payment was made to the correct bank account.

103. Regarding the issue of whether Al Gharafa acted with an adequate level of due diligence when performing the payment of the transfer fee, the Panel notes that attempts of fraud in relation to international transfers of football players appear to occur rather frequently, and FIFA encourages clubs to pay attention to possible fraud attempts and to double check financial information before performing any payment. As such, Al Gharafa had good reason to be attentive with regards to the procedure of paying the transfer fee.
104. The transfer report uploaded and instructed in TMS by FCSB, also sent by email to Al Gharafa on 11 July 2024, contained information about FCSB's legitimate bank account in Romania. The transfer report must be seen in relation to FIFA RSTP Annexe 3, Article 10.4 litra f, which obliges clubs to enter, *inter alia*, bank account details in TMS. The obligation to use TMS in international transfers is described in the FIFA RSTP Commentary (2023 edition) (page 577):

“Improving the administrative procedure governing transfers between member associations.

The original and core mission of TMS was and remains to facilitate and manage the process associated with the international transfer of players.

TMS must be used for all international transfers in eleven-a-side football. In other words, transfers outside of TMS are, as a fundamental and general rule, strictly prohibited.

Generally, it is for the club(s) involved in transferring a player internationally to enter the relevant transfer instruction in TMS. This is done by entering all the required information and supporting documentation into the system.”

105. The Panel holds that, in general, clubs' obligation to use TMS in accordance with FIFA RSTP Annexe 3 may contribute to decrease the chances of fraud attempts being successful. The fact that FCSB sent Al Gharafa a transfer report in TMS with its legitimate Romanian bank account, indicates that Al Gharafa has not acted with an adequate level of diligence when choosing to perform the payment of the transfer fee to a bank account that differed from the bank account referred to in the transfer report uploaded in TMS.

106. The Panel further notes that the amended Transfer Agreement, enclosed in the email sent by Mr Argăseală on 15 July 2024, contained amendments with regards to FCSB's bank account, where the illegitimate Vietnamese bank account was referred to as FCSB's bank account. These amendments were rather unprofessionally executed, as the information of the Vietnamese bank account was in a different font than the rest of the text and obviously pasted over the original text. The Panel holds that the unprofessional execution of the amendments should have triggered suspicions for Al Gharafa with regards to the legitimacy of the amended information. The fact that Al Gharafa's did not take any measures in order to verify the legitimacy of the amendments indicates that Al Gharafa has not acted with an adequate level of diligence.
107. Furthermore, the Panel holds that a change of bank account that the transfer fee should be paid to, from a Romanian bank account to a Vietnamese bank account, should be sufficient to trigger concerns for Al Gharafa. There were no indications that FCSB had any link to Vietnam, and there was no apparent reason why it should have a bank account in Vietnam. As Al Gharafa seemingly simply accepted that FCSB changed to a Vietnamese bank account without taking any measures to verify that FCSB indeed had a Vietnamese bank account indicates that Al Gharafa did not act with a necessary level of diligence.
108. In conclusion, the Panel holds that Al Gharafa had an obligation to act diligently, which included a duty to verify the correctness of the Vietnamese bank account. There were several suspicious circumstances that should have raised concerns with regards to the legitimacy of the Vietnamese bank account. Al Gharafa failed to act on these suspicious circumstances and consequently breached its obligation of acting diligently.
109. Against this background, the Panel holds that Al Gharafa is responsible for the transfer fee being paid to an illegitimate bank account in Vietnam, and not to FCSB's bank account in Romania, and that Al Gharafa has not complied with its obligation to pay the transfer fee.
- ii. If Al Gharafa has not complied with its obligation to pay the transfer fee, should the fee stipulated in the Penalty Clause be enforced or reduced?**
110. Having concluded that Al Gharafa has not complied with its obligation to pay the transfer fee, the Panel turns to the issue of whether Al Gharafa is responsible to pay the Penalty Clause.
111. In this regard, as a starting point, the Panel observes that in accordance with the principles of contractual freedom and pacta sunt servanda, contracts should, in principle, be interpreted in accordance with the intention of the parties. Within the framework of the parties' autonomy, the parties may agree on terms, hereunder a contractual penalty,

that will be triggered by a specific contractual condition, that will be enforceable unless applicable law or regulations stipulate otherwise.

112. Article 3.5 of the Transfer Agreement stipulates that if Al Gharafa fails to pay the transfer fee within 31 July 2024 a penalty of EUR 1,000,000 shall be payable by Al Gharafa to FCSB.
113. The Panel notes that FIFA Regulations do not regulate the enforceability of the Penalty Clause, and consequently the question of whether Al Gharafa is responsible to pay the Penalty Clause must be assessed according to Swiss law, as Swiss law is applicable to the case-at-hand subsidiarily.
114. Al Gharafa argues that, in accordance with Article 160 SCO, where a penalty is promised for non-performance or defective performance of a contract, the creditor may only compel performance or claim the penalty, unless otherwise agreed. As Mr Argăseală accepted performance without reservation on 31 July 2024, FCSB is not entitled to demand the penalty in addition to the fulfilment of the contract.
115. The English translation of Article 160 paragraph 1 and 2 SCO reads as follows:

“1. Where a penalty is promised for non-performance or defective performance of a contract, unless otherwise agreed, the creditor may only compel performance or claim the penalty.

2. Where the penalty is promised for failure to comply with the stipulated time or place of performance, the creditor may claim the penalty in addition to performance provided he has not expressly waived such right or accepted performance without reservation.”
116. The majority of the Panel does not concur with Al Gharafa’s claim that FCSB is not entitled to demand the penalty in addition to the fulfilment of the contract because Mr Argăseală accepted performance without reservation on 31 July 2024. Mr Argăseală’s email sent on 31 July 2024 and the message he sent on Whatsapp the same day, simply confirmed that he had received the email from Al Gharafa, an email that confirmed that the payment had been made, and cannot be considered as an acceptance of Al Gharafa’s performance without reservation pursuant to Article 160 paragraph 1 and 2 SCO.
117. The majority of the Panel holds that the intention of the Penalty Clause was to function cumulatively with the performance of Al Gharafa’s main obligations in accordance with the Transfer Agreement, i.e. to pay the transfer fee. The Penalty Clause clearly refers to the fact that Al Gharafa must pay the transfer fee within a stated deadline, and that failing to do so triggers the obligation to also pay the penalty. Consequently, the majority of the Panel finds that Al Gharafa’s failure to pay the transfer fee to the correct bank account triggered the obligation to also pay the penalty fee.

118. Subsidiarily, Al Garafa claims that the amount stipulated in the Penalty Clause is excessively high and should be subject to reduction by the Panel pursuant to SCO Article 163.

119. The English translation of Article 163 SCO reads as follows:

“1 The parties are free to determine the amount of the contractual penalty.

2 The penalty may not be claimed where its purpose is to reinforce an unlawful or immoral undertaking or, unless otherwise agreed, where performance has been prevented by circumstances beyond the debtor’s control.

3 At its discretion, the court may reduce penalties that it considers excessive.”

120. In this regard, the central issue is whether the Penalty Clause, which obliges Al Gharafa to pay FCSB an additional fee of EUR 1,000,000 if the transfer fee is not paid within 31 July 2024, should be categorised as excessive, pursuant to SCO Article 163 paragraph 3.

121. SCO Article 163 paragraph 3 provides that the Panel may reduce penalties which are found to be excessive. Reduction of penalties in accordance with SCO Article 163 paragraph 3 has been considered by CAS on numerous occasions. In the case CAS 2012/A/2847 (paragraph 69), the panel stated as follows:

“However, the reduction of the is reserved for exceptional cases and solely in cases where the penalty is considered as grossly unfair. This follows from Article 163(1) CO, which expressly provides that a penalty can be set at any amount by the parties. As a rule, the parties are therefore bound by their agreement and the principle of freedom of contract commands that the tribunal abides by the parties’ agreement.”

122. In CAS 2015/A/3909 (paragraph 104), the panel stated that:

“[T]here must be a manifest contradiction between justice and fairness on the one hand and the liquidated damages on the other hand, in other words a massive imbalance is required for interfering with the parties’ agreed assessment of the liquidated damages.”

123. The Panel notes that in accordance with CAS jurisprudence, it must be assumed that the reduction of a penalty in accordance with SCO Article 163 paragraph 3 is limited to exceptional cases where an agreement constitutes a massive imbalance.

124. In the consideration of whether the amount stipulated in the Clause should be characterized as excessive, the Panel observes that the payable amount stipulated in the Penalty Clause, EUR 1,000,000, constituted 20 percent of the fixed transfer fee of EUR 5,000,000. Furthermore, the Panel notes that the penalty was proposed by Al Gharafa.

125. In the case CAS 2018/A/5697 (paragraph 94), the sole arbitrator concluded that a penalty that constituted 10 percent of the principal debt was not excessive.

126. In the case CAS 2012/A/2847 (paragraph 106), the panel found that a penalty fee that constituted 33 percent of the agreed transfer fee should not be considered as excessive.
127. Against this background, taking into consideration CAS jurisprudence regarding excessive penalty clauses, the Panel holds that the fee stipulated in the Penalty Clause was relatively modest and proportionate seen in connection with the particular circumstances of the case, and that the penalty fee cannot be considered as excessive or that it constitutes a massive imbalance. Consequently, the Panel finds that the requirements for reducing the fee stipulated in the Penalty Clause are not met.

iii. Interest

128. The Panel notes that FIFA PSC, in the Appealed Decision, concluded that Al Gharafa was liable to pay to FCSB the total amount of EUR 6,000,000 and that interest were not awarded. The Panel further notes that the issue of interest has not been appealed by any of the Parties. As such, this operative part of the Appealed Decision is already final and binding upon the Parties, and it is beyond the scope of the Panel's power of review to consider FCSB's claim for interest on the awarded amounts.

B. Conclusion

129. Based on the foregoing, the Panel finds that:
- Al Gharafa has not complied with its obligation to pay the transfer fee.
 - Al Gharafa's failure to pay the transfer fee to the correct bank account triggered the obligation to also pay the penalty fee.
 - The agreed penalty fee is not excessive, and the requirements for reducing the fee stipulated in the Penalty Clause are not met.
 - It is beyond the scope of the Panel's power of review to consider FCSB's claim for interest on the awarded amounts.

X. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 30 December 2024 by Al Gharafa Sports Club against the decision issued on 5 November 2024 by the Players' Status Chamber of the Fédération Internationale de Football Association is dismissed.
2. The decision issued on 5 November 2024 by the Players' Status Chamber of the Fédération Internationale de Football Association is confirmed.
3. (...).
4. (...).
5. All other and further motions or requests for relief are dismissed.

Seat of Arbitration: Lausanne, Switzerland

Date: 28 August 2025

THE COURT OF ARBITRATION FOR SPORT

Espen Auberg
President of the Panel

Ilias Bantekas
Arbitrator

Petros Constantinos Mavroidis
Arbitrator