Arbitration CAS 2022/A/8679 Zamalek SC v. Ferjani Sassi & Al-Duhail SC, award of 27 March 2023

Panel: Mr Manfred Nan (The Netherlands), President; Mr Patrick Grandjean (Switzerland); Mr José Juan Pinto (Spain)

Football
Termination of an employment contract
Prohibition of retrospective effect
Bifurcation of the proceedings
Standing to be sued
Full power of review of the CAS
Referral to the previous instance
Nature of the referral decision

1. **As a matter of principle, a party cannot be disadvantaged by the implementation of a new set of procedural rules that are retrospectively governing the proceedings in the matter at hand insofar as a submission would have been filed validly under the previous set of procedural rules, but does not comply with one or more admissibility requirements set forth in the new set of procedural rules.**

2. **The CAS Code does not regulate under what conditions a panel may bifurcate the proceedings. Absent an agreement between the parties, a CAS panel is guided by Article 182(2) of the Swiss Private International Law Act, which provides that where the parties have not determined the procedure, the arbitral tribunal shall determine it to the extent necessary, either directly or by reference to a law or to arbitration rules. In this respect, the CAS panel may take inspiration from Article 125 of the Swiss Code of Civil Procedure, which provides that in order to simplify the proceedings, the court may, in particular: (a) limit the proceedings to individual issues or prayers for relief; (b) order the separation of jointly filed actions; (c) order the joinder of separately filed actions; and (d) separate the counterclaim from the main proceedings.**

3. **The question of who has standing to be sued, is a question of the merits implying that if the Respondents' standing to be sued is denied, then the appeal, albeit admissible, must be dismissed. A party has standing to be sued only if it has some stake in the dispute because something is sought against it, and is personally obliged by the dispute at stake. There is room to differentiate in respect of the standing to be sued depending on what kind of decision is being appealed. This flexible approach consists in differentiating between decisions entailing a vertical element ("vertical disputes") and decisions entailing a horizontal element ("horizontal disputes") whilst acknowledging that some decisions may entail both vertical and horizontal elements. An association's**

competence when deciding horizontal disputes is very different from the powers exercised in vertical disputes. The association only intervenes in horizontal disputes if the claim is brought before its association tribunal by one of the members. Thus, it cannot alter the relationship between the parties *ex officio*, but only intervenes upon a specific request of the parties. In addition – and very different from vertical disputes – once the association tribunal has exercised its (adjudicatory) function, the association's powers are at an end. In other words, as soon as the association (through its association tribunal) has exercised its jurisdictional powers, the only remaining persons entitled to freely dispose of the claim underlying the decision are the members.

4. **CAS panels decide *de novo* and therefore have full competence to review the facts and the law, without restriction. If this would be otherwise, procedural flaws at the previous instance could not be healed in a proceeding before the CAS. Based on Article R27 of the CAS Code, a federation cannot deviate from the full power of review of their case by the CAS.**

5. **Based on Article R57 of the CAS Code, a CAS panel is authorised to issue a new decision which replaces the appealed decision or annul the appealed decision and refer the case back to the previous instance. The CAS panel is afforded discretion in this respect and no particular request from any of the parties is required to choose for either of these options.**

6. **The decision of the appeal authority to annul the contested decision and to refer the case back to the authority of first instance for investigation and a new decision on the merits is qualified as an incidental decision, even though it puts an end to the appeal proceedings. It is justified to apply the same principle by analogy to the appeal procedure before the CAS, the idea being that, in this case too, the aim is to ensure that the Swiss Federal Tribunal only has to deal with a case once, subject to the exceptions allowed by the case law.**

I. PARTIES

1. Zamalek Sporting Club (the "Appellant" or "Zamalek") is a football club with its registered office in Giza, Egypt. Zamalek is registered with the Egyptian Football Association (the "EFA"), which is in turn affiliated to the *Fédération Internationale de Football Association* (the "FIFA").

2. Mr Ferjani Sassi (the "First Respondent" or the "Player") holds the Tunisian nationality and is a professional football player.

3. Al-Duhail Sporting Club (the "Second Respondent" or "Al-Duhail") is a football club with its registered office in Doha, Qatar. Al-Duhail is registered with the Qatar Football Association (the "QFA"), which is in turn also affiliated to FIFA.

4. The Player and Al-Duhail are hereinafter jointly referred to as the "Respondents" and together with Zamalek as the "Parties".

II. INTRODUCTION

5. The present arbitration concerns an appeal against a decision (the "Appealed Decision") rendered by the FIFA Dispute Resolution Chamber (the "FIFA DRC") in an employment-related dispute whereby a claim of the Player against Zamalek was upheld. Zamalek's response to the Player's claim as well as its counterclaim (the "Response/Counterclaim") directed at the Player and Al-Duhail was declared inadmissible.

6. Zamalek is seeking to overturn the Appealed Decision, that its Response/Counterclaim be declared admissible and that the Court of Arbitration for Sport (the "CAS") decides the contractual dispute in its favour, whereas the Respondents, *inter alia*, contest the admissibility of Zamalek's appeal and seek for a confirmation of the Appealed Decision.

III. FACTUAL BACKGROUND

7. 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 synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Background Facts

8. On 29 July 2018, the Player and Zamalek concluded an employment contract (the "Employment Contract"), valid for a period of three football seasons, until *"the end of the season: (2020-2021)"*.

9. On 15 May 2021, the Player's counsel sent a default notice to Zamalek, informing it*, inter alia*, that the Employment Contract would expire on 31 May 2021 and that Zamalek had overdue payables towards him in an amount of EUR 729,845.95, plus EUR 60,000 that would fall due on 26 May 2021. The Player's counsel granted Zamalek a period of 15 days to comply with its financial obligations towards the Player.

10. On 27 May 2021, Zamalek paid the Player an amount of EUR 250,000.

11. On 28 May 2021, Zamalek sent a letter to the Player, whereby it, *inter alia*, i) requested the Player's counsel to provide a valid power-of-attorney; ii) argued that the Player's Employment Contract would not expire on 31 May 2021, but at the end of the 2020/21 season; iii) indicated that the salary payments were delayed in accordance with the delayed start of the football season; iv) indicated that the salary payments due to the Player were gross amounts, not net amounts; v) indicated that Zamalek had imposed financial sanctions on the Player during the

2020/21 season in a total amount of EUR 180,963 and that these were *"never deducted from outstanding salaries due to the Player and they were all deducted from the due payments for the player"*; and vi) indicated that the newly installed Board of Directors of Zamalek confirmed that a further fine of EUR 166,225.63 was imposed on the Player for receiving a red card and being suspended for 6 matches, but that it *"may review this sanction upon the Player request"*. On this basis, Zamalek indicated that it considered that the outstanding amount due to the Player was EUR 251,576.41 and that it had therefore paid him an amount of EUR 250,000 net *"before starting negotiations for the new contract upon the request of the Player"* and that *"if the Player has any objection for the above-mentioned financial calculations and see that the amounts due to him, he should confirm that immediately and the Club invites him to a meeting at 5 pm on 29 May 2021 with the new board at the club premises"*.

12. On 5 June 2021, the Player's counsel replied to Zamalek, acknowledging receipt of the amount of EUR 250,000, but disputing the majority of Zamalek's arguments. The Player, *inter alia*, claimed that i) an amount of EUR 539,845.95 remained outstanding; ii) that the Employment Contract expired on 31 May 2021; and iii) that the Employment Contract was in any event terminated with just cause as per 1 June 2021 on the basis of Article 14bis FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP").

13. On an unspecified date, the Player signed an employment contract with Al-Duhail.

14. On 18 July 2021, when the Player had already filed a claim against Zamalek before the FIFA DRC as set forth in more detail below, Zamalek sent a letter to Al-Duhail, informing it that it had come to its attention that Al-Duhail had concluded an employment contract with the Player, but that the Player was still under contract with Zamalek.

B. Proceedings before the FIFA Dispute Resolution Chamber

15. On 16 July 2021, the Player filed a claim against Zamalek before the FIFA DRC, submitting, *inter alia*, the following prayers for relief:

> *"6.1. Net 230,967 EUR as outstanding remuneration in the season 2018/19, plus 5% interest p.a. as of 26.05.2019 until the date of effective payment;*
>
> *6.2. Net 104,352.52 EUR as outstanding remuneration in the season 2019/20, plus 5% interest p.a. as of 26.05.2020 until the date of effective payment;*
>
> *6.3. Net 167,342.11 EUR as the outstanding remainder of advance payment from the instalment of EUR 800,000, plus 5% interest p.a. as of 26.07.2020 until the date of effective payment;*
>
> *6.4 Net 367,740 as outstanding wages in the 2020/21 season, plus 5% interest p.a. until the date of effective payment as follows:*
>
> - *5% p.a. as of 26.08.2020 on the amount of net 1,935 EUR;*
> - *5% p.a. as of 26.09.2020 on the amount of net 1,935 EUR;*

- *5% p.a. as of 26.10.2020 on the amount of net 1,935 EUR;*
- *5% p.a. as of 26.11.2020 on the amount of net 1,935 EUR;*
- *5% p.a. as of 26.12.2020 on the amount of net 60,000 EUR;*
- *5% p.a. as of 26.01.2021 on the amount of net 60,000 EUR;*
- *5% p.a. as of 26.02.2021 on the amount of net 60,000 EUR;*
- *5% p.a. as of 26.03.2021 on the amount of net 60,000 EUR;*
- *5% p.a. as of 26.04.2021 on the amount of net 60,000 EUR;*
- *5% p.a. as of 26.05.2021 on the amount of net 60,000 EUR".*

16. On 11 August 2021, FIFA sent a letter to Zamalek with the Player in copy, providing, *inter alia,* as follows:

> *"We refer you to the matter of the reference and herewith provide you with a claim lodged against you before the* [FIFA DRC], *its annexes and relevant correspondence in this matter.*
>
> *In view of the foregoing, we kindly invite you to provide us with your position on the claim along with any documentary you deem useful in your support, by no later than 31 August 2021 to* [...]*@fifa.org in PDF format in accordance with art. 9 par. 1 lit. e) of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber* […]*"* (emphasis omitted by the Panel).

17. On 29 August 2021, Zamalek sent a letter to FIFA by means of which it requested FIFA to grant it an extension of 15 days to be counted as from 31 August 2021 (i.e. until 15 September 2021).

18. On 3 September 2021, FIFA sent a letter to Zamalek with the Player in copy, providing, *inter alia,* as follows:

> *"We refer to our previous correspondence regarding the aforementioned matter and acknowledge receipt of your latest correspondence, a copy of which we attach for the information of the* [Player].
>
> *In respect of your request for the extension of the time limit set out in our aforementioned correspondence, we kindly refer you to the principles of art. 16 par. 11 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber.*
>
> *In view of the above, we grant you an extension of the deadline until 15 September 2021"* (emphasis omitted by the Panel).

19. On 22 September 2021, FIFA received Zamalek's Response/Counterclaim from a DHL courier. In its Response/Counterclaim, Zamalek submitted, *inter alia*, the following prayers for relief:

> *"*[…]
>
> *ii. To fully accept* [Zamalek's] *counter-claim.*

1. *To issue a decision confirming the Player's breach*

2. *To issue a decision confirming the* [Al-Duhail's] *inducement*

3. *To order the Player as well as* [Al-Duhail] *to pay the following amounts*

   a. *337,447.32 EUR as residual value of the* [Employment Contract] *or in accordance with the Player's contract with* [Al-Duhail]

   b. *573,890 EUR as specificity of Sport*

   c. *2,200,000 EUR or an amount proportionate to the value of his signed contract with* [Al-Duhail] *as transfer fee*

[…]*".*

20. On 24 November 2021, the FIFA administration sent a letter to the Player and Zamalek, providing, *inter alia,* as follows:

> *"[W]e are in receipt of the correspondence sent by* [Zamalek] *in relation to the claim lodged by* [the Player]*, received by our services on 22 September 2021 by DHL. According to the documentation from DHL, such correspondence was sent on 20 September 2021, i.e. after expiry of the time-limit set by the FIFA administration (15 September 2021). A copy of such correspondence is attached via link below, for information purposes of the player.*
>
> *Taking into consideration the deadline set in our correspondence of 11 August 2021 and 3 September 2021, we would like to refer the parties to the content of art. 21 par. 1 of the Rules Governing the Procedures of the Football Tribunal, according to which, inter alia, submissions received outside the time limit shall not be taken into account.*
>
> *In view of the above we would like to inform the parties involved that the submission-phase of the present matter is now closed. This is, no further submissions from the parties will be admitted to the file (cf. art. 23 par. 1 of the Procedural Rules Governing the Football Tribunal* […].
>
> *Furthermore, please be informed that we will proceed to submit the present matter to the* [FIFA DRC] *for consideration and a formal decision on the occasion of its meeting on 9 December 2021".*

21. On 7 December 2021, Zamalek filed a letter with FIFA, indicating that it had filed a hardcopy of the Response/Counterclaim to FIFA on 15 September 2021 through ABS Express Courier Co. ("ABS"), an agency to DHL Co. ("DHL") and that the Response/Counterclaim was therefore to be considered as admissible. Zamalek also requested FIFA to postpone the meeting scheduled for 9 December 2021. Zamalek's letter was accompanied by way bills issued by ABS and DHL.

22. On 8 December 2021, the FIFA administration informed the Player and Zamalek, *inter alia*, as follows:

"[W]e would like to point out that it will be up to the Dispute Resolution Chamber if it will take into account the submitted documents or not and how it will proceed with the matter of reference".

23. On 9 December 2021, the FIFA DRC rendered the Appealed Decision, with the following operative part:

"1. The claim of the [Player]*, is partially accepted insofar it is admissible.*

2. [Zamalek] *has to pay to the* [Player]*, the following amount:*

- EUR 104,352.52 as outstanding remuneration plus 5% interest p.a. as from 1 June 2020 until the date of effective payment;

- EUR 167,342.11 as outstanding remuneration plus 5% interest p.a. as from 27 July 2020 until the date of effective payment;

- EUR 367,740 as outstanding remuneration plus 5% interest p.a. as from 1 June 2021 until the date of effective payment.

3. [Zamalek] *is ordered to remit the relevant tax certificates.*

4. Any further claims of the [Player] *are rejected.*

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

6. Pursuant to art. 24bis of the [FIFA RSTP] *(February 2021 edition), if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:*

1. [Zamalek] *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.

7. The consequences shall only be enforced at the request of the [Player] *in accordance with art. 24bis par. 7 and 8 and art. 24ter of the* [FIFA RSTP].

8. The counterclaim of [Zamalek] *is inadmissible.*

9. This decision is rendered without costs" (emphasis omitted by the Panel).

24. On 28 January 2022, the grounds of the Appealed Decision were communicated to the Parties, determining, *inter alia*, as follows:

- *"*[…] *[T]he DRC observed that* [Zamalek], *in spite of having been invited to do so, had, for its part, failed to present its* [Response/Counterclaim] *within the relevant time limit set by FIFA, i.e. 15 September 2021. In fact, the* [Response/Counterclaim] *was delivered to DHL on 20 September 2021 and arrived with FIFA on 22 September 2021.*

- *In this regard, the Chamber noted the allegation of* [Zamalek] *that it had delivered the* [Response/Counterclaim] *to a local courier on 15 September 2021, before it was given to DHL on 20 September 2021. The DRC analysed the documentation on file, especially the alleged receipt of the local courier and concluded that* [Zamalek] *did not submit sufficient proof of its allegation. The alleged receipt of the courier does not contain the date 15 September 2021 and there is no reference to the case.*

- *On account of the above, the DRC concluded that the* [Response/Counterclaim] *was submitted on 20 September 2021, the date it was dispatched to DHL and five days after the time-limit had expired.*

- *As a result, bearing in mind the Chamber's constant jurisprudence in this regard and in application of art. 21 of the Procedural Rules, the Chamber decided not to take into account the* [Response/Counterclaim] *and established that, in accordance with the aforementioned provision, it shall take a decision on the basis of those documents on file that were provided prior to the deadline set by FIFA, in casu, on the statements and documents presented by the* [Player].

- *On account of the above, the DRC declared the* [Response/Counterclaim] *inadmissible.*

- *The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the main question of the dispute is if the* [Player] *is entitled to the payment of certain outstanding remuneration.*

- *In this context, the Chamber acknowledged that its task was to determine, based on the evidence presented by the parties, whether the claimed amounts had in fact remained unpaid by* [Zamalek] *and, if so, whether the latter had a valid justification for not having complied with its financial obligations.*

- *The Chamber first noted that in the case at hand* [Zamalek] *bore the burden of proving that it indeed complied with the financial terms of the* [Employment Contract] *concluded between the parties.* […].

- [T]*he members of the Chamber maintained that* the [Player]*'s claim for outstanding remuneration remained uncontested by* [Zamalek]. […].

- *As a consequence, and in accordance with the general legal principle of pacta sunt servanda, the Chamber decided that* [Zamalek] *is liable to pay to the* [Player] *the amounts claimed as outstanding under the* [Employment Contract], *detailed as follows:*

    - *EUR 104,352.52, corresponding to outstanding remuneration resulting from the season 2019/2020;*

- *EUR 167,342.11 corresponding to the residual portion of his advance payment;*

- *EUR 367,740, corresponding to outstanding remuneration resulting from the season 2020/2021.*

➢ *In addition, taking into consideration the* [Player]*'s request as well as the constant practice of the Chamber in this regard, the latter decided to award the* [Player] *interest at the rate of 5% p.a. on the outstanding amounts as from the respective due dates until the date of effective payment.* […].

➢ *[B]earing in mind the above, the DRC decided that* [Zamalek] *must pay the full amount due (including all applicable interest) to the* [Player] *within 45 days of notification of the decision, failing which, at the request of the* [Player], *a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on* [Zamalek] *in accordance with art. 24bis par. 2, 4, and 7 of the Regulations".*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 18 February 2022, Zamalek filed a Statement of Appeal with CAS, challenging the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, Zamalek named the Player and Al-Duhail as respondents and requested that the proceedings be submitted to a three-member panel, subject to the respondents paying their share of the advance of costs, and otherwise to a sole arbitrator.

26. On 28 February and 2 March 2022 respectively, Al-Duhail and the Player requested that the proceedings be submitted to a three-member panel and nominated Mr José Juan Pinto, Attorney-at-Law in Barcelona, Spain, as arbitrator, but indicated that they would not pay their share of the advance of costs. In his submission, the Player also objected to the validity of the power-of-attorney provided by Zamalek's counsel.

27. On 2 March 2022, the CAS Court Office invited Zamalek to provide an up-to-date power-of-attorney by 7 March 2022.

28. On 4 March 2022, the CAS Court Office informed the Parties that the Deputy Division President of the Appeals Arbitration Division had decided that the proceedings would be submitted to a three-member panel. Zamalek was requested to nominate an arbitrator by 11 March 2022.

29. On 7 March 2022, FIFA renounced its right to request its possible intervention in the present arbitration proceedings in accordance with Articles R41.3 and R52.2 CAS Code. However, FIFA nonetheless made certain submission on the substance of the case, which can be summarised as follows:

> FIFA indicated that while Zamalek has not designated FIFA as a respondent to the present procedure, its main contention appears to be related to the competence of the

> FIFA DRC to pass a decision. In line with its long-standing jurisprudence, CAS may not take into consideration any question related to the alleged competence (or lack thereof) of the FIFA DRC to pass a decision on the substance of such dispute. From a formal point of view, the competence-related aspect does not fall within the discretion of any deciding body anymore. As pointed out by CAS, when considering "vertical disputes" such as those concerning jurisdiction, an appellant *"has standing to bring a challenge against the Appealed Decision against the CAS, however, that should be directed at the association itself, i.e. FIFA"*.

30. On 14 March 2022, the CAS Court Office granted Zamalek an additional deadline to provide an up-to-date power-of-attorney and nominate an arbitrator by 17 March 2022 and that, failing a nomination within the deadline granted, the appeal would be deemed withdrawn.

31. On 17 March 2022, Zamalek nominated Mr Patrick Grandjean, Attorney-at-Law, Belmont, Switzerland, as arbitrator. It furthermore requested an extension of the deadline to produce an up-to-date power-of-attorney.

32. On 18 March 2022, before being provided with Zamalek's email dated 17 March 2022, the Player requested the CAS Court Office to deem Zamalek's appeal withdrawn due its failure to timely provide a power-of-attorney and to nominate an arbitrator.

33. On 18 March 2022, the CAS Court Office granted Zamalek a deadline until 23 March 2022 to provide an up-to-date power-of-attorney, while indicating that providing a power-of-attorney was not listed amongst the prerequisites of Article R48(1) CAS Code and that the admissibility of the appeal would in any event be assessed *ex officio* by the Panel. The CAS Court Office also indicated that Zamalek had requested for the appointment of a sole arbitrator in its Statement of Appeal and nominated an arbitrator within the extended deadline granted to it on 14 March 2022.

34. On 22 March 2022, Zamalek provided the CAS Court Office with a power-of-attorney dated 15 March 2022, signed by an unidentified person.

35. On 24 March 2022, the Player informed the CAS Court Office that there were serious grounds to believe that the power-of-attorney provided by Zamalek on 22 March 2022 was a *"reconstructed document"*, because, *inter alia*, it was signed by an unknown person who was not empowered by Zamalek. The Player requested the CAS Court Office to order Zamalek to produce the original copy of the power-of-attorney provided on 22 March 2022 for inspection, failing which it considered that the appeal should be deemed withdrawn.

36. On 25 March 2022, the CAS Court Office informed the Parties that only the Panel, once constituted, would be competent to request disclosure of documents, pursuant to Article R44.3 CAS Code.

37. On 7 April 2022, Zamalek filed its Appeal Brief in accordance with Article R51 CAS Code.

38. On 30 May 2022, Al-Duhail filed a reasoned application for a bifurcation of the proceedings on the following issues:

> *"- the Honourable Panel is in a position to decide on* [Zamalek's] *counterclaim dated 15 September 2021 being admissible; and*
>
> - [Al-Duhail] *(and the Player, if deemed appropriate) has (have) standing to be sued".*

39. On 3 and 5 June 2022 respectively, the Player supported Al-Duhail's application for a bifurcation of the proceedings, whereas Zamalek objected thereto.

40. On 7 June 2022, the CAS Court Office informed the Parties that, pursuant to Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the Panel appointed to decide the present case was constituted as follows:

President: Mr Manfred Nan, Attorney-at-Law, Arnhem, The Netherlands

Arbitrators: Mr Patrick Grandjean, Attorney-at-Law, Belmont, Switzerland

Mr José Juan Pintó Sala, Attorney-at-Law, Barcelona, Spain

41. On 9 June 2022, the CAS Court Office informed the Parties that Mr Dennis Koolaard, Attorney-at-Law, Arnhem, The Netherlands, had been appointed as *Ad hoc* Clerk.

42. On 16 June 2022, the CAS Court Office informed the Parties as follows:

> *"For the sake of procedural efficiency, the Panel has decided to bifurcate these arbitral proceedings on the following issues:*
>
> - *Admissibility of the Appeal;*
> - *Standing to be sued of the Respondents;*
> - *Necessity of summoning FIFA as a respondent in the current arbitral proceedings;*
> - *The Panel's scope of review to rule on the admissibility of the Appellant's Response/Counterclaim of 15 September 2021; and*
> - *Admissibility of the Appellant's Response/Counterclaim of 15 September 2021.*
>
> […]
>
> *Turning to the issue of the power of attorney, the* [Player's] *request for* [Zamalek] *to produce the original power of attorney dated 18 July 2021 is dismissed, as the Panel finds that the relevance of such request has not been established. Rather,* [Zamalek] *is instructed to provide the CAS Court Office with a valid and up-to-date power of attorney by 20 June 2022, clearly indicating the name of the person authorized to represent* [Zamalek].
>
> *Furthermore, it appears that exhibits n. 44 and 72 to the Appeal Brief are missing. Accordingly,* [Zamalek] *is requested to file these exhibits no later than 20 June 2022.*

> *Finally, the Panel considers that the issues related to (i) the alleged late nomination of an arbitrator by* [Zamalek] *and (ii) the timely payment of the advance of cost have been definitely settled further to the CAS Court Office's letters of 14 and 18 March 2022 as well as 10 and 30 May 2022, respectively. In light of the foregoing, the Panel sees no reasons to overrule the content of the aforesaid letters"* (emphasis omitted by the Panel).

43. On 20 June 2022, Zamalek submitted the requested exhibits to the Appeal Brief and resubmitted the power-of-attorney dated 15 March 2022 that it had previously already filed with the CAS Court Office on 22 March 2022.

44. On 10 and 11 July 2022 respectively, Al-Duhail and the Player filed their submissions on the Bifurcated Issues.

45. On 13 July 2022, the Player informed the CAS Court Office that he maintained his objection to Mr Nasr Eldin Azzam's authority to represent Zamalek.

46. On 15 July 2022, the CAS Court Office informed the Parties, *inter alia*, that the exhibits to the Player's submission dated 11 July 2022 were missing, granting him a deadline to submit such exhibits by 20 July 2022, and further as follows:

> *"[D]espite the request of 16 June 2022, the Panel notes that* [Zamalek] *failed to provide an up-to-date power of attorney and filed a power of attorney dated 15 March 2022, which had already been submitted on 22 March 2022.*
>
> *Further to the* [Player's] *objection, and on behalf of the Panel,* [Zamalek] *is granted an ultimate deadline until 20 July 2022 to (i) indicate who signed the power-of-attorney dated 15 March 2022 on behalf of* [Zamalek]*; and to (ii) provide evidence that this person is authorized to bind* [Zamalek]*, or, alternatively, provide a new power-of-attorney, signed by a person authorized to bind* [Zamalek] *and providing evidence thereof, failing which it will be assumed that Mr Nasr El Din Azam is not authorized to act on behalf of* [Zamalek]*, as a consequence of which the Statement of Appeal and the Appeal Brief are deemed not to have been submitted on behalf of* [Zamalek]*, as a consequence of which the appeal shall be deemed withdrawn"* (emphasis omitted by the Panel).

47. On 19 July 2022, Zamalek provided the CAS Court Office with a new power-of-attorney signed by Mr Mortada Mansour, President and Chairman of Zamalek, dated 19 July 2022.

48. On 20 July 2022, before being provided with the power-of-attorney submitted by Zamalek on 19 July 2022, the Player submitted the missing exhibits to its submission dated 11 July 2022 and reiterated its objections to the power-of-attorneys filed by Zamalek.

49. On 22 July 2022, the CAS Court Office forwarded the power-of-attorney submitted by Zamalek on 19 July 2022 and informed the Parties, *inter alia*, as follows:

> *"The Parties are informed that the Panel confirms that, unless further objections are raised by the Respondents,* [Zamalek] *duly complied with its duty to provide a valid Power of Attorney in favour of Mr Nasr El Din Azam, as per the Panel's order of 15 July 2022".*

50. On 5 August 2022, Zamalek filed its submission on the Bifurcated Issues.

51. On 10 August 2022, the CAS Court Office, on behalf of the Panel, invited the Parties to indicate whether they considered that a hearing – strictly limited to the Bifurcated Issues – was necessary.

52. On 14 and 15 August 2022 respectively, Al-Duhail indicated that, particularly because the Bifurcated Issues purely related to legal aspects, it did not consider it necessary to hold a hearing limited to the Bifurcated Issues, whereas Zamalek indicated that it considered it necessary to hold a hearing limited to the Bifurcated Issues. The Player did not express any preference.

53. On 16 August 2022, the CAS Court Office informed the Parties that the Panel deemed itself to be sufficiently well-informed to render an Award on the Bifurcated Issues on the basis of the Parties' written submissions and that, therefore, no hearing limited to the Bifurcated Issues would be held.

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

V. SUBMISSIONS OF THE PARTIES ON THE BIFURCATED ISSUES AND REQUESTS FOR RELIEF

A. The Appellant's Appeal Brief

55. Since the Panel only adjudicates and decides on the Bifurcated Issues in the present Award, the Parties' submissions on the substance of their contractual dispute are not relevant for present purposes. The Panel therefore limits itself to paraphrasing Zamalek's prayers for relief as submitted in its Appeal Brief:

> *"EVIDENTIARY REQUEST:*
>
> *i. To order the First and Second Respondent to produce the Employment contract signed between them and all annexes and/or the offers by means of which the new Club was engaged with the player.*
>
> *ON THE MERITS:*
>
> *ii. To accept the Appellant's appeal.*
>
> *1. To declare that the Appellant's Counterclaim dated 15 September 2020 submitted to the FIFA is admissible and thus that the Honorable panel has the right to decide on all the requests of the Appellant against the Respondents including the right to receive compensation and imposing sporting sanctions.*

2. *To admit that the Player's Employment Contract with Zamalek is seasonal and does not end naturally on 31 May 2020 and it is contractually scheduled to end at the end of season 2020/2021 in Egypt.*

3. *To declare that the Player has no outstanding amounts due to him from season 2019/2020 or 2020/2021.*

4. *To declare the Player had terminated his Contract with the Appellant without just cause and committed a severe breach to his contractual obligations.*

5. *To condemn the Player to return to the Appellant an amount of EUR 81,250 as an excessive balance paid by the Appellant to the Player for Season 2020/2021 (please check the Season 2020/2021 closing budget) after he decided not to continue the last contractual season with the Club.*

6. *To confirm and admit the Second Respondent's inducement to the Player not to continue his contract with the Appellant.*

7. *To order the Player as well the Second Respondent, jointly and severally, to pay the following amounts*

   a. *337,447.32 EUR as residual value of the Contract or in accordance with the Player's contract with the Second Respondent.*

   b. *573,890 EUR as specificity of Sport*

   c. *2,200,000 EUR or an amount proportionate to the value of his signed contract with the Second Respondent as lost transfer fee.*

iii. To impose sporting sanctions on the Player as well as the Second Respondent:

1. *To impose a 6-months ban on the Player.*

2. *To impose registration ban on the New Club corresponding to two registration periods.*

iv. To issue any other order it sees convenient".

B. The First Respondent's position on the Bifurcated Issues

56. The Player's submissions on the Bifurcated Issues, in essence, may be summarised as follows:

Admissibility of the appeal

- Article 58(1) FIFA Statutes provides for a time limit of 21 days to file an appeal. This deadline is also referred to in the Appealed Decision, which was notified to Zamalek on 28 January 2022. Zamalek filed its Statement of Appeal on 18 February 2022.

However, Zamalek filed its Appeal Brief on 7 April 2022, i.e. after the deadline of *"ten days following the expiry of the time limit for appeal"* as set forth in Article R51 CAS Code.

- The appeal is inadmissible as i) it is not compliant with Articles R31, R32 and R51 CAS Code; ii) Mr Azzam lacks authority to represent Zamalek; and iii) there is a lack of standing to be sued.

The scope of review to rule on the admissibility of Zamalek's Response/Counterclaim

- Article 184(1) of the Swiss Federal Code on Private International Law ("PILA") and Articles R44.2, R56 and R57(3) CAS Code provide the Panel with a wide margin of discretion regarding the exclusion of evidence presented by the Parties if it was available to them or could reasonably have been discovered by them before the Appealed Decision was rendered.

- In this case, there are no exceptional circumstances justifying submitting the manipulated proofs of delivery of the Response/Counterclaim as new evidence. Therefore, the Player objects to the admissibility of these documents as new evidence.

- The scope of the Panel's jurisdiction is defined in Article R57 CAS Code. In the present case, contrary to Article R57 CAS Code, pursuant to Article 75 of the Swiss Civil Code ("SCC") the Panel's scope of review is of a strictly *"cassatory"* nature. In this context, the Panel may only confirm or annul the Appealed Decision.

- Article R57 CAS Code provides the Panel with *de novo* powers and perhaps, if both FIFA and the Player had been summoned as respondents, then all parties may have asked the Panel to consider the admissibility of the Response/Counterclaim and subsequently the merits. However, since FIFA is not summoned, this question remains moot. The Panel should not rule on the admissibility of the Response/Counterclaim without the participation of FIFA as respondent in the present proceedings.

Admissibility of the appeal is an issue of substance

- The standing to be sued is an issue of substantive law, according to well-established CAS jurisprudence. More specifically, the question of FIFA's standing to be sued has been the object of a nuanced and sometimes case-by-case treatment. In short, if an appeal is not directed against FIFA, it results that the appeal shall be declared inadmissible, and CAS cannot review the decision of the first instance.

- In the matter at hand, the appeal is not admissible and should be dismissed in its entirety, because the Player lacks standing to be sued. Indeed, the contractual dispute between the Parties is not the issue in the current procedure and the appeal to annul the Appealed Decision should only be directed against the decision of the FIFA DRC to decline jurisdiction. Pursuant to Article 75 SCC, the appeal should be directed against FIFA, not against the Player.

- With the present appeal, Zamalek asks the Panel to set aside the Appealed Decision and take a new decision, without requesting it to send the matter back to the FIFA DRC to hear the matter.

- This is clearly a "vertical" issue, i.e. a dispute between Zamalek and FIFA. The Panel can see that Zamalek has an indirect interest, but *"it would be able to advance its position on the merits before the FIFA DRC, should the matter have returned there"*.

Standing to be sued of the Respondents

- The standing to be sued is an issue of substantive law, according to CAS' well-established jurisprudence. Under Swiss law, the defending party has standing to be sued (*"légitimation passive"*) if it is personally obliged by the "disputed right" at stake. In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it.

- In the present case, Zamalek breached Articles 10 and 21 of the October 2021 edition of the FIFA Procedural Rules Governing the Football Tribunal (the "FIFA Procedural Rules (October 2021)", by failing to submit its Response/Counterclaim within the deadline fixed. In such case, FIFA was indeed entitled to close the investigation phase and proceed to rule on the basis of the file as provided for in Article 21(1) FIFA Procedural Rules (October 2021).

- In proceedings of this type and structure, and unless the rules provide specifically therefore, there is by nature and definition no procedural position for parties other than the parties directly subject to the decision at stake in the proceedings.

- As follows from CAS 2008/A/1639, Article 75 SCC provides that *"the members of an association have standing to appeal against a resolution of an association whereas only the association itself has standing to be sued"*. Therefore, in present proceedings, the only party having standing to be sued is FIFA, and therefore Zamalek is not permitted to direct its primary appeal against the Player and Al-Duhail.

- CAS jurisprudence has created a distinction between "horizontal" and "vertical" disputes when dealing with cases involving the failure to summon FIFA as a respondent and possibly encompassing the framework of Article 75 SCC.

- "Horizontal" disputes are those disputes between two or more direct or indirect members of FIFA in which a FIFA body issued a decision which concerns their contractual relationship, and in which FIFA itself has nothing directly at stake. The Appealed Decision does not concern a contractual dispute between the Parties as it is only directed against the outcome of the Appealed Decision, whereby the FIFA DRC dismissed Zamalek's Response/Counterclaim.

- Zamalek requesting to annul the Appealed Decision instead of referring the case back to FIFA is similar to requesting the CAS to decide that FIFA was not competent or

lacked jurisdiction in the first instance procedure, and that, ultimately, FIFA misapplied its own regulations when deciding otherwise in the Appealed Decision.

- Zamalek itself emphasised that the contractual dispute between the Parties is not the issue of the present proceedings and that its appeal is only directed against the decision of the FIFA DRC declining jurisdiction over the dispute. As a result, these proceedings involve a "vertical" dispute, which concerns a membership-related decision, as a consequence of which Zamalek's appeal should have been directed solely against FIFA, rather than against the Player.

- For the same reason, the Player has no standing to be sued in the present proceedings.

- Al-Duhail also lacks standing to be sued. Its rights were not the object of the dispute before the FIFA DRC, and it was not even a party in such proceedings.

Necessity of summoning FIFA as a Respondent in the current arbitral proceedings

- FIFA renounced its right to intervene in the present proceedings. Therefore, any question related to the competence of FIFA's deciding bodies to pass a decision on the substance of the present dispute may not be taken into consideration by the Panel. A different interpretation would constitute a violation of FIFA's right to be heard.

- An appeal dealing with a review of the admissibility of the Response/Counterclaim concerns a membership-related dispute, with the consequence that it must (also) be directed against FIFA. The admissibility of the Response/Counterclaim before the FIFA DRC touches upon the relationship between FIFA and its members. When assuming the competences conferred on it according to the FIFA RSTP and the FIFA Procedural Rules (October 2021), FIFA is exercising an administrative function impacting its individual members and the rights of indirect members. Therefore, the motion to amend an "administrative" decision by an organ of FIFA is to be directed against FIFA.

- As to the issue of the standing to be sued in the dispute relating to the FIFA DRC's decision to declare Zamalek's Response/Counterclaim inadmissible, this question must be examined in the light of Article 75 SCC: the party having the standing to be sued is only the association which issued the decision. Such request is not to be directed against other parties, such as the Player or Al-Duhail. The Respondents' rights are not concerned by the Appealed Decision and have no power whatsoever with respect to the admissibility of the Response/Counterclaim.

- If Zamalek is granted the relief it seeks, the matter will be referred to the FIFA DRC who will consider Zamalek's Response/Counterclaim and Zamalek will have the right to defend itself.

Admissibility of the Appellant's Response/Counterclaim of 15 September 2021

- Zamalek was granted a time limit until 15 September 2021 to submit its reply to the claim. Subsequently, FIFA received the Response/Counterclaim on 22 September 2021 by DHL. According to the information provided by DHL, the shipment was submitted on 20 September 2021, i.e. 5 days after the time-limit had expired.

- In this regard, the FIFA DRC rightfully rejected the allegation of Zamalek that it had delivered the Response/Counterclaim to a local courier on 15 September 2021, before it was given to DHL on 20 September 2021, as Zamalek did not submit sufficient proof of this allegation. Indeed, the alleged receipt of the local courier does not contain the date of 15 September 2021 and there is no reference to the case.

- It is further undisputed that Zamalek did not send the Response/Counterclaim by email to FIFA on or before 15 September 2021 or after the expiry of the time limit. Furthermore, it is undisputed that the Response/Counterclaim was sent by DHL on 20 September 2021. If no statement or reply is received before the time limit expires, a decision shall be taken on the basis of the documents already on file according to Article 21(1) FIFA Procedural Rules (October 2021).

- It is up to Zamalek to discharge the burden of proof to establish that it had submitted the Response/Counterclaim in accordance with the procedural rules and before the expiry of the time limit.

- The Player agrees with the principle deriving from CAS 2020/A/7356 that in order for a counterclaim to be notified to an addressee, i.e. FIFA, the answer *"must enter into the recipient's sphere of control"* before midnight of 15 September 2021. Only on 7 December 2021, 48 hours before the FIFA DRC passed the Appealed Decision, Zamalek provided a *"biased, uncommon, and manipulated proof of DHL delivery dated 15 September 2021"*.

- In accordance with the theory of *"sphere of control"* in Swiss Law and CAS jurisprudence, once a message leaves the sender's sphere of control, it enters the recipient's sphere of control and any error which may occur as from that point is the latter's responsibility, which does not apply here.

- If the Panel were to decide that any procedural violation had occurred, CAS proceedings would have a healing effect on any procedural irregularities and this Panel would be in a position to consider Zamalek's Response/Counterclaim.

- Zamalek should at least have provided proof of delivery of its shipment to FIFA by email before midnight on 15 September 2021, which it did not do.

- Zamalek did not submit any evidence to prove its timely notification of FIFA on 15 September until 7 December 2021, 48 hours before the issuance of the Appealed

Decision. Therefore, Zamalek's conduct violates the principle of *"venire contra factum proprium"*.

- In its letter of 7 December 2021, Zamalek provided three copies of receipts: one from ABS and two from DHL. The ABS receipt appears to bear no postmark of 15 September 2021. The two manipulated DHL receipts bear a tracking number and a postmark reflecting 15 September 2021.

- While the tracking number of the shipment with the Response/Counterclaim that reached its destination on 22 September 2021 and was shipped on 20 September 2021 can be retrieved in the DHL database, the tracking number provided by Zamalek that allegedly corresponds to the alleged shipment of 15 September 2021 cannot be identified in the ABS online tracking system.

- The evidence supporting the contention that the Response/Counterclaim was shipped on 15 September 2021 is disturbingly untrustworthy and has to be disregarded by the Panel in line with the limited scope of Article R57(3) CAS Code.

- It is crucial that FIFA treats all parties subject to FIFA proceedings in the same way, and it is the parties' duty of diligence to respect the deadline set by the regulations of FIFA, which serve the interests of legal certainty and security. As such, Player agrees with FIFA that the procedural rules cannot be bent in favour of the needs of one party.

57. On this basis, the Player submits the following prayers for relief in his submission on the Bifurcated Issues:

"TO DISMISS the appeal and DECLARED GROUNDLESS to all extent.

TO CONFIRM the appealed decision in its entirety.

TO ORDER the Appellant to pay the full amount of the CAS arbitration costs relating the present dispute at the end of the ongoing arbitration

TO ORDER the Appellant to also pay a contribution towards the legal costs, fees and other related expenses of the Player regarding the ongoing matter, in the forms of CHF20,000".

C. The Second Respondent's submissions on the Bifurcated Issues

58. Al-Duhail's submission on the Bifurcated Issues, in essence, may be summarised as follows:

Admissibility of the Appeal

- First of all, at least with regards to its counterclaim, Zamalek did not exhaust the internal legal remedies at FIFA prior to filing an appeal with CAS. The counterclaim is therefore inadmissible. Notwithstanding a deadline granted to it until 15 September

2021, Zamalek only sent its Response/Counterclaim on 20 September 2021. The FIFA DRC correctly applied Article 21 FIFA Procedural Rules (October 2021). Moreover, Al-Duhail was not a party to the proceedings before FIFA leading to the Appealed Decision. Zamalek's request to declare its counterclaim admissible has the nature of a *"new claim"*. However, CAS should not and cannot enter in the present appeal proceedings into the substance of such new claim. In the present matter, CAS acts as an appeal body, not as a court of first instance with respect to Zamalek's counterclaim. In no way can Zamalek's – careless – conduct during the proceedings at FIFA be detrimental to Al-Duhail and its right of defence. Declaring the Response/Counterclaim admissible would have precisely such effect.

- Legal scholars also consider the requirement of exhausting internal legal remedies as an aspect pertaining to jurisdiction. If one were to follow such view, CAS would not be competent to rule on Zamalek's counterclaim.

- The Panel is also not in a position to declare Zamalek's counterclaim admissible, because the dispute at hand concerns primarily FIFA and its decision related to the competence of a FIFA body. The dispute at hand is of a vertical nature. By declaring the Response/Counterclaim inadmissible, the FIFA DRC did not simply act as a court of first instance. Rather, it performed an assessment of its own competences, which has a direct impact on the rights and duties of its direct and indirect members in the sense of Article 75 SCC. Because it concerns a membership-related issue, the appeal should have been directed against FIFA. Since Zamalek did not direct its appeal against FIFA, there actually does not exist a real and/or justifiable dispute between Al-Duhail and Zamalek, which could be decided upon.

Standing to be sued of the Respondents and the necessity of summoning FIFA as a respondent in the current arbitral proceedings

- As set out above, the dispute pertaining to the request to declare the Response/Counterclaim admissible is of a "vertical" nature. Therefore, summoning FIFA was indispensable. Zamalek's primary request is directed against the administrative function of FIFA with respect to the enforcement of its regulations, which makes the matter at hand a competence-related dispute.

- It is important to recall that, according to both Swiss and CAS case law, a party has standing to be sued if it is personally obliged by the "disputed right" at stake or has a *de facto* interest in the outcome of an appeal. With regard to the question of the admissibility of Zamalek's Response/Counterclaim, FIFA is the only entity whose interests are at stake. As a consequence, in the absence of an appeal directed against FIFA, the appeal shall be dismissed.

- With regard to Zamalek's primary request for relief, Al-Duhail does not have standing to be sued. It is undisputable that Al-Duhail was not a party to the FIFA proceedings that led to the Appealed Decision. As a consequence, it cannot be compelled to participate in the current appeal proceedings.

- Al-Duhail does not have standing to be sued in relation to Zamalek's primary request for relief. As the subsequent requests may only be addressed in the event of the Response/Counterclaim being admissible, they cannot be addressed.

The Panel's scope of review to rule on the admissibility of the Appellant's Response/Counterclaim of 15 September 2021

- Despite Article R57 CAS Code, which provides for the right of a *de novo* review, the Panel is not in a position to review FIFA's ruling on the inadmissibility of Zamalek's Response/Counterclaim.

- If one were to reassess FIFA's assessment of its own competence, Article 21 FIFA Procedural Rules (October 2021) would be obsolete. This article shows that it is within FIFA's own competence to decide whether documents filed meet all the requirements under the FIFA Procedural Rules (October 2021) and can be admitted. Regardless of whether FIFA has acted rightly concerning the inadmissibility of the Response/Counterclaim, CAS has no power to review FIFA's competence. To assess FIFA's competence would allow to call into question the *"governing sports body"* nature of FIFA.

Admissibility of the Appellant's Response/Counterclaim of 15 September 2021

- It is unquestionable that FIFA rightfully declared Zamalek's Response/Counterclaim inadmissible. Zamalek was given a clear time limit until 15 September 2021 to submit its reply to the Player's claim, but only filed it on 20 September 2021. Submissions and evidence filed outside the relevant time limit shall be disregarded.

- Zamalek chose to submit its Response/Counterclaim late and justified its conduct by means of a document whose authenticity is at least doubtful. This behaviour unveils the bad faith of Zamalek which seeks to remedy its disregard to the time limits at all costs.

59. On this basis, Al-Duhail submits the following prayers for relief in its submission on the Bifurcated Issues:

"1. To hold the appeal filed by the Appellant against the Decision under Appeal inadmissible and, as a consequence, to uphold the Decision under Appeal.

Subsidiary to request 1:

2. To hold the Appellant's counterclaim of 15 September 2021 to be inadmissible, and, as a consequence, to exclude it from the present proceedings.

3. In any case, to rule that the Appellant shall bear the costs of the arbitration in full and shall contribute to the legal fees incurred by the Second Respondent at an amount of at least CHF 20,000.00/-".

D. The Appellant's submissions on the Bifurcated Issues

60. Zamalek's submissions on the Bifurcated Issues, in essence, may be summarised as follows:

Admissibility of the appeal

- The Player claims that only FIFA ought to be summoned as a respondent without the presence of either of the Respondents, which is incorrect. If Zamalek had summoned FIFA as the only respondent, the Player would have submitted that the appeal shall be inadmissible since his right to be heard would not be respected by not summoning him as a respondent.

- Al-Duhail alleges that Zamalek's Response/Counterclaim is inadmissible, as it did not exhaust the internal legal remedies at FIFA, which is entirely incorrect. Even if Zamalek's Response/Counterclaim was inadmissible (*quod non*), FIFA's internal legal remedies shall be deemed entirely exhausted by being a party to the proceedings before FIFA, no matter whether Zamalek submitted any response or counterclaim, or if it did so, whether or not such a response or counterclaim shall be admissible. Since the only possible way to appeal the Appealed Decision was to file the present appeal, it is indisputable that FIFA's internal legal remedies were exhausted.

- The Appealed Decision was notified to Zamalek on 28 January 2022. Accordingly, Zamalek filed the Statement of Appeal on 18 February 2022, i.e. within the 21-day deadline to appeal.

- As to Al-Duhail's argument that it was not a party to the proceedings before the FIFA DRC, CAS enjoys *de novo* power to *"rule on parties for the first time that were not parties during the lower instance's proceedings, especially in our case where* [Al-Duhail] *contributed to* [the Player's] *termination without just cause by an act of inducement"*.

- In CAS appeals, FIFA's presence is never obligatory even if the disputed issue in question pertains to a procedural aspect, such as the issue of the admissibility of Zamalek's Response/Counterclaim in these proceedings.

Standing to be sued of the Respondents

- A party has standing to be sued if it has a direct or indirect interest in relevance to an appellant's requests.

- The Appealed Decision is in favour of the Player. Zamalek filed the present appeal in principle to annul the Appealed Decision and to rule that the Player is not entitled to any outstanding payments. Therefore, the Player is concerned by the present appeal and has a direct interest in it. The Player's standing to be sued is not connected to the issue regarding the admissibility of Zamalek's Response/Counterclaim. Even if the Response/Counterclaim would be inadmissible, the Player would still have standing

to be sued. The issue regarding the necessity of FIFA's presence in the present appeal is also a completely different issue.

- Al-Duhail has standing to be sued as Zamalek's requests for relief in both the Statement of Appeal and the Appeal Brief concern Al-Duhail. Al-Duhail is personally obliged by the claim brought by Zamalek. Al-Duhail advanced an irrelevant reason to justify its lack of standing to be sued on the basis that it was not a party to the proceedings before the FIFA. However, CAS enjoys absolute *de novo* power to rule against any party that was not present before the lower-instance adjudicatory body.

Necessity of summoning FIFA as a respondent in the present appeal arbitration proceedings

- An appeal can have both vertical and horizontal dimensions when the relevant appealed decision includes both financial and disciplinary measures. In this regard, the present appeal is of mixed dimensions and not purely vertical, as argued by the Respondents.

- The Respondents relied on numerous CAS precedents that do not contribute to their positions, but rather go against them. In CAS 2020/A/7144, CAS did not render the appeal therein inadmissible for not including the lower-instance body as a party, but rather because the appellant there did not advance legal arguments to reinforce its position. To the contrary, the award explicitly states that *"*[FIFA] *is not a necessary party, nor the appellant has the burden to summon FIFA as a respondent in order for the CAS Panel to adjudicate the issue of FIFA's jurisdiction".*

- In CAS 2020/A/6694, the appeal was not dismissed because of the failure to include FIFA as a respondent. CAS entered into the merits of the appeal and addressed the financial aspects of the appeal, and merely rejected the request of annulling the disciplinary sanctions.

The admissibility of Zamalek's Response/Counterclaim

- Zamalek duly served the Response/Counterclaim in a timely manner, as also testified by ABS. As to the Player's argument that Zamalek could have filed its Response/Counterclaim by email, the FIFA regulations permit the parties to submit their documents either electronically or by courier. Therefore, it was up to Zamalek to choose to either submit the Response/Counterclaim by email or by courier, and it cannot be blamed for choosing a viable option under the applicable regulations.

- Zamalek submitted the Response/Counterclaim in a timely manner by delivering it to the courier company on 15 September 2021. It does not matter when the Response/Counterclaim actually reached FIFA. The only relevant date is the date of the Response/Counterclaim leaving Zamalek's sphere of control. Therefore, Zamalek's Response/Counterclaim was admissible.

- Most importantly, because FIFA indicated that it was not interested in intervening in the present arbitration proceedings, FIFA's right to be heard with respect to the admissibility of the Response/Counterclaim is not violated.

The Panel's scope of review to rule on the admissibility of Zamalek's Response/Counterclaim

- Zamalek did not commit any procedural default pertaining to the present appeal, and hence the CAS shall have an absolute scope to rule on Zamalek's Response/Counterclaim without FIFA being a party in these proceedings.

61. On this basis, Zamalek submits the following prayers for relief in its Brief on the Bifurcated Issues:

"1. To rule that the present Appeal is admissible

2. To rule that the Respondents have standing to be sued

3. To rule that the Appellant's Counterclaim before the FIFA is admissible

4. Alternatively, if the Counterclaim got ruled to be inadmissible, it does not lead to the dismissal of the present Appeal, but rather to excluding the Second Respondent ONLY from the proceedings.

5. To rule that the FIFA's summoning as a party to the present appeal was not necessary

6. Alternatively, if the FIFA's summoning was a must, it does not lead to the dismissal of the present Appeal, but rather the Appellant's request of imposing sporting sanctions shall ONLY be dismissed".

VI. JURISDICTION

62. The jurisdiction of CAS, which is not disputed, derives from Article 57(1) FIFA Statutes (2021 Edition), as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"*, and Article R47 CAS Code. The jurisdiction of CAS is not contested by the Parties.

63. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. ADMISSIBILITY OF THE APPEAL

64. The Panel notes that the Parties are in dispute with regard to the admissibility of Zamalek's appeal.

65. On the one hand, the Respondents maintain that Zamalek's appeal is inadmissible as: i) Zamalek's Appeal Brief was filed late and is therefore non-compliant with Articles R31, R32, and R51 CAS Code; ii) Zamalek did not exhaust the internal legal remedies at FIFA prior to filing an appeal with CAS as the Response/Counterclaim has the nature of a "new claim"; iii) Mr Azzam lacks authority to represent Zamalek; and iv) the Respondents lack standing to be sued and that FIFA should have been named as a respondent.

66. Zamalek, on the other hand, holds that its appeal is admissible and that the arguments raised by the Respondents are to be dismissed.

67. The Panel notes that the Statement of Appeal was filed within the deadline of 21 days set by Article 58(1) FIFA Statutes and that the appeal is therefore, in principle, admissible.

68. The Panel finds that some arguments raised by the Respondents do not concern the admissibility of the appeal, but are rather a matter of substance. Accordingly, the arguments raised by the Respondents that are not addressed in this section are addressed below in the section concerning the merits of the case. This particularly concerns the Respondents' reasoning as to their alleged lack of standing to be sued and their argument that FIFA should have been named as a respondent.

A. The timely filing of the Appeal Brief

69. Article R32 CAS Code provides, *inter alia*, as follows:

> *"Upon application on justified grounds and after consultation with the other party (or parties), either the President of the Panel or, if she/he has not yet been appointed, the President of the relevant Division, may extend the time limits provided in these Procedural Rules, with the exception of the time limit for the filing of the statement of appeal, if the circumstances so warrant and provided that the initial time limit has not already expired".*

70. Accordingly, unlike with respect to the Statement of Appeal, the time limit to file the Appeal Brief may be extended upon justified grounds and following consultation with the other party.

71. Zamalek filed three requests for extensions of the time limit to file its Appeal Brief, which were partially granted, as follows:

- On 23 February 2022, the CAS Court Office informed Zamalek that it was required to file its Appeal Brief within 10 days following the expiry of its deadline to appeal. This time limit was due to expire on 28 February 2022.

- On 28 February 2022, Zamalek filed a reasoned application for an extension of 30 days to file its Appeal Brief.

- On the same date, 28 February 2022, the CAS Court Office suspended Zamalek's time limit to file its Appeal Brief.

- On 2 March 2022, the Player objected to Zamalek's request for an extension of its time limit to file its Appeal Brief. Al-Duhail did not submit any position.

- On 4 March 2022, the Deputy of the President of the CAS Appeals Arbitration Division extended Zamalek's time limit to file its Appeal Brief with 20 days. The Parties were also informed that the suspended time limit for Zamalek to file its Appeal Brief resumed.

- On 22 March 2022, Zamalek filed a reasoned application for a 10-day extension of the time limit to file its Appeal Brief.

- On 23 March 2022, the CAS Court Office suspended Zamalek's time limit to file its Appeal Brief.

- On 24 March 2022, both Respondents indicated that they had no objection to the extension requested by Zamalek.

- On 25 March 2022, the CAS Court Office lifted the suspended time limit for Zamalek to file its Appeal Brief and extended it with 10 days.

- On 4 April 2022, Zamalek filed a reasoned application for an extension of the time limit to file its Appeal Brief until 8 April 2022.

- On the same date, 4 April 2022, the Player objected to Zamalek's application for a further extension of the time limit to file its Appeal Brief. Al-Duhail did not submit any position.

- On 5 April 2022, the CAS Court Office extended Zamalek's time limit to file its Appeal Brief until 7 April 2022.

- On 7 April 2022, Zamalek filed its Appeal Brief with the CAS Court Office.

72. On the basis of the chronology set forth above, the Panel is satisfied that Zamalek duly complied with the time limit to file its Appeal Brief and that all requirements for the various extensions of the time limit were duly complied with.

B. Zamalek's Alleged Failure to Exhaust FIFA's Internal Legal Remedies

73. The Appealed Decision is an internally final decision in the sense that no further internal legal remedies were available to challenge it within the organisation of FIFA. The only recourse against the Appealed Decision is filing an appeal with CAS. This is not in dispute between the Parties.

74. Rather, the argument of the Respondents with respect to Zamalek's alleged failure to exhaust the internal legal remedies appears to be more nuanced. The Panel understands that the Respondents' argument specifically concerns the counterclaim filed by Zamalek in

the context of the proceedings leading to the Appealed Decision. The Respondents appear to suggest that, if the Response/Counterclaim was wrongly declared inadmissible, CAS should not address the substance of such counterclaim, because this would first have to be assessed by the FIFA DRC.

75. The Panel notes that Article 9(3) FIFA Procedural Rules (June 2020) provides, *inter alia*, as follows:

> *"In case the opposing party wishes to lodge a counter-claim, it shall submit within the same time limit applicable to the reply its petition* […]*".*

76. Substantively the same is provided in Article 21(2) FIFA Procedural Rules (October 2021):

> *"The respondent(s) may submit a counterclaim with their response to the claim. A counterclaim shall have the same form as a claim and shall be submitted within the same time limit as that for the response to the claim".*

77. Accordingly, if Zamalek had a counterclaim with respect to the Player's claim filed against it before the FIFA DRC, it had to file such counterclaim within the time limit granted to it to file a response, otherwise its counterclaim would be inadmissible.

78. As a consequence, the Appealed Decision is relevant for Zamalek in the sense that, if its appeal would be dismissed by this Panel, it is barred from filing its counterclaim with the FIFA DRC at a later point in time.

79. The Panel finds that FIFA's decision to declare the Response/Counterclaim inadmissible is not a decision that can be independently appealed before CAS. Rather, Zamalek had to wait until the issuance of the Appealed Decision to challenge, *inter alia*, the decision to declare the Response/Counterclaim inadmissible, not least because the FIFA administration specifically informed Zamalek on 8 December 2021 that *"[W]e would like to point out that it will be up to the Dispute Resolution Chamber if it will take into account the submitted documents or not and how it will proceed with the matter of reference".*

80. FIFA's letter dated 24 November 2021 was therefore not a final decision with respect to the admissibility of the Response/Counterclaim.

81. Consequently, both with respect to the claim filed against it by the Player before the FIFA DRC as well as concerning the counterclaim, Zamalek exhausted all internal legal remedies available to it and filing an appeal against the Appealed Decision does not result in the inadmissibility of Zamalek's appeal.

C. Mr Azzam's authority to represent Zamalek

82. Throughout the proceedings, the Player repeatedly questioned the authenticity of the power-of-attorneys provided by Mr Azzam. The Player also questioned whether the person that allegedly signed the power-of-attorney on behalf of Zamalek was authorised to do so.

83. The Panel granted Zamalek various opportunities to file an updated power-of-attorney, with which request it finally complied on 19 July 2022.

84. On 22 July 2022, the CAS Court Office informed the Parties, *inter alia*, as follows:

> *"The Parties are informed that the Panel confirms that, unless further objections are raised by the Respondents,* [Zamalek] *duly complied with its duty to provide a valid Power of Attorney in favour of Mr Nasr El Din Azam, as per the Panel's order of 15 July 2022".*

85. No objections were raised by the Respondents with respect to the power-of-attorney presented to the CAS Court Office by Zamalek on 19 July 2022. In any event, the Panel has no reason to question the authority of Mr Mortada Mansour, President of Zamalek, to sign the power-of-attorney or question its authenticity.

86. The mere fact that Mr Azzam only presented a power-of-attorney at a relatively late stage of the proceedings does not render his correspondence with the CAS Court Office prior to such date inadmissible.

87. Consequently, the Panel finds that Mr Azzam is and was at all relevant times duly authorised to represent Zamalek.

88. It follows that the appeal is admissible.

VIII. APPLICABLE LAW

89. Article R58 CAS Code provides as follows:

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

90. Article 56(2) FIFA Statutes provides the following:

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

91. Zamalek maintains that, pursuant to Article R58 CAS Code, the regulations of FIFA are primarily applicable and Egyptian law subsidiarily, as Egypt is the place of execution of the Employment Contract.

92. Whereas Al-Duhail does not dedicate any specific submissions on the applicable law in its submission on the Bifurcated Issues, the Player objects to the application of Egyptian law and submits that the regulations of FIFA are primarily applicable and Swiss law subsidiarily, should the need arise to fill a possible gap in the various rules of FIFA.

93. On the basis of Article R58 CAS Code, the Panel finds that the applicable law is comprised of the Statutes and regulations of FIFA and additionally Swiss law to fill in any gaps or *lacunae* within those regulations. The Parties did not specifically devote any reasoning to the applicable versions of the various regulations of FIFA.

94. Since the Player filed his claim with FIFA on 16 July 2021, i.e. before the implementation of the August 2021 edition of the FIFA RSTP, the February 2021 edition of the FIFA RSTP applies to the substance of the matter at hand.

95. As to the applicable version of the procedural rules, since the Player filed his claim with FIFA on 16 July 2021, the procedure was in principle governed by the June 2020 edition of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules (June 2020)").

96. However, on 1 October 2021, i.e. during the proceedings before the FIFA DRC, the FIFA Procedural Rules (October 2021) entered into force.

97. The Panel notes that whereas FIFA's letters dated 11 August and 2 September 2021, whereby the time limit for the filing of its Response/Counterclaim was communicated to Zamalek, refer to the FIFA Procedural Rules (June 2020), FIFA's letter dated 24 November 2021 refers to the FIFA Procedural Rules (October 2021).

98. Article 31(1) FIFA Procedural Rules (October 2021) contains the following transitory provision:

> *"Procedures that commenced prior to these Rules coming into force shall be subject to these Rules".*

99. Accordingly, as from 1 October 2021, the FIFA Procedural Rules (October 2021) entered into force, retrospectively governing the proceedings in the matter at hand before the FIFA DRC, including the timely filing of the Response/Counterclaim.

100. As a matter of principle, the Panel finds that Zamalek cannot be disadvantaged by the implementation of a new set of procedural rules that are implemented retrospectively insofar as for example the Response/Counterclaim would have been filed validly under the FIFA Procedural Rules (June 2020), but does not comply with one or more admissibility requirements set forth in the FIFA Procedural Rules (October 2021). This is assessed in more detail with respect to the discussion below about the admissibility of the Response/Counterclaim.

IX. MERITS

A. The Bifurcated Issues

101. In this award, the scope of dispute is limited to the following Bifurcated Issues:

i) the admissibility of the present appeal;

ii) the standing to be sued of the Respondents;

iii) the necessity of summoning FIFA as a respondent in the current arbitral proceedings;

iv) the Panel's scope of review to rule on the admissibility of Zamalek's Response/Counterclaim; and

v) the admissibility of Zamalek's Response/Counterclaim.

102. The Panel considered it appropriate to bifurcate the present proceedings, because the arguments raised by the Respondents in this respect could potentially have the effect that the Panel would be barred from assessing the core of the contractual dispute between the Parties.

103. The Bifurcated Issues are so-called threshold issues, i.e. the non-compliance with such prerequisites would result in the inadmissibility or dismissal of Zamalek's appeal, without the Panel being required to assess the actual contractual dispute between the Parties and deal with questions such as, e.g. whether i) Zamalek has overdue payables towards the Player; ii) the Employment Contract expired or was terminated prematurely; and if so, iii) there was just cause to terminate the Employment Contract prematurely; iv) any of the contractual parties was liable to pay compensation for breach of contract to the counterparty, etc.

104. At the time of the bifurcation of the proceedings, the Respondents had not yet filed any written submission on the substance of the contractual dispute between the Parties. The Panel therefore considered it to be procedurally efficient and in the interest of justice to bifurcate the proceedings and have the Respondents file submissions on the core of the contractual dispute only if deemed appropriate.

105. The CAS Code does not regulate under what conditions a panel may bifurcate the proceedings. Absent an agreement between the Parties, the Panel is guided by Article 182(2) PILA, which provides as follows:

> *"Where the parties have not determined the procedure, the arbitral tribunal shall determine it to the extent necessary, either directly or by reference to a law or to arbitration rules".*

106. In this respect, the Panel took inspiration from Article 125 of the Swiss Code of Civil Procedure (the "CCP"), which provides as follows:

> *"In order to simplify the proceedings, the court may, in particular:*
>
> *a. Limit the proceedings to individual issues or prayers for relief;*
> *b. Order the separation of jointly filed actions;*
> *c. Order the joinder of separately filed actions;*
> *d. Separate the counterclaim from the main proceedings".*

107. The Parties did not raise any objection to the Panel's decision to bifurcate the proceedings.

108. Notwithstanding Zamalek's request for a hearing limited to the Bifurcated Issues, the Panel did not consider it necessary to do so, because, as argued by Al-Duhail, the Bifurcated Issues remained largely limited to legal questions and no witnesses were called by the Parties that could testify on any aspect related to the Bifurcated Issues.

109. As the Respondents' objections to the admissibility of the appeal have already been dismissed above, the Panel will hereinafter discuss the remaining Bifurcated Issues.

110. In light of the foregoing, the main issues to be resolved by the Panel are the following:

i. Do the Respondents have standing to be sued and/or should FIFA have been called as a respondent?

ii. Does the Panel's scope of review extend to the admissibility of the Response/Counterclaim?

iii. Is the evidence filed by Zamalek with respect to the timely filing of the Response/Counterclaim admissible?

iv. Was the Response/Counterclaim admissible?

v. What are the consequences deriving therefrom?

i. Do the Respondents have standing to be sued and/or should FIFA have been called as a respondent?

111. The question of who has standing to be sued, or *légitimation passive* in French, is a question of the merits implying that if the Respondents' standing to be sued is denied, then the appeal, albeit admissible, must be dismissed (CAS 2020/A/7144, para. 87 of the abstract published on the CAS website, with further references to SFT 128 III 50 of 16 October 2001, at 55; SFT 4A_424/2008 of 22 January 2009, para. 3.3; CAS 2008/A/1639, para. 3).

112. According to CAS doctrine *"a party has standing to be sued only if it has some stake in the dispute because something is sought against it, and is personally obliged by the dispute at stake"* (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials, 2015, p. 411, nr. 65).

113. The Respondents claim that they have no standing to be sued and, at the same time, that FIFA should have been called as a respondent.

114. In its prayers for relief, Zamalek, *inter alia*, requests the Panel to declare that its Response/Counterclaim, as filed in the proceedings before the FIFA DRC, was admissible. Furthermore, it claims that the Panel has the right to decide on all of Zamalek's prayers for

relief, including its alleged right to receive compensation for breach of contract from the Respondents and that sporting sanctions are to be imposed on them.

115. Whilst Article 57(1) FIFA Statutes provides that appeals against a decision of a FIFA body must be lodged with CAS, neither the FIFA Statutes, nor the CAS Code, specify against which party such appeal should be lodged, i.e. who has standing to be sued.

116. The Panel agrees with what has been stated in legal doctrine about the different approach between vertical and horizontal disputes, as also endorsed in CAS jurisprudence:

> *"Recent jurisprudence points towards a more nuanced approach, according to which there is room to differentiate in respect of the standing to be sued pursuant to article 75 SCC depending on what kind of decision is being appealed. Various reasons speak in favour of this (flexible) approach' (HAAS U., Standing to Appeal and Standing to be sued, in International Sport Arbitration, Bern 2018, p. 53-88, para. 49).*
>
> *This flexible approach consists in differentiating between decisions entailing a vertical element ("vertical disputes") and decisions entailing a horizontal element ("horizontal disputes") whilst acknowledging that some decisions may entail both vertical and horizontal elements.*
>
> *According to Prof. Haas:*
>
> > *'43. […] Vertical disputes, are characterized by the fact that the association issuing the decision thereby shapes, alters or terminates the membership relation between itself and the member concerned. Vertical disputes typically arise in disciplinary, eligibility or registration contexts'.*
>
> *whereas*
>
> > *'44. […] horizontal disputes do not affect the actual membership sphere, i.e. the participation rights of a member in the co-management of the federation's affairs or the usage rights of an individual member with respect to the associations' facilities. Instead, horizontal disputes originate in a legal relationship amongst individual members. Examples of horizontal disputes are conflicts relating to the performance or termination of employment contracts (between clubs and players or coaches), agency contracts (between clubs and agents) or transfer contracts (between clubs) All these (horizontal) relationships between the individual members are heavily regulated by the respective federations. FIFA -e.g.- imposes extensive rules with respect to the execution, content and termination of contracts between players (or coaches) and clubs or for the transfer of players between clubs (cfr. Regulations on the status and transfer of players) Those horizontal disputes relationships are, thus, not entered into or executed outside the regulatory authority, but remain under the strict umbrella of FIFA. …'.*
>
> *Still according to Prof. Haas:*
>
> > *'51. […] an association's competence when deciding horizontal disputes is very different from the powers exercised in vertical disputes. The association only intervenes in horizontal disputes if the claim is brought before its association tribunal by one of the members. Thus, it cannot alter the relationship between the parties ex officio, but only intervenes upon a specific request of the parties.*

> *In addition - and very different from vertical disputes - once the association tribunal has exercised its (adjudicatory) function, the association's powers are at an end. In other words, as soon as the association (through its association tribunal) has exercised its jurisdictional powers, the only remaining persons entitled to freely dispose of the claim underlying the decision are the members'"* (CAS 2020/A/7144, paras. 91-94 of the abstract published on the CAS website).

117. The Panel subscribes to these views and considers that for what concerns the case under review, except for the sporting sanctions requested by Zamalek, the present dispute is a purely horizontal dispute between Zamalek on one side and the Respondents on the other, both with respect to the claim as well as to the counterclaim.

118. Indeed, in the proceedings before the FIFA DRC, the Player sought a ruling from the FIFA DRC as the adjudicatory body in charge, requiring Zamalek to comply with its contractual obligations arising out of the Employment Contract.

119. At the same time, with its counterclaim (that was not assessed because it was declared inadmissible), Zamalek sought a ruling from the FIFA DRC as the adjudicatory body in charge, requiring the Player to comply with his contractual obligations arising out of the Employment Contract.

120. Besides potentially imposing sporting sanctions on any of the parties involved in the proceedings before the FIFA DRC, FIFA had no interest in the outcome of such proceedings.

121. FIFA's decision to declare the Response/Counterclaim inadmissible does not alter the membership relations of any of the Parties vis-à-vis FIFA, but it exclusively alters the contractual rights and obligations between one another. By declaring the Response/Counterclaim inadmissible, the FIFA DRC disposed of Zamalek's right to seek enforcement of the Employment Contract and thereby intervened in the horizontal relationship of Zamalek vis-à-vis the Respondents.

122. Moreover, once the FIFA DRC rendered the Appealed Decision, its power came to an end and FIFA could no longer dispose of the underlying dispute whilst the Parties can still reach a different agreement, amending partially or reaching an entirely different agreement than the content of the Appealed Decision, which is typical for horizontal disputes.

123. Also, the Panel finds that the FIFA DRC acted as a (quasi-) adjudicative first instance body ruling on the admissibility of a legal submission under the rules contained in the FIFA Statutes, the FIFA RSTP and the FIFA procedural rules. Such situation does not fundamentally differ from the situation in which a civil court assesses the admissibility of a legal submission under national procedural laws. In the latter case, if a party does not agree with the ruling of a first instance civil court considering a submission inadmissible, and such party appeals the first instance ruling, it is not required to direct its appeal against or include the first instance court as a respondent in its appeal. The same logic should apply to appeals before the CAS for what concerns purely procedural issues.

124. Moreover, the Panel is comforted in reaching the above conclusion, keeping in mind other CAS jurisprudence in which the following is held:

> *"With regard to the allegation that FIFA should have been summoned by the Appellant as a necessary party in the present proceedings (in order for the Panel to adjudicate the issue of FIFA's jurisdiction), the Panel agrees with CAS consistent jurisprudence according to which in cases where FIFA merely acts as the legal body rendering the lower-instance decision, i.e. in cases which do not involve FIFA's disciplinary powers (so-called "horizontal disputes"), as in the present case, FIFA has the opportunity to participate in the CAS proceedings but is not a necessary party, nor the Appellant has the burden to summon FIFA as a respondent (see CAS 2008/A/1705; CAS 2008/A/1708; CAS 2010/A/2289)"* (CAS 2015/A/3896, para. 89 of the abstract published on the CAS website).

125. FIFA's reliance on CAS 2016/A/4836 by means of its letter to the CAS Court Office in the matter at hand dated 7 March 2022, does not lead the Panel to any different view. Such CAS award concerns an issue related to jurisdiction, while the present matter concerns the admissibility of a response/counterclaim. CAS 2016/A/4836 is further to be distinguished from the matter at hand because the appellant in such case did not request CAS to rule on the substance of the contractual dispute, while Zamalek does request the Panel to do so. Finally, the appellant in CAS 2016/A/4836 *"emphasised that the contractual dispute between the Parties is not the issue of the present proceedings and that his Appeal is only directed against the decision of the FIFA PSC declining jurisdiction"* (CAS 2016/A/4836, para. 73 of the abstract published on the CAS website), while Zamalek maintains that the contractual dispute between the Parties is at stake. In any event, the Panel finds that the appeal before it is horizontal for the reasons set forth in this section of the award and favours the approach set forth in CAS 2015/A/3896.

126. The consequence of the above analysis is that the Player has standing to be sued. Indeed, should the Player not have been called as a respondent, the Panel would not have been able to set aside the Appealed Decision, because the Player would be prejudiced by such decision as he would not be able to enforce the Appealed Decision against Zamalek, while not being heard in the appeals proceedings.

127. Also Al-Duhail has standing to be sued. While Al-Duhail was not a party to the proceedings before the FIFA DRC that resulted in the Appealed Decision, had Al-Duhail not been called as respondent, it would arguably no longer have to fear a claim being filed against it by Zamalek at a later stage, because such claim would be inadmissible on the basis of Article 9(3) FIFA Procedural Rules (June 2020) or Article 21(2) FIFA Procedural Rules (October 2021), as set out above. However, if the Response/Counterclaim is retrospectively declared admissible in the present appeal arbitration proceedings, Al-Duhail's liability cannot be definitely discounted. Such potentially prejudicial decision cannot be issued without respecting Al-Duhail's right to be heard.

128. However, as to FIFA, based on the reasoning set forth above, the Panel finds that it was not necessary for Zamalek to call FIFA as a respondent, as Zamalek is not seeking anything from FIFA.

129. Should FIFA have desired to be heard as a party in the present proceedings, it could have applied for its intervention on the basis of Articles R41.3 and R52.2 CAS Code, but it explicitly renounced to such right on 7 March 2022. Also, should the Respondents have desired that FIFA would be included as a party, they could have filed an application for joinder on the basis of Article R41.2 CAS Code, but the Respondents did not avail themselves of such opportunity.

130. As already alluded to above, the Panel finds that there is one caveat. Without FIFA being called as a respondent in the present appeal arbitration proceedings, the Panel is prevented from imposing sporting sanctions on the Player and/or Al-Duhail. This is because imposing sporting sanctions is primarily the prerogative of FIFA, which renders it a vertical element in the present proceedings the Panel cannot dispose of without FIFA's involvement as a party.

131. Consequently, on the basis of all the above, the Panel finds that the Respondents have standing to be sued and that Zamalek was not required to call FIFA as a respondent to potentially obtain the relief requested, except insofar as it concerns the request to impose sporting sanctions on the Player and Al-Duhail.

ii. Does the Panel's scope of review extend to assessing the admissibility of the Response/Counterclaim?

132. The Player maintains that the scope of the Panel's jurisdiction is defined in Article R57 CAS Code. In the present case, contrary to Article R57 CAS Code, pursuant to Article 75 SCC, the Panel's scope of review is of a strictly *"cassatory"* nature. On this basis, the Player argues that the Panel may only confirm or annul the Appealed Decision.

133. The Player also submits that the admissibility of the Response/Counterclaim falls outside of the scope of appeal as the Respondents lack standing to be sued in this arbitration procedure. In this regard, he refers to the fact that the contractual dispute between the Parties is not the issue in the current procedure.

134. In this respect, Al-Duhail submits that, if one were to reassess FIFA on its own competence, Article 21 FIFA Procedural Rules (October 2021) would be obsolete. In Al-Duhail's opinion, Article 21 FIFA Procedural Rules (October 2021) effectuates that it is within FIFA's own competence whether documents filed meet the requirements under the applicable procedural rules and can be admitted. Therefore, Al-Duhail holds that the admissibility of the Response/Counterclaim falls outside the Panel's scope of review.

135. Zamalek maintains that it did not commit any procedural default pertaining to the present appeal, and hence the Panel shall have an absolute scope to rule on the admissibility of Zamalek's Response/Counterclaim.

136. As discussed above, the Panel finds that it was not necessary for Zamalek to summon FIFA as a party in these proceedings given the horizontal nature of the dispute and, conversely, that the Respondents have standing to be sued. Except for the element of Zamalek's request for

sporting sanctions to be imposed on the Respondents, the Panel's scope of review is not limited, but it is competent to rule on Zamalek's prayers for relief.

137. Article R57 CAS Code provides for a *de novo* review:

> *"The Panel has full power to review the facts and the law.* […]*".*

138. It has been consistently held in CAS jurisprudence that the principle of *de novo* review means that procedural defects that occurred before the previous instance are, in principle, cured by means of an appeals arbitration procedure before CAS.

139. CAS panels decide *de novo* and therefore have full competence to review the facts and the law, without restriction. If this would be otherwise, procedural flaws at the previous instance could not be healed in a proceeding before the CAS.

140. This view is supported by CAS jurisprudence:

> *"CAS jurisprudence shows that the type of decision which an appeal panel may make is described in the second sentence of Article R57 of the CAS Code which states that the appeal panel "may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance". This description does not seek to limit the powers of the appeal panel or that it can only act if it finds error in the initial decision or award (CAS 2008/A/1574). Indeed, CAS appeals arbitration proceedings allow the parties ample latitude not only to present written submissions with new evidence, but also to have an oral hearing during which witnesses are examined and cross-examined, evidence is provided and comprehensive pleadings can be made (CAS 2009/A/1880-1881, §18). CAS does not act as an administrative court reviewing an act of an administrative authority where, usually, the scope of review is characterised by minimum standards of scrutiny, mostly procedural, and the administrative court may not substitute its own judgement for that of the administrative authority. Typically, administrative courts may only control the fairness and correctness of the previous procedure, the way in which the decision was arrived at, the reasons given for the decision, the competence of the body adopting the decision and the like. In contrast, it is the duty of a CAS panel in an appeals arbitration procedure to make its independent determination of whether the Appellant's and Respondent's contentions are correct on the merits, not limiting itself to assessing the correctness of the previous procedure and decision (CAS 2009/A/1880-1881, §22)"* (CAS 2012/A/2900, para. 98 of the abstract published on the CAS website).

141. In view of its full power of review, the Panel rejects the Respondents' argument that it would not be entitled to review the FIFA DRC's decision to declare the Response/Counterclaim inadmissible. Such decision forms part of the Appealed Decision and is therefore appealable.

142. Article 21(1), (2) and (3) FIFA Procedural Rules (October 2021) provide as follows:

> *"1. After determining that the claim is complete, and (where relevant) if the procedure is to continue following the conclusion of any preliminary procedural matters, the FIFA general secretariat will request that the respondent(s) submit their response to the claim within the time limit granted. If the*

respondent(s) fail(s) to submit a response to the claim within the time limit, a decision will be made based on the file.

2. *The respondent(s) may submit a counterclaim with their response to the claim. A counterclaim shall have the same form as a claim and shall be submitted within the same time limit as that for the response to the claim.*

3. *If a party submits a new claim which is related to an existing case in which it is a respondent, the new claim shall be joined with the existing case and treated as a counterclaim in the existing case. Where the party has already been notified of the existing case, the new claim must have been submitted within the same time limit as that for the response to the claim in the existing case in order to be considered".*

143. The Panel rejects the argument submitted by Al-Duhail that Article 21 FIFA Procedural Rules (October 2021) restricts the Panel's full power of review, and adheres to the view supported by the prevailing CAS jurisprudence that, based on Article R27 CAS Code, a federation cannot deviate from the full power of review of their case by the CAS (RIGOZZI/ HASLER, n. 13, in: ARROYO (Ed.), Arbitration in Switzerland – The Practitioner's Guide, p. 1039).

144. Of course, the FIFA DRC was entitled to decide on the admissibility of the Response/Counterclaim. However, in view of the decision to declare the Response/Counterclaim inadmissible, Zamalek is entitled to challenge the Appealed Decision, including the decision to declare the Response/Counterclaim inadmissible, and the Panel is entitled to review such decision. Indeed, if the Panel finds that the Response/Counterclaim was illegitimately declared inadmissible, the Panel can cure such default.

145. Unlike suggested by the Respondents, this does not mean that Article 21 FIFA Procedural Rules (October 2021) is obsolete. Rather, the Panel shall assess whether the Response/Counterclaim is inadmissible or not and is guided in this respect by the FIFA Procedural Rules (October 2021), including Article 21.

146. Consequently, the Panel finds that its scope of review extends to assessing the admissibility of the Response/Counterclaim filed before the FIFA DRC.

iii. Is the evidence filed by Zamalek with respect to the timely filing of the Response/Counterclaim admissible?

147. The Respondents maintain that the evidence provided by Zamalek as to the alleged timely dispatch of its Response/Counterclaim is to be disregarded by the Panel, as they consider it to be filed in violation of Articles R44.2, R56 and R57(3) CAS Code, as such evidence was available to Zamalek or could reasonably have been discovered by Zamalek before the Appealed Decision was rendered, and as there are no exceptional circumstances justifying submitting the proof of timely delivery of the Response/Counterclaim as new evidence.

148. As indicated above, on 7 December 2021, Zamalek provided FIFA with information about sending a hardcopy of the Response/Counterclaim with ABS on 15 September 2021. Annexed to this correspondence are way bills of ABS and of DHL.

149. The Panel notes that, in the Appealed Decision, the FIFA DRC assessed Zamalek's letter dated 7 December 2021 and the evidence annexed thereto. Indeed, the Appealed Decision provides as follows in this respect:

> *"In this regard, the Chamber noted the allegation of* [Zamalek] *that it had delivered the submission to a local courier on 15 September 2021, before it was given to DHL on 20 September 2021. The DRC analysed the documentation on file, especially the alleged receipt of the local courier and concluded that the Respondent did not submit sufficient proof of its allegation. The alleged receipt of the courier does not contain the date of 15 September 2021 and there is no reference to the case.*
>
> *On account of the above, the DRC concluded that the* [Response/Counterclaim] *was submitted on 20 September 2021, the date it was dispatched to DHL and five days after the time-limit had expired".*

150. Accordingly, the evidence annexed to Zamalek's letter dated 7 December 2021 formed part of the case file in the proceedings before the FIFA DRC, was not declared inadmissible, and was assessed in the Appealed Decision. Accordingly, the Panel finds that there is no reason to exclude such evidence from the present appeal arbitration proceedings before CAS.

151. Article R51 CAS Code, *inter alia,* provides as follows:

> *"Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely".*

152. Zamalek duly submitted the evidence it wished to rely upon with its Appeal Brief. For such filing no exceptional circumstances are required. This is only the case for evidence submitted after the filing of the Appeal Brief. Accordingly, also this aspect of the Respondents' objection is to be dismissed, as no evidence was submitted by Zamalek after the filing of its Appeal Brief.

153. The Panel however notes that, in trying to establish that the Response/Counterclaim was filed timely with the FIFA DRC, Zamalek also relies on evidence that was not relied upon in the proceedings before the FIFA DRC. Indeed, with its Appeal Brief, Zamalek submitted a statement allegedly issued by ABS on the letterhead of ABS, but undated and unsigned, providing as follows:

> *"To whom it may concern,*
>
> *We, Express Courier, is a courier & freight systems company, we work with DHL Company as an agency such that collect shipments from clients to be sent via DHL which proceeds with sending the clients' shipments to abroad.*

On 15 September, we, ABS Express Courier, collected from Sport Makers Law Firm a shipment with code 5078777830 to be delivered to Zurich, Switzerland and we provided them with a receipt dated 15 September 2021.

The aforementioned shipment was sent via the DHL after completing the internal procedures. According to our system, this is the only shipment we received from Sport Makers on 15 September 2021.

Should you have any queries or comments on any of the above, please feel free to contact us at: [email address]*".*

154. Article R57 CAS Code, *inter alia,* provides as follows:

"The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply".

155. As to the newly provided evidence, the Panel subscribes to CAS jurisprudence and legal doctrine, according to which the possibility of dismissing evidence on the basis of Article R57 CAS Code is to be used with restraint:

Regarding the discretion a CAS panel has to exclude evidence on this basis, the Panel observes that legal scholars have expressed the opinion that such discretion should be exercised by a CAS panel with caution:

"The new provision raised some criticism, and it has been (rightly) supported that it should be used with restraint in order to preserve the fundamental de novo character of the review by the CAS" (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 519).

This provision appears to excessively limit the right to be heard (which includes the right to submit evidence (SFT 4A_600/2010, §4.1)) and to contradict the de novo character of CAS proceedings, by creating an unwarranted link between the evidence presented during the internal proceedings of a sports organization and the evidence presented before the CAS. Given that CAS arbitration is alternative to State jurisdiction, and has thus a legal nature which is very different from that of the intra-association proceedings held within sports organizations, it is submitted that CAS arbitrators should resort to this discretionary power to exclude evidence only in the most extreme cases, e.g. when it is utterly evident that a party is acting in bad faith and is ambushing the other party" (COCCIA M., International Sports Justice: The Court of Arbitration for Sport, European Sports Law and Policy Bulletin, Issue I-2013, p. 58).

[T]his new provision should be applied with caution, so as not to impinge upon the fundamental principle of de novo review by the CAS. The amendment may make sense in those cases where the CAS acts as a second instance arbitral tribunal, reviewing an award rendered by another arbitral panel at the end of genuine arbitral proceedings. But in appeals proceedings against decisions rendered by the hearing bodies of sports-governing organizations, where the curing effect of a full, de novo review by the CAS assumes all its importance, we believe Panels should use the discretion now granted to them by Article R57 only in those cases where the adducing of pre-existing evidence

> *amounts to abusive or otherwise unacceptable procedural conduct by a party" (RIGOZZI/HASLER/QUINN, The 2011, 2012 and 2013 revisions of the Code of Sports-related Arbitration, Jusletter, 3 June 2013, p. 14)"* (CAS 2016/A/4704, para. 81 of the abstract published on the CAS website).

156. Submitting additional evidence of sending the Response/Counterclaim with FIFA timely is, in principle, admissible. There is no indication that Zamalek would have intentionally withheld such evidence in the proceedings before the FIFA DRC. Rather, since the FIFA DRC was not convinced by the evidence provided by Zamalek, the Panel considers it legitimate for Zamalek to try and gather additional evidence to convince the Panel in the present appeal arbitration proceedings that the Response/Counterclaim was filed with FIFA already on 15 September 2021.

157. Consequently, the Panel finds that the evidence filed by Zamalek with respect to the timely filing of the Response/Counterclaim before the FIFA DRC is admissible, which conclusion is however without prejudice to the evidentiary value thereof, which is assessed separately below.

iv. Was the Response/Counterclaim admissible?

a. Was the Response/Counterclaim to be sent by Zamalek on 15 September 2021 or did FIFA have to receive it by such date?

158. It is undisputed between the Parties that the deadline for Zamalek to file its Response/Counterclaim was 15 September 2021.

159. While Zamalek maintains that it submitted the Response/Counterclaim in a timely manner by delivering it to ABS on 15 September 2021, the Respondents argue that this was not the case, as did the FIFA DRC in the Appealed Decision.

160. In assessing whether the Response/Counterclaim was filed timely, and in light of the discussion above as to the applicable version of the FIFA procedural rules, the Panel will first assess whether the Response/Counterclaim was filed timely in accordance with the FIFA Procedural Rules (October 2021), because of the transitory provision determining that such rules are also applicable to procedures that commenced prior to the implementation thereof. However, should this result in a conclusion that the Response/Counterclaim was inadmissible, the Panel will assess whether such conclusion would be different if the FIFA Procedural Rules (June 2020) were applied, because the Panel finds that Zamalek cannot be disadvantaged by the retrospective implementation of a new set of procedural rules that could not have been taken into account at the time of filing of the Response/Counterclaim.

161. First of all, the positions of the Parties differ as to whether the Response/Counterclaim had to be received by FIFA on 15 September 2021 or whether it was sufficient for Zamalek to send the Response/Counterclaim to FIFA on such date.

162. Article 21(1) FIFA Procedural Rules (October 2021) provides as follows:

> *"After determining that the claim is complete, and (where relevant) if the procedure is to continue following the conclusion of any preliminary procedural matters, the FIFA general secretariat will request that the respondent(s)* ***submit their response to the claim within the time limit granted****. If the respondent(s) fail(s) to* ***submit a response to the claim within the time limit****, a decision will be made based on the file"* (emphasis added by the Panel).

163. Pursuant to Article 21(2) FIFA Procedural Rules (October 2021), the aforementioned time limit applies *ipso facto* to the filing of a counterclaim.

164. Article 11(4) FIFA Procedural Rules (October 2021) provides as follows:

> *"A time limit is deemed to have been complied with if the action required or requested has been completed by latest the last day of the time limit at the location of the party's domicile, even where the party has appointed an authorised representative with a different domicile".*

165. Reading Article 21(1) in conjunction with Article 11(4) FIFA Procedural Rules (October 2021), the Panel finds that the relevant element for the timely submission of the Response/Counterclaim is whether it was submitted in Egypt on 15 September 2021 at the latest.

166. The Panel is further comforted in this understanding based on the reasoning of the FIFA DRC in the Appealed Decision, insofar it indicates that Zamalek provided insufficient proof of its allegation that it had delivered the Response/Counterclaim to a local courier on 15 September 2021 and that *"the DRC concluded that the* [Response/Counterclaim] *was submitted on 20 September 2021, the date it was dispatched to DHL and five days after the time-limit had expired".*

167. Indeed, this suggests that the FIFA DRC considered that the Response/Counterclaim was *"submitted"* on 20 September 2021. 20 September 2021 was the date of sending, not the date of receipt, which was 22 September. Accordingly, should Zamalek be able to establish that, contrary to the FIFA DRC's conclusion, the Response/Counterclaim was not submitted on 20 September 2021, but already on 15 September 2021, the Response/Counterclaim should have been considered to have been filed timely.

168. Furthermore, if the Response/Counterclaim should have been received by FIFA on 20 September 2021, any discussion as to whether the Response/Counterclaim would have been filed on 15 September 2021 or on 20 September 2021 would be obsolete, because under either scenario the Response/Counterclaim would have been filed late, given that it was only received by FIFA on 22 September 2021.

169. The same applies to the reasoning of the FIFA administration in its letter dated 24 November 2021, where it was concluded that the Response/Counterclaim was *"sent on 20 September 2021, i.e. after expiry of the time-limit set by the FIFA administration (15 September 2021)".*

Indeed, the reference to 20 September 2021 is only relevant if the Response/Counterclaim had to be filed on 15 September 2021, rather than received.

170. Finally, although not discussed between the Parties, the Panel notes that the FIFA Procedural Rules (October 2021) no longer appear to allow for the submission of documents to FIFA by regular mail or by courier, because Article 10(1) FIFA Procedural Rules (October 2021) provides that *"[c]ommunications may be undertaken via email or the Transfer Matching System"*.

171. Since it is not in dispute that Zamalek only filed its Response/Counterclaim to FIFA by courier, this would in principle appear to be an invalid submission.

172. The Panel notes that, pursuant to the FIFA Procedural Rules (June 2020), submission of documents shall in principle be conducted by email. However, Article 9bis(1) FIFA Procedural Rules (June 2020) provides, *inter alia*, that *"[a]lternatively, submissions may also be transmitted by regular mail or courier"*.

173. On this basis, and given that the Response/Counterclaim was submitted by Zamalek before the implementation of the FIFA Procedural Rules (October 2021), the Panel finds that transmission by courier of the Response/Counterclaim was valid.

174. Consequently, the Panel finds that the Response/Counterclaim had to be sent by Zamalek on 15 September 2021.

b. Was the Response/Counterclaim timely submitted by Zamalek?

175. As to the submission of the Response/Counterclaim, the Panels considers it to be particularly relevant to look at the contemporaneous evidence, i.e. the evidence related to the moment of filing that was available before FIFA declared it inadmissible.

176. In this respect, the Panel notes that FIFA, by letter dated 24 November 2021, informed Zamalek and the Player, *inter alia*, that *"[a]ccording to the documentation from DHL, such correspondence was sent on 20 September 2021, i.e. after expiry of the time-limit set by the FIFA administration (15 September 2021)"*, and attaching such documentation received from DHL to its letter.

177. The relevant documentation of DHL is depicted below. For present purposes, it is relevant to note that in the top left corner reference is made to *"2021-09-15 MYDHL"*:



178. From the document depicted above, FIFA inferred that the Response/Counterclaim was dispatched on 20 September 2021.

179. While the Panel notes that it is true that the label on the right side refers to the date of 20 September 2021, it is not clear to the Panel why FIFA did not consider the reference to 15 September 2021 on the label on the left side to be relevant.

180. The two labels depicted above contain the same way bill number. Indeed, both contain the following information: *"WAYBILL 50 7877 7830"*. The Panel finds that this supports Zamalek's argument that both labels are connected as well as the dates of 15 September 2021 and 20 September 2021.

181. Indeed, the Panel considers this to be very strong evidence in support of Zamalek's position that it filed the Response/Counterclaim on 15 September 2021 via a local courier and that the shipment was subsequently handed over from the local courier to DHL on 20 September 2021 and was ultimately delivered at FIFA on 22 September 2021.

182. Furthermore, included in the documents provided to FIFA by Zamalek on 7 December 2021 is a *"Shipment Receipt"*, which contains, *inter alia*, the following information:

> *"Shipment From*
>
> *Sport Makers Law& Management Firm"*
>
> […]
>
> *Shipment To*
>
> *FIFA*
>
> […]
>
> *Shipment Date: 2021-09-15*
>
> *Waybill Number: 5078777830*
>
> […]
>
> *Estimated Del date: Thursday, 23 Set. 2021".*

183. Finally, although the evidentiary value is somewhat limited because the document is neither signed nor dated, the statement from ABS relied upon by Zamalek also confirms Zamalek's argument that the Response/Counterclaim was submitted on 15 September 2021.

184. The Respondents provided no evidence that the evidence presented by Zamalek was forged. Indeed, as indicated above, the Panel finds that in particular the waybill referred to by FIFA in its letter 24 November 2021 is convincing as it predates the dispute as to the timely submission of the Response/Counterclaim. At such point in time, there was no incentive for Zamalek to forge any document, because it submitted its Response/Counterclaim to FIFA in a timely manner.

185. Consequently, the Panel finds that the Response/Counterclaim filed before the FIFA DRC was admissible.

v. What are the consequences deriving therefrom?

186. The Panel first of all finds that, by declaring the Response/Counterclaim inadmissible, the FIFA DRC violated Zamalek's right to be heard with respect to the claim filed against it by the Player and illegitimately did not address Zamalek's counterclaim.

187. This situation needs to be repaired insofar as possible.

188. As indicated above, based on Article R57 CAS Code, the Panel is authorised to issue a new decision which replaces the Appealed Decision or annul the Appealed Decision and refer the case back to the FIFA DRC. The Panel is afforded discretion in this respect and no particular request from any of the Parties is required to choose for either of these options.

189. Notwithstanding its competence to decide on the contractual dispute between the Parties itself, the Panel believes it would be fair and appropriate to refer the present case back to the FIFA DRC for adjudication and a decision on the merits.

190. Indeed, because of the severe violation of Zamalek's right to be heard, the Panel finds it appropriate that the FIFA DRC assesses the merits of the case first, before CAS can potentially do so on appeal, as this is what should have happened in the first place.

191. In this respect, the Panel also takes into account the Respondents' implicit stance/request to refer the case back to FIFA in case Zamalek's Response/Counterclaim would be deemed admissible:

- Al-Duhail argues that CAS should not and cannot enter in the present appeal proceedings into the substance of such new claim. In the present matter, CAS acts as an appeal body, not as a court of first instance with respect to Zamalek's counterclaim.

- The Player argues that, if Zamalek is granted the relief it seeks, the matter will be referred to the FIFA DRC who will consider Zamalek's Response/Counterclaim and Zamalek will have the right to defend itself.

192. The Panel finds that it would indeed be appropriate for the FIFA DRC to assess the full case file and issue a new decision, fully respecting all parties' right to be heard. If the Panel would issue a decision on the substance of the Parties' contractual dispute, the Parties would be deprived of one level of jurisdiction. Because the admissibility of the Response/Counterclaim may have a major impact on the outcome of the proceedings, the Panel decides to refer the case back to FIFA for a new decision on the merits.

193. The Panel therefore only rules on Zamalek's prayer for relief no. 1 and intentionally leaves Zamalek's additional prayers for relief undecided.

194. Zamalek's prayer for relief no. 1 provides as follows:

> *"To declare that the Appellant's Counterclaim dated 15 September 2020 submitted to the FIFA is admissible and thus that the Honorable panel has the right to decide on all the requests of the Appellant against the Respondents including the right to receive compensation and imposing sporting sanctions".*

195. For the reasons set out above, the Panel decides to grant prayer for relief no. 1, albeit that the case is referred back to the FIFA DRC rather than that the Panel exercises its right to decide on the substance of the dispute itself. However, as considered above, one element

of this prayer for relief is to be dismissed, because the Panel is not competent to rule on Zamalek's request to impose sporting sanctions on the Respondents without FIFA being called as a party. As a consequence thereof, Zamalek's appeal is only partially upheld.

196. Finally, for the sake of completeness, the Panel wishes to note that, as the present case is referred back to the FIFA DRC, this arbitral award is not a final award, but an incidental award. In this regard, the Panel refers to ATF 140 III 520 par. 2.2.1. and 2.2.2. and cases quoted, which stipulates as follows (in a free translation into English):

> *"The decision of the appeal authority to annul the contested decision and to refer the case back to the authority of first instance for investigation and a new decision on the merits is qualified as an incidental decision by the federal case law, even though it puts an end to the appeal proceedings (cf. ATF 137 V 314 consid. 1 p. 315; ATF 135 V 141 consid. 1.1; ATF 135 III 329 consid. 1.2). It is justified to apply the same principle by analogy to the appeal procedure before the CAS, the idea being that, in this case too, the aim is to ensure that the Federal Supreme Court only has to deal with a case once, subject to the exceptions allowed by the case law (ATF 130 III 755 recital 1.2).*
>
> […]
>
> *The CAS annulled the decision submitted to it after having found a major defect in the procedure relating to it; then, using the option granted to it by art. R57 para. 1 of the Code, it referred the case back to the DRC for a new decision. In so doing, it undoubtedly closed the appeal procedure pending before it; it did not, however, render a final award, in the particular sense of this notion".*

B. Conclusion

197. Based on the foregoing, the Panel holds that:

i) The Respondents have standing to be sued and Zamalek was not required to call FIFA as a respondent to potentially obtain the relief requested, except insofar as it concerns the request to impose sporting sanctions on the Player and Al-Duhail.

ii) Its scope of review extends to assessing the admissibility of the Response/Counterclaim filed before the FIFA DRC.

iii) The evidence filed by Zamalek with respect to the timely filing of the Response/Counterclaim before the FIFA DRC is admissible.

iv) The Response/Counterclaim filed before the FIFA DRC was admissible.

v) The proceedings are referred back to the FIFA DRC for adjudication and a new decision, this time considering the Response/Counterclaim admissible.

vi) All other and further prayers for relief are deliberately not addressed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 18 February 2022 by Zamalek Sporting Club against the decision issued on 9 December 2021 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is partially upheld.

2. The decision issued on 9 December 2021 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is set aside.

3. The proceedings are referred back to the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* for adjudication and a new decision, this time considering the Response/Counterclaim filed by Zamalek Sporting Club on 15 September 2021 admissible.

4. (…).

5. (…).

6. All other and further motions or prayers for relief are deliberately not addressed.