



TAS / CAS

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

CAS 2025/A/11835 Club Atlético Independiente v. Club Red Bull Bragantino & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Roberto **Moreno Rodríguez Alcalá**, Professor and Attorney-at-Law,
Asunción, Paraguay
Co-arbitrator: Mr João **Nogueira Da Rocha**, Attorney-at-law in Lisbon, Portugal
Co-arbitrator: Mr Kwadjo **Adjepong** OBE, Attorney-at law in London, United Kingdom

in the arbitration between

Club Atlético Independiente, Argentina

Represented by Mr. Ariel Reck and Mr. Maximiliano Walker, Buenos Aires, Argentina

- Appellant –

Club Red Bull Bragantino, Brazil

Represented by Mr. Pedro Henrique Mendonca and Mr. Guilherme Consul Charles,
Attorneys-at-Law, São Paulo, Brazil

- First Respondent –

&

Fédération Internationale de Football Association, Switzerland

Represented by Mr. Miguel Liétard Fernández-Palacios, Roberto Nájera Reyes and Cristina Pérez
González, Zürich, Switzerland and Coral Gables, Florida, United States

- Second Respondent –

I. PARTIES

1. Club Atlético Independiente (the “**Appellant**” or “**Independiente**”), is an Argentinian professional football club, affiliated to the *Asociación del Fútbol Argentino* (“**AFA**”), a member association of the *Fédération Internationale de Football Association* (FIFA).
2. Club Red Bull Bragantino (the “**First Respondent**” or “**Red Bull Bragantino**”), is a Brazilian professional football club affiliated to the *Confederação Brasileira de Futebol* (“**CBF**”), which in turn is a member association of FIFA.
3. *Fédération Internationale de Football Association* (the “**Second Respondent**” or “**FIFA**”), an association incorporated under Articles 60 *et seq.* of the Swiss Civil Code, with headquarters in Zürich, Switzerland, is the international governing body of professional football.
4. Independiente and Red Bull Bragantino shall be jointly referred to as the “**Clubs**” where applicable; Red Bull Bragantino and FIFA shall be jointly referred to as the “**Respondents**” where applicable; and the Appellant and the Respondents shall jointly be referred to as the “**Parties**”.

II. FACTUAL BACKGROUND

5. The elements set out below constitute a summary of the main relevant facts of the case as established by the Panel, based on the Parties’ written and oral submissions and the evidence examined during these proceedings. It is made for the sole purpose of providing a synopsis of the dispute. Thus, additional facts or issues may be set out, where relevant, in the legal considerations contained in this award.
6. On 18 July 2024, the Clubs concluded a Loan Agreement with an option of a permanent transfer (the “**Loan Agreement**”) for the player Kevin Joel Lomónaco (the “**Player**”).
7. On 27 December 2024, the Clubs executed an agreement for the permanent transfer of the Player from Red Bull Bragantino to Independiente (the “**Transfer Agreement**”).
8. As per Clause 5 of the Transfer Agreement, the Clubs agreed upon a fixed transfer fee of USD 3,000,000 (the “**Fixed Transfer Fee**”), to be paid in four different instalments:
 - (i) USD 750,000, payable on 30 June 2025 (the “**First Instalment**”);
 - (ii) USD 750,000, payable on 31 January 2025 (the “**Second Instalment**”);
 - (iii) USD 750,000, payable on 30 June 2025 (the “**Third Instalment**”); and
 - (iv) USD 750,000, payable on 15 December 2025 (the “**Fourth Instalment**”).
9. In addition, Independiente and Bragantino agreed upon the following:

“7.2. If INDEPENDIENTE fails to timely pay any compensation agreed under [the] Agreement, INDEPENDIENTE shall be subject to the payment in favor of RBB of the amount due plus a fine equivalent to 10% (ten per cent) of the amount due and

INDEPENDIENTE shall be subject to payment of interest of 2% (two per cent) per month calculated from the date of default until actual payment.

7.2.1. In the event of INDEPENDIENTE continued default following written notification from RBB, all outstanding installments shall immediately become due and payable in full. INDEPENDIENTE shall be required to pay the entire Fixed Transfer Fee within ten (10) business days of the date of this Notice.”

10. On 21 July 2025, Red Bull Bragantino sent a notice putting Independiente in default (the “**Default Notice**”) for the First Instalment, with an additional penalty of 10% plus interest of 2% per month, and further noting that, should the amount not be fully settled within 10 business days, all remaining instalments shall be automatically accelerated and become immediately due and payable. The Default Notice also observed that in such a case, a penalty of 10% and interest of 2% per month shall be applied to the total amount of the accelerated instalments.
11. On 20 August 2025, after exchanging messages (via WhatsApp), a representative from Independiente sent a message (also via WhatsApp) to a representative of Red Bull Bragantino, alleging that the club was making a partial payment of USD 400,000; the message included a screenshot of a printout copy of the relevant banking information (“SWIFT”) (included as Annexes 4 & 5 of the Appeal Brief). These allegations were however subsequently controverted by Red Bull Bragantino.
12. On 26 August 2025, Red Bull Bragantino lodged a claim against Independiente before the Players’ Status Chamber of the FIFA Football Tribunal (“**PSC**”) for outstanding remuneration in relation to the Transfer Agreement. Specifically, in its claim, Red Bull Bragantino asked for payment of the entire Fixed Transfer Fee (*i.e.*, USD 3,000,000), plus the penalty of 10% and interest of 2% per month.
13. On 5 September 2025, pursuant to Article 20 of the FIFA Tribunal Procedural Rules, the FIFA General Secretariat proposed the Clubs to settle the matter (the “**Proposal**”):

“[...] The Respondent, Club Independiente, shall pay the Claimant, Red Bull Bragantino - SP:

- USD 3,000,000 net as outstanding remuneration plus 18 % interest p.a. as follows:*
- 18 % interest p.a. over the amount of USD 750,000 net as from 1 July 2025 until the date of effective payment;*
- 18% interest p.a. over the amount of USD 2,250,000 net as from 6 August 2025 until the date of effective payment;*
- USD 300,000 net as contractual penalty.*

Payment (including any applicable interest) shall be made within 45 days as from notification of the confirmation letter. [...]”

14. In the Proposal, the FIFA General Secretariat informed the Clubs, *inter alia*, that (i) the deadline to accept or reject the Proposal was 22 September 2025, and (ii) that failure to respond within deadline would be deemed as an acceptance. Specifically, it stated that:

“In line with art. 20 par. 2 of the Procedural Rules, the parties must either accept or reject the proposal by 22 September 2025. Such acceptance or rejection shall be filed exclusively via the procedure of reference within the Legal Portal (legalportal.fifa.com) in PDF format (cf., art. 10 par. 1 of the Procedural Rules).

A party that fails to respond to a proposal is deemed to have accepted it.

If both parties accept the proposal, a confirmation letter shall be issued. The confirmation letter shall be considered a final and binding decision pursuant to the relevant FIFA Regulations. If the Claimant has paid an advance of costs in this matter, it is entitled to be reimbursed the full amount. The reimbursement shall be made to the same bank account from which the payment was made.

The Claimant may only accept or reject the proposal. They may not amend their claim.

If the Respondent rejects the proposal, it shall provide its response to the claim (including any exhibits duly translated, if need be into English, Spanish or French) in PDF format exclusively via the procedure of reference within the Legal Portal, within the same deadline cited above (cf. art. 21 of the Procedural Rules).

Furthermore, in the event that an evidentiary request has been made, please be informed that such request is subject to art. 13 par. 5 and 6 of the Procedural Rules. [...]”

15. On 23 September 2025, FIFA addressed the Clubs with the Confirmation Letter (the “**Appealed Decision**” or “**Confirmation Letter**”), which stated:

“The Respondent, Club Independiente, shall pay the Claimant, Red Bull Bragantino - SP:

- USD 3,000,000 net as outstanding remuneration plus 18 % interest p.a. as follows:*
- 18 % interest p.a. over the amount of USD 750,000 net as from 1 July 2025 until the date of effective payment;*
- 18% interest p.a. over the amount of USD 2,250,000 net as from 6 August 2025 until the date of effective payment;*
- USD 300,000 net as contractual penalty.*

Payment (including any applicable interest) shall be made within 45 days as from notification of the confirmation letter.”

16. The Appealed Decision was notified on 23 September 2025.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (“CAS”)

17. On 10 October 2025, the Independiente filed its Statement of Appeal to the Court of Arbitration for Sport (the “CAS”), pursuant to Article R48 *et seq.* of the Code of Sports-related Arbitration (the “Code”) (ed. 2025), against Red Bull Bragantino and FIFA, with respect to the Appealed Decision of 23 September 2025, requesting that the present case

be submitted to a Sole Arbitrator, and that the language of the proceedings be Spanish or, in the alternative, the implementation of a bilingual procedure (English – Spanish).

18. On 17 October 2025, FIFA stated that it agreed that the case be submitted to a Sole Arbitrator but expressed its disagreement with Spanish being the language of the proceedings, on the grounds that the Appealed Decision was issued in English.
19. On 20 October 2025, Red Bull Bragantino requested that the present proceedings be submitted to a Panel of 3 arbitrators and recalled that Clause 14 of the Transfer Agreement provides that the language used shall be English and requested an expedited procedure.
20. On the same date, the CAS Court Office, pursuant to Article R29 of the Code, informed the Parties that English will be the language of this procedure.
21. On 21 October 2025, FIFA rejected the First Respondent's request for an expedited procedure, as did the Appellant on 22 October 2025.
22. On 22 October 2025, the CAS Court Office informed the Parties that the present arbitration proceedings would not be conducted as an expedited procedure.
23. On 3 November 2025, the Appellant nominated Mr. João Nogueira da Rocha, from Portugal, as arbitrator.
24. On 7 November 2025, the Appellant filed its Appeal Brief, in accordance with Article R51 of the Code.
25. On 10 November 2025, Red Bull Bragantino and FIFA nominated Mr. Kwadjo Adjepong OBE, from the United Kingdom, as arbitrator.
26. On 19 December 2025, the CAS Court Office, pursuant to Article R54 of the Code and on behalf of the President of the CAS Appeals Arbitration Division, enclosed a "Notice of Formation of the Panel", and informed the Parties that the Panel appointed to decide the case had been constituted as follows:

President: Mr. Roberto Moreno, Attorney-at-Law and Professor in Asunción, Paraguay
Arbitrators: Mr. João Nogueira Da Rocha, Attorney-at-law in Lisbon, Portugal
Mr. Kwadjo Adjepong OBE, Attorney-at law in London, United Kingdom
27. On 7 January 2026, FIFA submitted its Answer to the Appeal Brief in accordance with Article R55 of the Code.
28. On 26 January 2026, First Respondent submitted its Answer to the Appeal Brief, in accordance with Article R55 of the Code.
29. On 2 March 2026, after duly hearing the Parties, the CAS Court Office informed that, pursuant to Article R57 of the Code, in view of the Parties' availabilities, the Panel had

decided to hold a hearing on this matter, to be held by videoconference (via Webex) on 17 April 2026 at 15h00 (Swiss time).

30. On 20 March 2026, the CAS Court Office enclosed the Order of Procedure.
31. On 23 March 2026, FIFA and on 27 March 2026, the Appellant and the First Respondent, respectively, returned the Order of Procedure duly signed.
32. On 17 April 2026 at 15h00 (Swiss time), the hearing was held by videoconference (via Webex), the date and organization of which had been agreed upon between the CAS Court Office and the Parties, with the attendance, in addition to the Panel, of the CAS Head of Arbitration, Antonio de Quesada, as well as the following persons:

For Independiente:

- Ariel Reck; Attorney.
- Guido Jamer; Attorney.

For Red Bull Bragantino:

- Pedro Henrique Mendonca; Attorney
- Guilherme Consul Charles; Attorney
- Beatriz Kajihara; Attorney

For FIFA:

- Roberto Nájera Reyes, Head of Litigation;
- Cristina Pérez González, Senior Legal Counsel.

33. During the hearing, the Parties were given unrestricted opportunity to present their arguments, and all submissions and arguments were carefully considered by the Panel, including the statements of the Parties and the witnesses. When asked at the outset of the hearing, the Parties confirmed that they had no objection to the constitution of the Panel, and at the conclusion of the hearing, they confirmed that they had no objection to either the conduct of the hearing or the proceedings as a whole, stating that their right to be heard, to equal treatment, and to present their case had been fully respected.

IV. SUBMISSIONS OF THE PARTIES¹

34. The Appellant's submissions in its Appeal Brief can be summarized according to the following lines of factual and legal argumentation:
 - The Appellant submitted that the appeal should be upheld and that the Appealed Decision be partially revoked with respect to the calculation of the outstanding amounts, interest and penalties arising from the Transfer Agreement concluded between the parties for the permanent transfer of the Player. The Appellant did not dispute the principal debt as such,

¹ Whilst the Panel has carefully considered all facts, arguments, and evidence submitted by the Parties, their respective submissions have been duly summarized in this section of the award.

provided that the First Respondent acknowledged the alleged partial payment of USD 400,000 made on 20 August 2025.

- The Appellant explained that the transfer relationship originated from a prior Loan Agreement containing an option to purchase the player for USD 3,000,000 or USD 3,500,000 depending on the exercise date, payable in three instalments and without an acceleration clause. According to the Appellant, the definitive Transfer Agreement ultimately signed maintained the transfer fee at USD 3,000,000 but amended the payment structure into four instalments of USD 750,000 each, while introducing an acceleration clause in the event of persistent default following written notice.
- The Appellant submitted that, after the First Instalment fell due, discussions took place between representatives of both clubs in light of restrictions imposed by the Argentine Central Bank allegedly affecting the transfer of funds abroad. According to the Appellant, it requested a short extension of time to make payment, as it expected incoming international funds that would facilitate payment without requiring central bank approval. The Appellant maintained that communications took place between Fernando Sciacaluga, on behalf of Independiente, and Felipe Solleiro, on behalf of Red Bull Bragantino.
- Independiente further submitted that, on 21 July 2025, the First Respondent sent a notice granting 10 days to pay the outstanding instalment together with the contractual penalty and interest. It maintained that, on 20 August 2025, it transferred USD 400,000 as a partial payment using international funds received by the club and informed the First Respondent accordingly. This payment was delayed due to the First Respondent's failure to issue an invoice, which allegedly prevented the Argentine Central Bank from authorizing the transfer. The Appellant argued that, given the ongoing communications and the absence of objection to the partial payment, it believed in good faith that an agreement had been reached to defer the remaining balance of the first instalment.
- The Appellant also argued that the First Respondent nevertheless initiated proceedings before FIFA and failed to acknowledge the alleged partial payment of USD 400,000, resulting in a FIFA Proposal that, in its view, did not reflect the actual outstanding debt. The Appellant submitted that the payment was made before FIFA issued its Proposal and that the First Respondent had sufficient time to inform FIFA of such payment but failed to do so. It further maintained that no special contractual formalities were required for notification of payment. On this basis, the Appellant argued that the outstanding principal should be reduced from USD 3,000,000 to USD 2,600,000.
- As to the merits, the Appellant submitted that FIFA and the First Respondent incorrectly applied the contractual penalty and interest provisions to the entirety of the accelerated debt. It argued that Clauses 7.2 and 7.2.1 of the Transfer Agreement clearly distinguished between "amounts due" and "accelerated amounts", with the 10% penalty and the agreed interest rate applying only to the instalment already due and not to future instalments rendered payable by operation of the acceleration clause. The Appellant maintained that the wording of the clauses admitted no other interpretation and relied on CAS jurisprudence concerning contractual interpretation under Swiss law, emphasizing the primacy of the literal meaning of contractual terms. It further invoked the principle of *contra proferentem*, arguing that any ambiguity should be interpreted against the drafter of the agreement.
- The Appellant also challenged the applicable interest rate, arguing that the 18% annual rate confirmed by FIFA exceeded the maximum interest accepted under Swiss law and CAS

jurisprudence and should be reduced to 17% per annum. It submitted that such rate could only apply to the overdue First Instalment from 1 July 2025 until 20 August 2025 and thereafter over the outstanding balance of USD 350,000 following the partial payment. As to the accelerated amounts, the Appellant contended that no contractual penalty or special interest rate applied and that only the default statutory rate of 5% p.a. under Articles 73 and 104 of the Swiss Code of Obligations (the “SCO”) should be imposed.

- In addition, the Appellant argued that the cumulative application of the acceleration clause together with an 18% annual interest rate constituted an excessive and disproportionate sanction contrary to Swiss law and public policy. According to the Appellant, the acceleration of future instalments represented a form of “negative interest” that could not be cumulatively applied with a high contractual interest rate without resulting in usurious consequences. The Appellant submitted that the principle of *pacta sunt servanda* was limited by proportionality and reasonableness under Swiss law and referred to CAS jurisprudence concerning excessive penalties and the reduction of disproportionate contractual clauses. It further argued that the First Respondent had not suffered damage warranting such cumulative sanctions, particularly considering the alleged partial payment and the fact that subsequent instalments were not yet due at the time of acceleration.
- In conclusion, the Appellant submitted that the First Respondent improperly sought penalties and interest over the entire transfer fee, failed to acknowledge the alleged partial payment of USD 400,000, and advanced an incorrect interpretation of the Transfer Agreement. Accordingly, the Appellant requested that the Panel partially revoke the Appealed Decision and determine that the correct amounts due were: (i) USD 2,600,000 as principal; (ii) a 10% penalty only over the first instalment, amounting to USD 75,000; (iii) interest at 17% per annum over USD 750,000 from 1 July 2025 until 20 August 2025 and over USD 350,000 thereafter; and (iv) interest at 5% per annum over the accelerated amount of USD 2,250,000 from 6 August 2025.

35. For its part, the First Respondent in its response makes the following arguments:

- Red Bull Bragantino submitted that the appeal should be dismissed in its entirety, primarily on procedural grounds and, subsidiarily, on the merits. It submitted that, after the Appellant exercised the purchase option contained in the prior Loan Agreement, the payment schedule had been amended at the Appellant’s request in order to provide more favorable payment conditions, postponing the first instalment and extending the payment schedule, and that the Appellant had the opportunity to review and negotiate the wording of the Transfer Agreement and had expressly agreed to its terms.
- The Appellant failed to pay the First Instalment due on 30 June 2025. Despite several amicable efforts to secure payment, including informal communications and a written notice sent on 21 July 2025, the Appellant neither complied with its payment obligations nor responded to the notice. It further maintained that, after the Appellant remained in default, the acceleration clause was triggered, rendering the remaining instalments immediately due and payable, together with contractual interest and penalties.
- The First Respondent further submitted that, following the Appellant’s failure to comply with its obligations, it filed a claim before the FIFA Football Tribunal. FIFA’s General Secretariat issued a proposal pursuant to Article 20 of the FIFA Procedural Rules, granting the Appellant the opportunity to reject it and submit a response, but the Appellant failed to do so. Consequently, FIFA issued a Confirmation Letter on 23 September 2025, confirming

that the proposal had become final and binding and ordering the Appellant to pay the outstanding compensation, contractual penalty and interest.

- As a preliminary matter, the First Respondent argued that the Appellant was precluded from challenging the substance of FIFA's Proposal before CAS. Article 20 of the FIFA Procedural Rules had been correctly applied, that the dispute did not involve *prima facie* complex factual or legal issues, and that FIFA was therefore entitled to issue a proposal capable of becoming final and binding in the absence of a response. In this respect, the First Respondent relied on several CAS precedents and submitted that the Appellant's silence amounted to tacit acceptance of the proposal, akin to a settlement agreement, thereby preventing both the Appellant and the Panel from revisiting the merits of the dispute.
- In support of the foregoing, it further contended that the Appellant had been duly notified of FIFA's Proposal through the FIFA Legal Portal, had acknowledged awareness of the FIFA proceedings, and failed to substantiate any alleged technical impediment preventing access to the portal. It also submitted that any expectation of an amicable settlement could not justify the Appellant's failure to respond within the prescribed deadline.
- Subsidiarily, should the Panel decide to examine the merits, the First Respondent submitted that the Confirmation Letter should be fully upheld. It argued that the accelerated amounts did not constitute a penalty or negative interest but merely represented the early maturity of amounts already contractually due, and that the acceleration clause could validly operate together with contractual penalties and interest. It further maintained that the 18% interest rate confirmed by FIFA was permissible under Swiss law and CAS jurisprudence.
- The First Respondent additionally submitted that the interpretation of Clauses 7.2 and 7.2.1 of the Transfer Agreement necessarily led to the conclusion that accelerated instalments formed part of the "amount due" and were subject to both the contractual penalty and interest. It rejected the Appellant's reliance on the principle of *contra proferentem*, arguing that the relevant contractual provisions were neither ambiguous nor incapable of determination.
- Furthermore, the First Respondent argued that it had no contractual obligation to issue an invoice as a condition precedent to payment of the transfer fee, maintaining that the invoicing requirement invoked by the Appellant applied only to the sell-on fee mechanism. According to the First Respondent, the Appellant was fully aware of both the amount due and the relevant bank details and had never requested an invoice before the payment deadline.
- With regard to the alleged partial payment of USD 400,000, the First Respondent submitted that it had not identified effective receipt of such amount prior to filing the FIFA claim, that the alleged payment remained conditional and could be cancelled, and that no agreement regarding partial payment had ever been reached between the parties. It further denied that any settlement negotiations had taken place.
- Finally, the First Respondent invoked the principle of *pacta sunt servanda*, submitting that the Appellant was bound to comply with the obligations freely assumed under the Transfer Agreement and that contractual stability should be upheld.

36. Lastly, in its Answer, FIFA made the following legal and factual observations:

- FIFA submitted that the appeal should be rejected in its entirety and that the Appealed Decision be confirmed, arguing that the Appellant was precluded from challenging the substance of FIFA's Proposal due to its failure to object within the prescribed deadline.
- Pursuant to Article 20 of the Procedural Rules Governing the Football Tribunal, the FIFA General Secretariat issued a proposal on 5 September 2025 in order to settle the dispute, setting a deadline until 22 September 2025 for the parties to either accept or reject it. FIFA emphasized that the Proposal expressly warned the parties that a failure to respond within the deadline would be deemed an acceptance and that, if accepted, a confirmation letter would be issued and considered a final and binding decision. According to FIFA, the Appellant failed to reject the Proposal or file any response to the First Respondent's claim within the prescribed deadline, with the consequence that the Proposal became final and binding and was formalized through the Confirmation Letter issued on 23 September 2025.
- The Appellant is precluded from challenging the merits of the contractual dispute before CAS because it had failed to react to the Proposal within the prescribed time limit. FIFA maintained that Article 20 of the Procedural Rules clearly establishes that a failure to respond qualifies as tacit acceptance and that the resulting confirmation letter constitutes a final and binding decision. It further argued that the Proposal mechanism was introduced to promote procedural economy and facilitate the swift resolution of non-complex disputes and had proven effective in practice, including in disputes before the PSC.
- FIFA further submitted that its administration enjoys broad discretion in determining, on a *prima facie* basis, whether a case involves complex factual or legal issues and is therefore suitable for a proposal under Article 20 of the Procedural Rules. In FIFA's view, the present matter, concerning the non-payment of a transfer fee instalment and the contractual consequences agreed between the parties, clearly did not raise *prima facie* complex issues. FIFA also emphasized that the Appellant had not challenged either the applicability of Article 20 of the Procedural Rules or FIFA's entitlement to issue the Proposal.
- In support of its position, FIFA relied extensively on CAS jurisprudence, arguing that Panels had consistently held that a party failing to object to a proposal within the prescribed deadline is legally deemed to have accepted it and is consequently precluded from revisiting the merits of the dispute. FIFA submitted that the Appellant's silence amounted to a waiver of its right to reject the Proposal and that allowing the Appellant to challenge its content at a later stage would undermine the purpose of the proposal mechanism and violate the principle of *venire contra factum proprium*, insofar as the Appellant's conduct had created legitimate expectations that the Proposal had been accepted and had become final and binding. FIFA further argued that CAS jurisprudence equates the tacit acceptance of a proposal to the conclusion of a settlement agreement, which cannot subsequently be withdrawn at will.
- FIFA also addressed the Appellant's allegations, raised in its Statement of Appeal, that technical reasons prevented timely access to the FIFA Legal Portal and that the Appellant believed the First Respondent would not pursue the proceedings while negotiations were ongoing. FIFA submitted that such allegations were unsupported by evidence, were not further developed in the Appeal Brief, and were insufficient to justify any departure from the procedural framework governing FIFA proposals.

- Finally, FIFA submitted that, in the unlikely event that the Panel were to consider the Proposal challengeable, the dispute would become strictly horizontal between the clubs, given that no relief had been sought against FIFA concerning the underlying contractual dispute. In such circumstances, FIFA refrained from commenting on the merits of the contractual dispute and simply referred to the Proposal and Confirmation Letter.

V. REQUESTS FOR RELIEF

37. In its Appeal Brief, Independiente requested that CAS rule as follows:

1. *Confirm the appeal brief is considered to have been filed in due time and form.*
- 2.- *Timely adopt an award revoking the appealed decision ruling that the correct amounts to be paid by Independiente to Red Bull are the following:*
 - *Capital amount: usd 2.600.000.-*
 - *Penalty 10% over first installment only usd 75.000.-*
 - *Interest at 17% p/a over usd 750.000.- from 01.07.2025 until 20.08.2025*
 - *Interest at 17% p/a over usd 350.000.- from 20.08.2025*
 - *Interest at 5% p/a over usd 2.250.000.- from 06.08.2025*
- 3.- *Imposing the costs of this arbitration on Red Bull, in particular due to its request to have a three-member panel, alongside with a contribution towards the costs of this party to be fixed by the tribunal.*

38. For its part, in its Answer, Red Bull Bragantino submits the following *petitum*:

- i. *Preliminarily, to dismiss Independiente's Appeal in its entirety;*
- ii. *Subsidiarily to "i", to totally dismiss the requests for relief made by Independiente within its Appeal; and*
- iii. *To order Independiente to cover all costs of the proceedings and reimburse the legal expenses borne by Independiente*

39. Lastly, in its Answer to the Appeal, FIFA requested the following prayers for relief:

- i. *To reject the Appellant's appeal in its entirety;*
- ii. *To confirm the Appealed Decision (i.e. the Confirmation Letter issued in the context of procedure FPSD-20550); and*
- iii. *To order the Appellant to bear all costs incurred with the present procedure and to cover all the legal expenses of FIFA related to the present procedure.*

VI. JURISDICTION

40. Article R47 of the CAS Code provides that:

"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".

41. In its Statement of Appeal and Appeal Brief, the Appellant invoked the jurisdiction of the CAS based on Article 50 of the FIFA Statutes; in turn, both Respondents have explicitly acknowledged the CAS's jurisdiction to adjudicate this appeal.
42. Thus, all Parties have accepted the jurisdiction of the CAS and have subsequently confirmed it by returning the duly signed Order of Procedure, which constitutes an additional and unequivocal acknowledgement of the jurisdiction of the CAS.
43. Accordingly, in light of the provisions of the Code and the FIFA Statutes and the positions of the Parties, the Panel finds that the CAS has full jurisdiction to hear this appeal.

VII. ADMISSIBILITY

44. Article R49 of the CAS Code provides that:

"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".

45. In line with this provision, Article 50(1) of the FIFA Statutes likewise provides for a 21-day time limit to lodge an appeal before the CAS following receipt of the decision.
46. In this case, the Appealed Decision was notified on 23 September 2025, and the Appellant filed its Statement of Appeal on 10 October 2025; *ergo*, within the prescribed time limit.
47. Thus, the Panel finds the appeal to be admissible.

VIII. APPLICABLE LAW

48. In relation to this matter, Article R58 of the Code establishes that:

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

49. As for the positions of the Parties: the Appellant referred to Article R58 of the Code and submitted that FIFA regulations apply to the dispute and, alternatively, Swiss law; the First Respondent submitted that the rules, statutes and regulations of FIFA are applicable to the dispute at hand and that Swiss law applies on a subsidiary basis, considering that FIFA is an association incorporated and headquartered in Zurich, Switzerland; finally, FIFA referred to Article 49(2) of the FIFA Statutes and that the Panel should primarily apply the various FIFA regulations and, additionally, Swiss law.
50. More specifically, FIFA submitted that, since the Appealed Decision had been rendered by the FIFA administration on behalf of the Football Tribunal, the applicable regulations

to the present matter were the FIFA Statutes and regulations, namely the January 2025 edition of the Regulations on the Status and Transfer of Players (the “**RSTP**”) and the January 2025 edition of the Procedural Rules Governing the Football Tribunal (the “**FIFA Procedural Rules**”), and that Swiss law should apply subsidiarily.

51. The normative architecture of Article R58 of the TAS Code provides two types of rules: (i) the primary rules, which are the "applicable regulations," and (ii) the subsidiary rules, which consist of (a) the rules chosen by the parties; or, (b) in the absence of such choice, the law of the country where the association, federation, or sports entity in question is domiciled; or, (c) in the absence of such law, the rules that the Panel deems appropriate.
52. In this appeal, there is no doubt that the primary rules are constituted by the "applicable regulations": *in casu*, the rules that make up the regulatory framework of FIFA; primordially, the FIFA Statutes, the RSTP (2025 ed.) and the FIFA Procedural Rules.
53. On the other hand, with regards to the subsidiary rules, there is no doubt that Swiss law applies in default of a choice by the Parties (*i.e.*, [b] “*the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled*”).
54. Finally, the Panel notes that Article 49(2) of the FIFA Statutes establishes that “*CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law*”.
55. In sum: The Panel finds that this dispute must be adjudicated based on the regulations of FIFA (*i.e.*, FIFA Statutes, RSTP – January 2025 ed. and FIFA Procedural Rules *et al*); and, subsidiarily, by Swiss law.

IX. MERITS

A) Demarcating the disputed and undisputed facts

56. As a preliminary and preparatory step toward the proper elucidation of the present appeal, the Panel must establish, *in primis*, an analytical demarcation between the disputed and the undisputed issues.
57. In this sense, there is no major dispute between the Parties regarding the following fundamental facts:
 - a) That Independiente and Red Bull Bragantino first signed a Loan Agreement involving the Player, which was subsequently followed by a Transfer Agreement that provided for the definitive transfer of the Player to Red Bull Bragantino;
 - b) That the total amount owed by Independiente for the definitive transfer of the Player was USD 3,000,000, payable in 4 instalments of USD 750,000 each;
 - c) That the First Instalment was payable on 30 June 2025 and that Independiente did not fulfil this payment in a timely manner;

- d) That a representative from Independiente (Mr Sciacaluga) and from Red Bull Bragantino (Mr Solleiro) had contacts; however, as will be seen below (*infra* j) and k)), there is a disagreement regarding the juridical implications of these contacts;
- e) That on 21 July 2025 Red Bull Bragantino sent a Default Notice putting Independiente in default and invoking the acceleration provision;
- f) That on 26 August 2025 Red Bull Bragantino lodged a claim before the PSC of the FIFA Football Tribunal, requesting the whole transfer fee plus interest and penalties;
- g) That on 5 September 2025 the FIFA General Secretariat proposed to settle the matter sending the Proposal to the Clubs;
- h) That neither Independiente nor Red Bull Bragantino presented any comments or objections to the Proposal within the time limit (*i.e.*, 22 September 2025);
- i) That on 23 September 2025 FIFA sent the clubs the Confirmation Letter ordering Independiente to pay USD 3,000,000 plus 18% interest p.a. over the amount of USD 750,000 as from 1 July 2025 and 18% interest p.a. over the amount of USD 2,250,000 as from 6 August 2025, plus USD 300,000 net as contractual penalty.

58. There is controversy or dispute between the Clubs, however, regarding the following fundamental facts:

- j) With regards to d) *supra*, Independiente alleges that these conversations gave the impression that a “deferral agreement” was reached between the Clubs regarding the First Instalment, something that is disputed by Red Bull Bragantino, which denies that any such deferral agreement was reached;
- k) Independiente alleges that in the course of the contacts d) *supra*, on 20 August 2025 its representative sent the representative of Red Bull Bragantino a WhatsApp communication, which included a screenshot of the relevant banking transfer printout (“SWIFT”), forwarding the partial payment of USD 400,000 for the First Instalment. With regards to this specific issue there is disagreement between the Clubs:
 - a. In its written presentations (*vide* Section VII ¶ 45 of its Answer), Red Bull Bragantino argued that: it was is a mere “alleged proof of payment”, that such payment had a “condition precedent” so that the payment “could be cancelled” and did not constitute a “valid proof of payment”; based on Independiente’s negligent conduct, Red Bull Bragantino reasonably understood that it was only a “promise of payment” from Independiente’s bank; Red Bull Bragantino had not identified receipt of any amount before initiating proceedings before the PSC; and the Clubs never agreed on a partial payment.
 - b. Independiente argued in its written submissions that the amount in question was sent and duly received by Red Bull Bragantino, and that the club “in good faith believed the payment was admitted and an agreement was reached in order to defer the remaining portion of the first instalment”.
 - c. Finally, when asked specifically by the Panel in the hearing, the legal representative of Red Bull Bragantino expressly acknowledged that the amount of USD 400,000 was in fact received by the Brazilian club.

B) Summary of the arguments and positions of the Parties

59. Based on its own interpretation of k) *supra*, Independiente holds that the amount owed for the transfer of the Player must consider and deduct this partial payment of USD

400,000; *i.e.*, the amount must be limited to USD 2,600,000 and not USD 3,000,000 as established in the Appealed Decision. Moreover, Independiente alleges that the penalty of 10% and the 18% *per annum* interest rate applies only to the First Instalment, and not to the entire accelerated amounts. With regards to the interest rate, Independiente holds that the maximum rate allowed by Swiss law is 17%, and regarding the interest rate for the accelerated amounts, the “customary” 5% rate must apply. Finally, Independiente alleges that the 18% interest and the acceleration clause cannot be accumulated, as this is excessive and not in line with Article 2 of the Swiss Civil Code (the “SCC”).

60. This entails that for Independiente the Appealed Decision must be modified to embody the following concepts and amounts:
- Capital - USD 2,600,000
 - Penalty 10% over the First Instalment - USD 75,000
 - Interest 17% over USD 750,000 from 1 July 2025 to 20 August 2025 and interest 17% over USD 350,000 from 20 August 2025
 - Interest 5% over USD 2,250,000 from 6 August 2025
61. In turn, Red Bull Bragantino argues that, as a preliminary matter, Independiente is precluded from disputing the FIFA Proposal, as FIFA was entitled to issue the Proposal, Independiente was duly notified, and had every chance of answering until 22 September 2025, but failed to do so. Consequently, according to CAS jurisprudence, Independiente is precluded from discussing the FIFA Proposal at this stage and the Panel is prevented from addressing the merits. Regarding the merits, Red Bull Bragantino states that the accelerated amounts are neither a penalty nor a negative interest, and that CAS jurisprudence has recognized that a penalty clause and an acceleration could (and in this case must) be triggered together. Regarding the 18% p.a. interest rate, FIFA has already determined its reduction from 24%, and 18% is accepted by Swiss law and CAS. Red Bull Bragantino also disputes Independiente’s interpretation of clauses 7.2 and 7.2.1 of the Transfer Agreement, and that once the accelerated amounts are due and payable, these instalments constitute the “amount due” which in accordance with clause 7.2 is the amount to be considered when calculating the penalty, and the *contra proferentem* rule is not applicable. Lastly, Red Bull Bragantino invokes the principle of *pacta sunt servanda*.
62. FIFA’s arguments are circumscribed to the preliminary matter of defending its system of proposals, as per Article 20 of the FIFA Procedural Rules. Noting that it is entitled to issue the Proposal, FIFA argues that in line with Swiss law, failure to respond qualifies as acceptance, and that the absence of a timely rejection by Independiente entails that the Proposal became final and binding in the Confirmation Letter. Independiente has waived its right to challenge the Proposal, and its appeal goes against the principle of *venire contra factum proprium*. Given Independiente’s silence, the Proposal became final and binding on 23 September 2025, and the appeal goes against the very essence of the entire system of proposals of FIFA. Moreover, Independiente’s tacit acceptance of the Proposal can be regarded as analogous to the conclusion of a settlement agreement and in any case, Independiente’s allegations are insufficient to justify a revision. Finally, insofar the Proposal can be challenged, the dispute would cease to have a ‘vertical’ component and would become purely ‘horizontal’; thus, FIFA refrains from commenting on the merits.

C) Legal issues to be elucidated by the Panel

63. Given this factual and legal framework, it seems crystalline that the fundamental issue to be addressed in this appeal is whether the Panel is precluded or in any legally relevant sense thwarted from reviewing the Appealed Decision due to Independiente's silence in the internal proceedings before FIFA. Relatedly, the acknowledgement by Red Bull Bragantino in the oral hearing of the partial payment of USD 400,000, raises the legal question of whether Article R57 and the *de novo* powers of CAS should have any impact on this appeal. Finally, in case that the Panel finds that it is not precluded from reviewing the Appealed Decision, it must embark on an analysis of the merits: must the partial payment be deducted? Does the penalty of 10% and the contractually fixed interest rate apply solely to the First Instalment or rather to the entire transfer amount, and must the 18% interest rate be reduced to 17%? What is the applicable interest rate to the other amounts owed?
64. Thus, with these facts established and the controversy analytically demarcated, the Panel proposes the following *iter* for elucidating this appeal:

- **First legal issue:** *Is the Panel precluded or in any legally relevant sense prevented from reviewing the Appealed Decision (i.e., the Confirmation Letter) due to the Appellant's silence vis-à-vis the Proposal during the proceedings before FIFA?*

In case the answer is affirmative, then the appeal must be dismissed.

- **Second legal issue(s):** But only in case the answer to the first issue is negative, the Panel must address the following issues:
 - *Must the partial payment allegedly made by Independiente be deducted from the amount contained in the Appealed Decision?*
 - *Does the 10% penalty apply solely to the First Instalment or rather to the entire Fixed Transfer Amount? And: does the 18% per annum rate established in the Appealed Decision apply only to the First Instalment, and should it be reduced to 17%?*
 - *What is the applicable interest rate for the other amounts owed by Independiente?*

65. In the following paragraphs the Panel will address these issues in detail.

- i. First legal issue:** *Is the Panel precluded or in any legally relevant sense prevented from reviewing the Appealed Decision (i.e., the Confirmation Letter) due to the Appellant's silence vis-à-vis the Proposal during the proceedings before FIFA?*

66. The Panel begins its analysis by citing the basic rule regarding proposals issued by FIFA, which is found in Article 20 of the FIFA Procedural Rules:

“Article 20: Proposal from the FIFA general secretariat

1. After determining that the claim is complete, in disputes without prima facie complex facts or legal issues, or in cases where this is clear established jurisprudence, the FIFA general secretariat may make a proposal to finalise the matter without a decision issued

by a chamber. Such proposal is without prejudice to any future decision issued by a chamber.

2. A party shall accept or reject the proposal within the time limit granted by the FIFA general secretariat.

3. A party that fails to respond to the proposal shall be deemed to have accepted it.

4. Where a proposal is accepted, a confirmation letter will be issued by the FIFA general secretariat. The confirmation letter shall be considered a final and binding decision pursuant to the relevant FIFA regulations.

5. Where a proposal is rejected, the respondent(s) must submit their response within the time limit indicated in the proposal.”

67. This rule is straightforward and does not necessitate in this case extensive interpretation: *in claris non fit interpretatio*. FIFA may issue a proposal in determined types of cases (e.g., cases of simple legal or factual issues or consolidated jurisprudence), giving the clubs a time limit to accept or reject the proposal. If a club fails to respond in that timeframe, it “*shall be deemed to have accepted it*”. Further, if the proposal is accepted – either explicitly or by its silence — a confirmation letter is issued by the FIFA general secretariat, and this proposal shall be considered a “final and binding decision” by FIFA.
68. *In casu*, the Appellant has not questioned the rationale and success of the proposal system nor FIFA’s discretion to issue such a proposal, nor the validity or reasonableness of Article 20 itself, and thus, it is unnecessary to dwell on these issues, highlighted by FIFA (¶¶ 32-49 of its Answer). The Appellant has also not challenged the idea that silence by the party is deemed as an acceptance, nor its intrinsic validity under Swiss law. Hence, the sole matter to be examined is whether this tacit acceptance precludes the affected club from objecting to the respective confirmation letter when appealing before CAS.
69. The Panel is aware of the CAS case law regarding Article 20 of the FIFA Procedural Rules, which was extensively cited both by Red Bull Bragantino and FIFA itself. In particular, the Panel summarizes the salient holdings of case CAS 2020/A/7252: silence precludes the affected club from subsequently challenging the amounts established in the confirmation letter; the *venire contra proprium factum* principle is applicable, which prevents the club from raising a defense it previously (tacitly) waived; and also, tacit acceptance of the proposal is “akin to concluding a settlement agreement” (in French, *transaction*), which, once concluded, is legally binding upon the party (*vide* ¶¶ 159-162). Moreover, the Panel also recalls CAS 2022/A/9215, which broadly followed the holdings of this previous case. Further, the Panel also notes that the Sole Arbitrator in cases CAS 2020/A/7516 & 7517 mentioned the notion of a “settlement agreement”, which results in the “preclusion of looking into the merits of the case”, whilst also acknowledging that there are “limited grounds for revision” to avoid “injustice” (see further *infra* ¶ 90).
70. Applying these ideas to this case, it would appear – *in principle* — that the fate of the appeal is ineluctably sealed: for, it is not disputed that Independiente did not object to the Proposal, thereby tacitly accepting it and concluding an agreement “akin to a settlement”.

The key words here however are: *in principle*, that is, not unqualifiedly or unconditionally. Indeed: as CAS 2020/A/7516 & 7517 held, its reasoning was explicitly presented as an “in principle” reasoning, and thus there may indeed be “limited grounds for revision” of the “akin to settlement agreement” to avoid situations of “injustice”. Moreover, Article R57 and the *de novo* powers of review by CAS therein contemplated have an obvious impact and weight given the particular circumstances of this case.

71. The Panel notes at this juncture that under Swiss law, a *transaction* is considered as a valid legal means to settle a dispute between two parties in a binding manner². The Swiss Federal Tribunal (“SFT”) has held that “by means of a settlement agreement, parties involved resolve a dispute or uncertainty concerning a legal relationship through mutual concessions” (BGE 105 II 273; BGE 111 II 349). Swiss law distinguishes between two types of *transactions*. The *transaction judiciaire* is regulated by Articles 208 and 241 of the Swiss Code of Civil Procedure (“SCCP”); once arrived to, this *transaction* has a *res judicata* effect (*chose jugée*) and is subject to a limited review under *la voie de la révision* of Article 328 of the SCCP (as the SFT has expressly held: ATF 139 III 133). In turn, this *transaction judiciaire* must be distinguished from the *transaction extrajudiciaire*, which the SFT has found to be a contract subject to the general rules of the SCO (ATF 130 III 49) and that, as its name indicates, is attained *outside* courts.
72. Although the CAS case law cited by the Parties does mention that the act in question is “akin to a settlement agreement”, these cases do not further clarify to which type of *transaction* this agreement corresponds nor do they explore other conceptual implications of this idea, which can appear as problematic and have not been exhaustively analyzed in the jurisprudence: *e.g.*, should the alleged agreement be considered a *transaction simpliciter*, or rather an innominate contract that is only analogous to a *transaction*; what are the formal requisites for the validity of a *transaction*, and must they be strictly met (*e.g.*, a requirement of agreement in writing³); in what situations and under what circumstances may the agreement be reviewed; should an agreement attained before bodies of a private sports organization be considered analogous to an agreement arrived to before judicial courts (*i.e.*, a *transaction judiciaire*); etc.
73. Furthermore, and crucially, to all this it must be added that CAS Panels have a *de novo* power of review of the proceedings before the respective sports organization – a power of review which has a decisive impact on this specific case. To recall, this rule states that:

“Article R57 - Scope of Panel’s Review, Hearing

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

² See: J. HALDY, *Procédure civile Suisse*, Helbing Lichtenhahn, Basel, 2014, p. 159 and case law of the SFT cited therein.

³ Thus, for example, Article 241(1) of the SCCP establishes that a *transaction judiciaire* requires signature by the parties (“If notice of a settlement, acceptance of the claim or withdrawal of the action is placed on record in court, the parties must sign the record”).

74. As has been duly emphasized when authoritatively commenting this rule⁴, the first opportunity of affected parties to bring their case before a truly independent arbitral tribunal is, precisely, in CAS, since proceedings before internal bodies of sports federations must be considered as just that: the internal proceedings of a private legal person, and not a true and impartial judgment. Therefore, to the extent that the sports instance that rendered the decision appealed against “is not an arbitral institution but an (internal) body of a sports federation”, its “decision lacks a jurisdictional character”; moreover, even if it is “regulated by the appeals procedure”, in truth “the appeal procedure to CAS is not a genuine appeals procedure” but a “new procedure”⁵ – with all the subsequent legal implications which arise from this fundamental fact.
75. Furthermore, this *de novo* full power of review entails that CAS “admits new prayers for relief and new evidence and hears new legal arguments”; hence, CAS Panels must “evaluate all facts and legal issues involved in the dispute”⁶ (e.g., CAS 2008/A/1515).
76. In this appeal, the Parties have had the full opportunity to present their evidence and their legal arguments in accordance with Article R57 of the Code, including the *crucial fact* – which was only admitted by Red Bull Bragantino in the oral hearing, and only when asked by the Panel — that a partial payment of USD 400,000 had effectively been made by Independiente. Once this fact has been established as undisputed, the Panel finds that the Appealed Decision simply cannot stand: it would amount not only to a decision that ignores fundamental facts regarding the relationship between the Clubs and the terms they freely agreed to – flouting the idea of *pacta sunt servanda* – but would in the final analysis constitute a paradigmatic instance of unjust enrichment in part of Red Bull Bragantino.
77. For: it is incontrovertible that if this payment is not discounted from the Appealed Decision, then Red Bull Bragantino would be receiving USD 3,400,000 for the total transfer amount and not the USD 3,000,000 which was amount originally agreed. As such, the decision would not respect the principle of *pacta sunt servanda*, which “dominates Swiss law of contractual obligations”⁷ and which has been repeatedly, and rightly, recognized by CAS jurisprudence (e.g., CAS 2007/A/1328; CAS 2017/A/5213; CAS 2017/A/5182; CAS 2010/A/2144; CAS 2012/A/3035). The Clubs agreed to USD 3,000,000, not 3,400,000: to order to pay more than originally agreed is simply not *pacta sunt servanda*. Moreover, this difference of USD 400,000 constitutes an enrichment by Red Bull Bragantino which, in a strict technical sense, would lack a legal basis (“*sans cause légitime*” as Article 62 of the SCO puts it, without a “legal ground”) and would be, *pro tanto*, unjustified or illegitimate (“*enrichissement illégitime*” in the terms of Articles 62 et seq. SCO). Any decision which allows for an unjust enrichment would be *stricto sensu* unconscionable and cannot be entertained by the Panel.
78. The Panel highlights that the SFT has held the principle of *pacta sunt servanda* forms part of substantive public policy (*vide ex multis* ATF 4A_4/2010 or ATF 4A_176/2008)

⁴ MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport, Commentary, cases and materials*, Kluwer, 2015, p. 505, which quotes the judgment of STF: ATF 4A_386/2010.

⁵ MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport, Commentary, cases and materials*, Kluwer, 2015, p. 505.

⁶ MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport, Commentary, cases and materials*, Kluwer, 2015, pp. 507-508 and abundant cases therein cited.

⁷ TERCIER/PICHONNAZ, *Le droit des obligations*, 6e. edition, Schulthess, Ginebra, 2019, pp. 235/135/141.

in the context of Article 192(2)(e) of the Swiss Private International Law Act (“PILA”). Moreover, although there appears to be no decisive position of the SFT regarding the principle of unjust enrichment (see e.g. 4A_492/2021⁸), for the Panel it is manifest that no arbitral award can conscionably embody an unjustified enrichment which is in any event contrary to the *pacta sunt servanda* principle.

79. Thus, fully in line with the *de novo* powers enshrined in Article R57 of the Code, and in consideration of the express acknowledgment made by Red Bull Bragantino in the oral hearing, the Panel finds that the Appealed Decision must be revoked in so far as it ordered in its first item the payment of USD 3,000,000 for the total transfer amount, and modified to crystalize that the amount payable for the Fixed Transfer Fee is USD 2,600,000.
80. It is of course true that this conclusive fact was not available to the relevant FIFA bodies (*i.e.*, the Football Tribunal and General Secretariat) at the moment of issuing both the Proposal and the Confirmation Letter. The Panel strongly emphasizes and underlines that FIFA cannot be faulted, in any sense, for this omission, and that its actions in this regard were unimpeachable – something that inevitably has an implication when adjudicating costs and contribution to legal fees (*infra* X COSTS). However, given the *de novo* powers of CAS when hearing an appeal, it cannot be doubted that with this fresh evidence at hand, the Appealed Decision must be modified to reflect both the factual reality of the case and the inherent justice of the resulting decision.
81. Does this conclusion reached by the Panel contradict or in any other sense fails to cohere with the above quoted line of jurisprudential developments by other CAS Panels – *i.e.*, the preclusion, *venire contra proprium factum* and settlement (*transaction*) arguments?
82. The answer to this question must be an emphatic: no.
83. Firstly, while it is true that Independiente failed to mention the partial payment before the relevant FIFA bodies, it is also true that the other party, Red Bull Bragantino, also glaringly failed to inform about this payment, even though it had the opportunity to do so⁹ – and in fact, continued in this stance even *after* the Confirmation Letter was appealed

⁸ In which the SFT stated that: “10.3. It must be noted from the outset that the SFT has never ruled on whether the principle of compensation for damages, according to which the award of damages must never lead to the enrichment of the injured party, falls within the scope of substantive public policy referred to in Article 190(2)(e) of PILA. In its judgment 4P.7/1998, rendered on July 17, 1998, this Court left this question undecided. It did, however, indicate that the prohibition against the enrichment of the injured party constituted a fundamental principle of the Swiss legal system and fell within the scope of Swiss public policy (para. 3c/aa). It nevertheless observed that legal scholars did not consider the prohibition against the enrichment of the injured party to be a concept belonging to international public policy (para. 3c/aa). Moreover, the fact that a legal principle falls under Swiss public policy does not necessarily imply that a violation of that principle would contravene the public policy of Art. 190(2)(e) PILA (see 4A_536/2016)” (Free translation by the Panel).

⁹ In fact, the first procedural moment in which payment was expressly recognized was only in the oral hearing before CAS, and only *after* an explicit question by the Panel. More specifically, when first asked by the Panel, the representative of Red Bull Bragantino stated that the club *did* receive a partial payment, but after the claim was filed before FIFA; however, when asked again by the Panel to indicate the precise moment in which payment was received, it stated that it “*did not have that information*” (and, according to Article 8 of the SCC, the *onus* of “*proving the existence of an alleged fact shall rest on the person who derives rights from that fact*”). In any case, given the banking details accompanied by the Appellant (see *supra* ¶ 58 k)), the decisive fact remains that the SWIFT information was sent on 20 August 2025 – *i.e.*, *before* the filing of the claim – and that Red Bull Bragantino was *fully aware* of this; and, in any event, it is reasonable to infer –

before CAS. The Panel notes that it is not clear – from the jurisprudential line of cases cited above – whether the “*preclusion*” argument and the *venire contra proprium factum* argument are two conceptually different, or independent, legal arguments, or rather two ways of expressing the same idea (*i.e.*, the same concept expressed in two different ways). Nevertheless, the Panel finds it is unnecessary to express a definite opinion on this matter, since it seems clear that the *ratio juris* underlying these arguments is to thwart an exercise of a right in contradiction with the idea of good faith and hence to protect the “*legitimate*” expectations of the other party: neither of which obtain *in casu*.

84. Indeed: in Swiss law, the *topos* of the *venire contra proprium factum* has been developed in the context of Article 2 of the SCC, which enshrines the good faith principle. Moreover, as developed in STF and CAS jurisprudence, the “*legitimate*” character of the expectation of the affected party is undisputed:

“According to established case law, the legal order does not protect contradictory conduct when the prior behavior of one party has instilled in the other party a legitimate expectation that led them to actions which prove detrimental once the situation has changed (ATF 115 II 331; ATF 110 II 494; ATF 106 II 320” (ATF 133 I 149) (free translation and emphasis by the Panel).

“the doctrine, recognized by Swiss law, providing that where the conduct of one party has induced legitimate expectations in another party, the first party is estopped from changing its course of action to the detriment of the second party” (CAS 2008/O/1455) (emphasis added by the Panel).

85. Hence, the underlying *ratio* of the CAS cases cited by Red Bull Bragantino and FIFA is that a debtor’s silence upon receipt of a proposal creates an expectation of acceptance on the part of the creditor, which would be incompatible with a subsequent change of position by the same debtor. As such, this holding is sound and unimpeachable *in genere* – *i.e.*, as a matter of principle – and is fully adhered to by this Panel. In general, then, the *venire* and *preclusion* doctrines apply, and the debtor cannot change its position. However, as is also made clear by the two precedents (of the SFT and CAS) regarding the *venire* principle, this idea *presupposes* that the other party was acting in good faith and thus had not only a mere expectation, but a “*legitimate*” expectation, to be protected by the law. Therefore, the *preclusion* and *venire* doctrines presuppose that the party invoking them acted in good faith and had a “*legitimate*” expectation to be secured.
86. But no such good faith or legitimate interest can be found in the context of this case in the *caput* of the First Respondent. To the contrary, to fail to inform that a payment was received; to accept a decision that leads to an unjust enrichment and goes *ultra vires* to the *pactum* initially agreed; and even to continue defending this unjust enrichment during an appeal procedure in CAS – only admitting payment when expressly asked by the Panel – seems to be a clear instance of a conduct without a “*legitimate*” expectation to protect.
87. Hence, given its specific factual circumstances, the *ratio* for applying the *preclusion* and *venire contra proprium factum* ideas as developed in the above cited line of precedents is

given standard banking practice – that payment was received either before the filing of the claim but certainly *before* the Proposal was sent by FIFA.

entirely missing in this particular case, as there is no good faith or legitimate interest to be found in Red Bull Bragantino being paid a total of USD 3,400,000 for the transfer – quite the contrary, it would be an illegitimate interest crystallized by an unjust enrichment that is furthermore contrary to the terms originally agreed upon by the parties.

88. Secondly, regarding the settlement or *transaction* argument, the Panel notes that it appears that this is not an argument which has been extensively or profoundly developed in the relevant CAS jurisprudence, but offered as an additional – and even tentative, as the words “akin” and “a parallel” seem to imply – argument for the (sound and fair) idea of impeding bad faith debtors from unduly thwarting, through a subreptitious change in its legal position and subsequent litigation, a creditor’s legitimate interest in being paid. In other words, it is not clear if this is an independent or definite holding, nor do the precedents analyze *in extenso* its potentially problematic aspects. More specifically, and crucially, these precedents do not analyze, and much less adjudicate, on the key question of the relationship between the purported settlement agreement and the *de novo* powers of Article R57.
89. In any case, and without prejudice to these matters, as has already been highlighted above, the argument itself was explicitly developed in the relevant cases as an “in principle” idea; that is, as an idea that is by definition subject to exceptions to avoid situations of injustice.
90. In effect, the Sole Arbitrator in cases CAS 2020/A/7516 & CAS 2020/A/7517, expressly acknowledged this:

*“The Sole Arbitrator finds that the implicit acceptance of the Proposal (...) is akin to concluding a settlement agreement, i.e., once concluded, a party to the settlement cannot withdraw its consent from the settlement agreement at will, but it is, **in principle**, bound by it. As such, a parallel can be drawn to a settlement agreement in Swiss court, which mechanism is modeled on SCCP, and which results in the preclusion of looking into the merits of the case. Such approach is subject to limited grounds for revision under Article 328 CPC, to have such decision reviewed in order to **protect a party from great injustice where the party did not do anything but remaining silent**. However, no such grounds have been submitted in the present case”* (emphasis added by the Panel).

91. In other words, if “grounds for revision” in order “to protect a party from great injustice” are presented, then the agreement that is “akin to a settlement” *may be reviewed*. This is precisely what happens *in casu*: grounds for revision were validly presented by the Appellant, and they lead to the avoidance of a situation of injustice – i.e., an unjust enrichment contrary to *pacta sunt servanda*. Thus, the Panel notes that even circumscribing its analysis to strictly applying the reasoning found in the precedents discussed by the Parties, the exceptions to the idea of reviewing the Confirmation Letter “as if” a settlement agreement are handsomely met in this specific case.
92. This finding in turn entails that it is unnecessary for the Panel to further dwell on the potentially problematic issues already mentioned above (*supra* ¶ 72); and even whether a valid “agreement” can be said to have been reached in a case in which there is a patent

discordance between the alleged agreement [USD 3,000,000] and the real factual substratum [USD 3,400,000]). Again, it is not necessary to pass judgment on these issues, since adherence to the exceptions that the precedents relied upon by the Parties expressly foresee – irrespective of their conceptual grounds — allows for the review of the Proposal by the Panel, to which the *de novo* powers of Article R57 give ulterior and decisive force.

93. In sum: given the *de novo* powers granted by Article R57 of the Code and the fact, established as undisputed in the oral hearing, that Independiente did make a partial payment of USD 400,000, the Appealed Decision must be revoked in this point and modified to reflect that the total Fixed Transfer Fee to be paid by Independiente is USD 2,600,000. Failure to do so would entail that the *pacta sunt servanda* principle would not be respected and would allow for an enrichment which has no legal basis and would be inherently unjust. Moreover, this finding is fully in line with the *ratio* of the cases cited by the Respondents, as these cases presuppose a good faith conduct and a “legitimate” expectation on the creditor – both of which here missing — and even with the jurisprudence which finds the tacit acceptance as “akin to a settlement agreement”, as it allows for limited grounds of revision in situations of “injustice”, such as this one.

94. Thus, given the specific factual context of this case, the Panel is not precluded or in any legally significant sense thwarted from reviewing the Appealed Decision and the underlying Proposal.

○ **Second legal issue(s):** Given that the answer to the first issue is negative:

○ *Must the partial payment allegedly made by Independiente be deducted from the amount contained in the Appealed Decision?*

95. For the reasons fully elaborated above, this issue can be summarily disposed, as it is adamantly clear that the Appealed Decision must be modified to reflect the deduction of the amount of USD 400,000 from the total amount of USD 3,000,000.

96. Thus, Independiente must be ordered to pay USD 2,600,000 for the Fixed Transfer Fee.

○ *Does the 10% penalty apply solely to the First Instalment or rather to the entire transfer amount? And: does the 18% rate established in the Appealed Decision apply only to the First Instalment and should it be reduced to 17%?*

97. The Appealed Decision interpreted that the penalty of 10% contemplated in clause 7.2 of the Transfer Agreement applies not only to the First Instalment but to the whole accelerated amounts (*i.e.*, to the Second, Third and Fourth Instalments). Independiente argues that the 10% penalty must only apply to the First Instalment; the difference, as can be inferred, is not insignificant: USD 225,000 less if the Appellant’s argument is sound. Independiente further alleges that the 18% interest rate must only apply to the First Instalment, and that in any case it must be reduced to 17% to respect Swiss law.

98. There is no dispute that Independiente failed to pay in a timely manner the First Instalment. There is also no dispute that the 10% penalty applies to this First Instalment;

the dispute is whether the 10% penalty also applies to the other instalments, once the acceleration provision of Clause 7.2.1 is triggered. In other words, there is a disagreement with respect to the provisions of Clauses 7.2 and 7.2.1, which must be solved by application of the rules of Swiss law for contract interpretation. Moreover, Red Bull Bragantino has not questioned the reduction by the Appealed Decision of the contractually agreed rate to 18%, but objects to its further reduction to 17%.

99. The fundamental rule in this matter is Article 18 of the SCO:

“When assessing the form and clauses of a contract, the true and common intention of the parties must be ascertained, without dwelling on inexact expressions or designations that they may have used, whether by mistake or to disguise the true nature of the agreement” (free translation by the Panel).

100. The SFT has copious and consistent case law on this rule.

101. In general, the SFT has held that, when faced with an interpretative or hermeneutic question, the judge/arbitrator must proceed “in two stages”: first, by determining the so-called “subjective interpretation” and, only if this fails to yield a meaning, it must proceed to the “objective interpretation” according to the principle of trust or *confiance/Vertrauensprinzip* (*ex multis*: ATF 121 III 118), which is deduced from the rules of “good faith” (ATF 144 III 93). This precedence of subjective interpretation over objective interpretation is known as its “*priorité*” (ATF 144 III 93 or ATF 138 III 659).

102. Subjective interpretation consists of seeking the “true and common intention” of the parties, according to their declarations of will, but also according to the general context of the relationship, in particular, the subsequent conduct of the parties (ATF 144 III 93), without dwelling on the inaccurate expressions and designations that the parties may have used (ATF 140 III 86). To resolve the issue of subjective interpretation, there are various “means of interpretation”¹⁰ accepted, such as “the text”, as well as “complementary means”, including “the place, the time and the circumstances” (ATF 144 III 93), and the behavior of the parties, both in the negotiations and subsequently (ATF 144 II 93 or ATF 140 III 86). On the other hand, the SFT has held that even though the wording “plays an important role,” interpretation is not limited to the text of the contract – indeed, the SFT has held that purely literal interpretation is “prohibited” in the context of Article 18 of the SCO (ATF 127 III 444) – since even when the interpretation seems clear at first glance, it may arise from circumstances that the text does not exactly reflect the true meaning of the agreement (ATF 127 III 444).

103. Conversely, objective interpretation is carried out according to the principle of “trust”, attributing to a party the objective meaning of its statement or behavior according to the rules of good faith (ATF 144 III 93, ATF 133 III 61 or ATF 131 III 606).

104. The task of the Panel is thus to first interpret the terms of the Transfer Agreement to determine if a common intention is found (*i.e.*, subjective interpretation); and, but only if

¹⁰ See TERCIER/ PICHONNAZ, *Le droit des obligations*, 6e. edition, Schulthess, 2019, p. 238 and cases cited therein.

this hermeneutic exercise fails to yield a meaning, an interpretation according to the principle of trust (*i.e.*, objective interpretation) must be undertaken.

105. The hermeneutic exegesis must begin with the clauses of the Transfer Agreement:

“7.2. If INDEPENDIENTE fails to timely pay any compensation agreed under Agreement, INDEPENDIENTE shall be subject to the payment in favor of RBB of the amount due plus a fine equivalent to 10% (ten per cent) of the amount due and INDEPENDIENTE shall be subject to payment of interest of 2% (two per cent) per month calculated from the date of default until actual payment.

7.2.1. In the event of INDEPENDIENTE continued default following written communication from RBB, all outstanding installments shall immediately become due and payable in full. INDEPENDIENTE shall be required to pay the entire Fixed Transfer Fee within 10 (ten) business days of the date of this Notice”.

106. Whilst the Panel notes the prohibition of a strictly literal interpretation, it also follows the holding of the SFT in 4A 124/2014, citing cases ATF 140 III 134 and 135 III 295:

*“Even when it appears clear, the meaning of a text agreed upon by the parties is not necessarily decisive, since purely literal interpretation is prohibited (Art. 18, para. 1 CO). When the content of a contractual clause seems clear at first glance, it may follow, from other terms of the contract, the purpose pursued by the parties, or other circumstances, that the text of that clause does not accurately reflect the meaning of the agreement concluded. However, **there is no reason to depart from the literal meaning of the text adopted by the contracting parties if there are no well-founded reasons to believe that it does not correspond to their intentions** (ATF 140 III 134 consid. 3.2; 135 III 295 consid. 5.2 p. 1).” 302 and cited judgments)”* (emphasis and free translation by the Panel).

107. For the Panel, the meaning of Clauses 7.2 and 7.2.1 is straightforward, and there is no need to depart from it.
108. Clauses 7.2 and 7.2.1 clearly establish a two-step mechanism with two different *factual situations* and two different *legal consequences*. Clause 7.2 establishes the first factual situation and first legal consequence: if Independiente fails to pay any compensation – in this case, the First Instalment – then the 10% fine and interest shall be payable upon that compensation owed. This is the first step. The second step in turn foresees one factual situation – “continued default” – but only one legal consequence: the activation of the acceleration provision. Thus, while Clause 7.2. expressly mentions the relevant legal consequences of the penalty of 10% and the interest of 2%, Clause 7.2.1 does not mention any other legal consequence but acceleration. As such, given the particular text of this Transfer Agreement, the only consequence of “continued default” is acceleration. Of course, had Clause 7.2.1 included a reference *e.g.* to “*pay the entire amounts, plus 10% penalty and 2% interest*”, the conclusion would be different. But the Panel is analyzing *these* terms agreed to by *these* Clubs; and *these* terms establish two different consequences for non-payment: in case of non-payment of one instalment, a penalty of 10% and 2% interest rate; and if this non-payment is not remedied within 10 days, then the only legal consequence is the activation of the acceleration mechanism. Two factual situations, two different consequences agreed to.

109. Moreover, this straightforward reading, inferable from the text of the clauses, is further supported by the previous binding relation between the Clubs; specifically, the Loan Agreement executed by Independiente and Red Bull Bragantino.
110. In this sense, Clause 6.6 of the Loan Agreement is identical to Clause 7.1 of the Transfer Agreement; but there is no provision such as Clause 7.2.1 of the Transfer Agreement in the Loan Agreement. It can be thus reasonably inferred the Clubs decided to add the possibility of acceleration to their relationship, and yet, by inserting this provision in a separate paragraph, and not mentioning that the penalty and interest rate applies to all amounts and not only the one in default – even though they had every chance to do it – their conscious decision was to limit the penalty and rate to the amount specifically in default, as 7.2 establishes. The Panel here recalls that the previous behavior of the parties, both in the negotiations and subsequently (ATF 144 II 93 or ATF 140 III 86), is an accepted canon for determining the common intention in Swiss law, and in this case this antecedent – the Loan Agreement – reinforces the literal meaning of the clause: the penalty and rate applies solely to the unpaid amounts, and the acceleration applies to the other instalments, without a penalty or fixed interest rate.
111. In sum: the Panel is of the interpretation that the true and common intention of the Clubs, as expressed in Clauses 7.2 and 7.2.1 of the Transfer Agreement, is that the penalty and fixed interest rate applies to the amount which was unpaid – *i.e.*, the First Instalment – and not to the accelerated amounts – *i.e.*, the Second, Third and Fourth Instalment – which are governed solely by Clause 7.2.1, a text that does not foresee the legal consequence of a penalty and contractually fixed interest rate but only one consequence: acceleration.
112. With regards to the rate which was set by the Appealed Decision at 18% per annum, the Panel is mindful at this juncture of the jurisprudence of the SFT regarding interest rates, and the CAS jurisprudence cited by the Appellant, and further notes the holding of the CAS Panel in CAS 2010/A/2128, which states that an interest rate of 18% to 20% would be considered as usury in Swiss law (*vide* ¶ 109 and cases of the SFT cited in footnote 12). In this sense, the Panel deems that in order to avoid any possible doubt, the pertinent rate should be fixed at 17% per annum, applicable solely to the First Instalment.
113. In conclusion: the Panel finds that the penalty of 10%, foreseen in Clause 7.2, applies solely to the compensation owed at the time of the Default Notice: USD 750,000. Thus, the amount to be paid by Independiente in this concept is USD 75,000.
114. Regarding the interest rate, for the amount of USD 750,000, the 18% fixed in the Appealed Decision must be modified and reduced to 17%, with *dies a quo* 1 July 2025 and *dies ad quem* 20 August 2025 (*i.e.*, the date in which Red Bull Bragantino received the copy of the banking SWIFT); for the remaining amount of USD 350,000, after the partial payment is accounted for, the applicable rate is: 17% p.a. with *dies a quo* 20 August 2025 until date of total and effective payment.
- *What is the applicable interest rate for the other amounts owed by Independiente?*

115. Given the previous findings, this matter may also be summarily adjudged; in effect, since the Panel has found that the interest rate established in Clause 7.1 only applies to the First Instalment, this entails that there is no contractually fixed rate for the other amounts owed. This in turn makes the default provision of Article 104(1) SCO automatically applicable:

“1. A debtor in default on payment of a pecuniary debt must pay default interest of 5% p.a. even where a lower rate of interest was stipulated by contract” (free translation by the Panel).

116. Thus, the pertinent interest rate for the other amounts owed under the Transfer Agreement – *i.e.*, the Second to Fourth Instalments – is 5% per annum. This interest rate applies to the Second, Third and Fourth Instalments, *i.e.*, USD 2,250,000. The *dies a quo* here must be established from the date after the acceleration was triggered: 6 August 2026.

117. Independiente must thence pay the amount of USD 2,250,000 plus 5% interest *per annum* with *dies a quo* 6 August 2025 until date of total and effective payment.

○ **Conclusion:**

118. The corollary of these considerations is that the Appealed Decision (*i.e.*, the Confirmation Letter) must be modified to embody the following amounts to be paid by Independiente to Red Bull Bragantino:

- USD 2,600,000 net as outstanding remuneration plus interest as follows:
 - 17 % interest p.a. over the amount of USD 750,000 net as from 1 July 2025 until the 20 August 2025;
 - 17% interest p.a. over the amount of USD 350,000 net as from 20 August 2025 until the date of effective payment;
 - 5% interest p.a. over the amount of USD 2,250,000 net as from 6 August 2025 until the date of effective payment;
- USD 75,000 net as contractual penalty.

X. COSTS

(...)

ON THESE GROUNDS

The Court of Arbitration for Sports rules as follows:

1. The appeal introduced by Club Atlético Independiente against Red Bull Bragantino and FIFA, with respect to the Confirmation Letter issued by the FIFA Football Tribunal (Ref. No. FPSD-20550) is upheld.
2. The Confirmation Letter issued by the FIFA Football Tribunal (Ref. No. FPSD-20550) is modified in the following terms:

“The Respondent, Club Independiente, shall pay the Claimant, Red Bull Bragantino - SP:

- USD 2,600,000 net as outstanding remuneration plus interest as follows:

- 17 % interest p.a. over the amount of USD 750,000 net as from 1 July 2025 until 20 August 2025;

- 17% interest p.a. over the amount of USD 350,000 net as from 20 August 2025 until the date of effective payment;

- 5% interest p.a. over the amount of USD 2,250,000 net as from 6 August 2025 until the date of effective payment;

- USD 75,000 net as contractual penalty.

Payment (including any applicable interest) shall be made within 45 days as from notification of the confirmation letter.”

3. (...).

4. (...).

5. To dismiss all other requests submitted by the Parties.

Seat of arbitration: Lausanne, Switzerland
17 September 2026

THE COURT OF ARBITRATION FOR SPORT

Roberto Moreno Rodríguez Alcalá
President of the Panel

João Nogueira Da Rocha
Arbitrator

Kwadjo Adjepong OBE
Arbitrator