

# Decision of the Adjudicatory Chamber of the Ethics Committee

Taken on 17 December 2020

## **COMPOSITION:**

Vassilios Skouris, Greece (Chairman)

Mohammad Al Kamali, UAE (Member)

Melchior Wathelet, Belgium (Member)

## **PARTY:**

Mr Joseph S. Blatter,

Switzerland

Regarding an infringement of the FIFA Code of Ethics (adj. ref. no. 7/2020)

## I. FACTS OF THE CASE

### A. PROCEEDINGS BEFORE THE INVESTIGATORY CHAMBER

#### Procedural background

#### 1. Preliminary investigation and opening of proceedings

1. Mr Joseph S. Blatter was the FIFA Secretary General from 1981 to 1998 and FIFA President between 1998 and 2015.
2. On 27 May 2015, the U.S. Department of Justice announced that “[a] 47-count indictment was unsealed early this morning in federal court in Brooklyn, New York, charging 14 defendants [Nine FIFA Officials and Five Corporate Executives] with racketeering, wire fraud and money laundering conspiracies, among other offenses, in connection with the defendants’ participation in a 24-year scheme to enrich themselves through the corruption of international soccer.” On the same day, the Office of the Attorney General of Switzerland (“OAG”) announced that it had opened criminal proceedings against unknown parties on suspicion of criminal mismanagement and money laundering in connection with the allocation of the 2018 and 2022 FIFA World Cups. Consequently, FIFA retained [Law Firm 1] and [Law Firm 2] to represent FIFA in connection with the U.S. and Swiss investigations and mandated them to conduct an internal investigation on several issues involving certain officials of FIFA, including Mr Joseph Blatter.
3. On 3 June 2016, [Law Firm 1] released information regarding details on contracts and compensation for a small group of former FIFA officials, including Mr Blatter, and stated that “The evidence appears to reveal a coordinated effort by three former top officials of FIFA to enrich themselves through annual salary increases, World Cup bonuses and other incentives totaling more than CHF 79 million – in just the last five years”.
4. In the meantime, the investigatory chamber of the FIFA Ethics Committee (hereinafter: “the investigatory chamber”) had started a preliminary investigation against him based on art. 62 par. 3 of the FIFA Code of Ethics, 2012 edition (“FCE 2012”). During the course of the investigation, Mr Blatter participated in an interview on 28 July 2016.
5. On 9 September 2016, Mr Blatter was officially notified pursuant to art. 63 par. 1 and 64 par. 1 of the FCE 2012, that formal investigation proceedings with ref. no. E16-00017 had been opened against him for possible violations of articles 13, 15, 16, 19, 20 and 21 of the FCE 2012. He was further informed that Mr Robert Torres, member of the investigatory chamber, had been assigned to lead the investigation proceedings as chief of investigation (cf. art. 65 of the FCE 2012).
6. On 29 March 2017, [Law Firm 1] and [Law Firm 2] rendered their investigation report through which they exposed several conducts that breached several provision of the FIFA Code of Ethics committed by Mr Blatter.

#### 2. Communications with the party

7. After having received the notification regarding the opening of investigation proceedings, on 15 September 2016, Mr Blatter sent a communication to the investigatory chamber through which he presented allegations in regard to the lack of impartiality and independence of all members of both the investigatory chamber and the adjudicatory chamber of the FIFA Ethics Committee, as required by article 34 of

the FCE 2012. Furthermore, Mr Blatter alleged that the FIFA Ethics Committee did not have the authority to initiate proceedings against him, since he no longer exercised any function at FIFA.

8. In reply to Mr Blatter's complaint, on 26 September 2016, the investigatory chamber sent him a communication and explained, among other issues, that the allegation was unsubstantiated and had to be rejected since the FCE does not allow objections made against all members of the FIFA Ethics Committee in line with article 35 par. 4 of the FCE 2012.
9. As for Mr Blatter's argument related to the jurisdiction of the FIFA Ethics Committee to exercise its investigatory powers, Mr Blatter was informed that the decision for the initiation of investigatory proceedings may not be contested and that the issue of jurisdiction will eventually be dealt with in a later stage when the Final report is issued, if any.
10. On the same date, 26 September 2016, Mr Lorenz Erni, legal representative of Mr Blatter, answered to the previous mentioned letter from the investigatory chamber and stated that, although he acknowledged receipt of the communication, Mr Blatter's still maintained the arguments brought forward in his submission of 15 September 2016.

#### **Factual findings of the investigatory chamber**

11. In the scope of its investigation, the investigatory chamber and chief of investigation gathered different types of evidence, including: the "AMENDED INVESTIGATIVE REPORT REGARDING BONUS PAYMENTS IN CONNECTION WITH THE 2010 FIFA WORLD CUP SOUTH AFRICA™" dated 29 March 2017 ("Bonus Report") prepared by [Law Firm 1] and [Law Firm 2]; documents related to meetings of the FIFA Compensation Sub-Committee ("CSC") in 2015; employment contracts between FIFA and Mr Blatter (including amendments).

### **3. Mr Blatter's employment agreements before 2010**

12. On 8 June 1998, Mr Blatter was elected by the FIFA Congress as President of FIFA. He was then re-elected on four occasions, in May 2002, May 2007, June 2011 and May 2015. Following his first re-election in 2002, Mr Blatter entered into an employment agreement with FIFA on 18 December 2002, the legal effects of which started on 1 January 2003, through which he was entitled to an annual remuneration of CHF 1.2 million, an annual contribution of CHF 100,000 as a reason of representative expenses, a car and all the related expenses, a place to live and all its related expenses, including taxes, as well as an ordinary annual bonus determined by the FIFA Finance Committee. The agreement was solely signed, on behalf of FIFA, by Mr Julio Grondona, the chairperson of the FIFA Finance Committee at the time (deceased in 2014).
13. On 10 November 2003, Mr Grondona informed Mr Blatter that he had been granted with an ordinary annual bonus of CHF 900,000 for the year of 2003.
14. Following Mr Blatter's second re-election as FIFA President in 2007, he signed a new employment contract with Mr Grondona (on behalf of FIFA) on 5 February 2008, which entered into force retroactively on 1 June 2007. The new contract stipulated an increased annual salary of CHF 2 million, and an increase to CHF 500,000 for annual representation expenses, as well as the same benefits as the 2002 agreement.

#### **4. Amended employment agreements of 1 December 2010 in relation to the 2010 FIFA World Cup South Africa™**

15. On 1 December 2010, the existing employment contract of Mr Blatter, as well as those of Markus Kattner (FIFA Deputy Secretary General and Director of FIFA Finance & Administration) and Jérôme Valcke (FIFA Secretary General) were amended. The respective amendments to the agreements provided extraordinary bonuses, related to services the aforementioned three officials performed in connection with the 2010 FIFA World Cup™, which would be paid over a span of four years in four equal instalments in December 2010, 2011, 2012 and 2013. The content of the three amendments was very similar, with the main difference being the amount of the bonus and name/title of the respective official, as follows:
  - CHF 11 million to Mr Blatter;
  - CHF 9 million to Mr Valcke; and
  - CHF 3 million to Mr Kattner.
16. Such bonuses were styled as amendments to Messrs Blatter's, Valcke's, and Kattner's existing employment contracts. The amendments all contained identical language, differing only in the amount of the bonus and the name of the employee. Additionally, the amendments stated that the bonuses were related to services each official provided in connection with the 2010 FIFA World Cup South Africa.
17. Notably, the bonus agreements also expressly mentioned that, in the event that Messrs Blatter, Valcke or Kattner left FIFA for any reason, the full aggregate bonus amount would accelerate and become immediately due for payment. In addition, the bonus agreements explicitly specified that in case of death of the recipient of the bonus, the full aggregate bonus amount would have to be paid to the heirs of the recipient.
18. In regard to disbursement of such bonuses, the amounts were to be paid over a span of four years in four equal instalments, of CHF 2,750,000 in the case of Mr Blatter. However, the schedule of Mr Valcke's bonus payments was accelerated in February 2011 by early payment of the 2011 bonus instalment, upon approval of Mr Blatter. In June 2011, it was further accelerated by a loan structure with regard to the 2012 and 2013 bonus instalments, also upon approval of Mr Blatter (who at the time possessed the sole signature power binding FIFA). In this respect, on 6 December 2011, Mr Blatter issued a letter through which he thanked [Bank] (which had granted the loan structure to Mr Valcke) for its financial support in regard to the bonus payments for 2012 and 2013 to Mr Valcke for his contribution to the success of the 2010 FIFA World Cup.
19. The (official) 1 December 2010 amendment agreement of Mr Blatter was signed by Messrs Grondona and Valcke on behalf of FIFA, the respective amendment agreement of Mr Valcke was signed by Mr Blatter (for FIFA), and that of Mr Kattner was signed by Messrs Blatter and Valcke.
20. In addition to the bonuses in favour of Messrs Blatter, Valcke and Kattner, FIFA also paid substantial bonuses to two other high-level FIFA officials in connection with the 2010 FIFA World Cup, Messrs Grondona and Issa Hayatou, FIFA Vice president and Chairman of the Organising Committee for the FIFA World Cup.
21. On 25 November 2010, both Messrs Valcke and Blatter wrote a letter to Mr Grondona informing him of the award of a USD 1 million bonus payment in his favour. In

addition, the bonus payments to Mr Grondona of USD 1 million continued on a yearly basis until his death in 2014. In total, Mr Grondona received the amount of USD 4,583,333 as extraordinary bonuses. FIFA made four payments of USD 1 million as extraordinary bonuses to Mr Grondona in his capacity as chairman of the FIFA Finance Committee on 1 December 2010, 15 December 2011, 13 December 2012, 6 December 2013 and a pro-rated bonus of USD 583,333 on 8 August 2014. Except for the first payment made in 2010, the later payments do not seem to have been made in connection with the 2010 FIFA World Cup South Africa.

22. In the course of their investigation, [Law Firm 1] and [Law Firm 2] discovered a USB drive in Mr Kattner's office, which contained different Microsoft Word versions of the 1 December 2010's amendments to Messrs Blatter's, Valcke's and Kattner's employment contracts. The first version referred to the amendments of the agreements as described above. However, in addition, [Law Firm 1] and [Law Firm 2] found that there was a second version of the same employment contracts which omitted all mentions of the extraordinary bonuses and their justification. Those second versions appear to be drafted with the intention to avoid that the external auditors at the time, [Auditors], were able to identify such transactions in the course the audited FIFA's financial figures for the year 2010. From the accessed data, it can be seen that such amendments were originally prepared in November 2010 and last modified in 2 December 2010. Since [Auditors] were at the time the external auditor of FIFA, it was suggested by [Law Firm 1] and [Law Firm 2] that the modified versions of the amendments were prepared in connection with the audit of the FIFA's financial figures for the year 2010.
  23. The aggregate bonus amount to be paid to Messrs Blatter, Valcke, and Kattner of CHF 23 million was not included in FIFA's financial statements for the year ended 2010. The 2010 FIFA financial statements only recorded the aggregate annual instalment paid to Messrs Blatter, Valcke, and Kattner in December 2010 in the amount of CHF 5.75 million. The 2010 bonus payments to Grondona and Hayatou totaling USD 2 million were reflected in FIFA's 2010 financial records as "various external services". No liability was recorded in the 2010 FIFA financial statements for the remaining instalments of FIFA's bonus commitments to Messrs Blatter, Valcke, and Kattner in the aggregate amount of CHF 17.25 million.
  24. The above mentioned failure to record the aggregate bonus amounts, to disclose the "related-party transactions", as well as to recognize the short-term/long-term employee benefits in the 2010 FIFA's financial statements, indicates that neither the FIFA Finance department nor the FIFA Human Resources department (with the exception of Mr Kattner) had the necessary information to properly record FIFA's bonus commitments to Messrs Blatter, Valcke and Kattner.
  25. By non-disclosing these transactions properly, it is evident that Messrs Blatter's, Valcke's and Kattner's intention was to avoid any transparency towards FIFA. In other words, Messrs Blatter, Valcke and Kattner tried to conceal the awarding of these bonus payments, so that the less possible people would know about their existence, and so that the transactions could still be arranged and known only between a select group of people.
- 5. Amendment agreements of Messrs Valcke and Kattner dated 30 April 2011**
26. On 30 April 2011, before the 2011 FIFA's presidential election in which Mr Mohamed Bin Hammam ran against Mr Blatter, further amendment agreements were concluded

extending the term of Messrs Valcke's and Kattner's employment agreements from 31 December 2015 until 31 December 2019.

27. In sum, the terms of the existing employment agreements were significantly extended and included further bonuses for each of the officials, as well as severance payments. Again, the amendment agreements of Messrs Valcke and Kattner contained identical language with only the amounts of the salary, the ordinary bonuses and the severance payments differing. The relevant severance payments were equivalent to the salary accruing until the expiration of the ordinary term of the employment agreement, even if the employment relationship was terminated for cause. Moreover, the amended agreements contained an indemnity clause that stated that in the event that Messrs Valcke or Kattner were prosecuted for conducts in connection with their official duties, FIFA would not only pay attorney's fees, but also fines and damages arising therefrom.

**6. Amended employment agreements of 19 October 2011 in relation to the FIFA Confederations Cup Brazil 2013 and the 2014 FIFA World Cup Brazil™**

28. A new series of amendment agreements, similar to the ones signed on 1 December 2010, were signed by Messrs Blatter, Valcke and Kattner on 19 October 2011, including extraordinary bonuses in connection with the FIFA Confederations Cup Brazil 2013 and the 2014 FIFA World Cup Brazil™ for the following amounts:
  - CHF 12 million to Mr Blatter;
  - CHF 10 million to Mr Valcke; and
  - CHF 4 million to Mr Kattner.
29. The amendment agreement of Mr Blatter was signed by Messrs Valcke and Grondona on behalf of FIFA, while the amendment agreement of Mr Valcke was signed by Blatter and Grondona, and the amendment agreement of Mr Kattner by Blatter, Valcke, and Grondona on behalf of FIFA.
30. The rights of Messrs Blatter, Valcke and Kattner to receive the respective bonuses depended on the fulfilment of ten criteria assessing the organizational success of the FIFA Confederations Cup Brazil 2013 and the organizational and financial success of the 2014 FIFA World Cup Brazil™. If the criteria concerning the FIFA Confederations Cup Brazil 2013 were met, thirty-five percent of the aggregate bonus amounts would be paid in December 2013. Similarly, if the criteria concerning the 2014 FIFA World Cup Brazil™ were met, the remaining amount (i.e., sixty-five percent of the aggregate bonus) would be paid in December 2014.
31. In March 2013, article 7.9.1 of the FIFA Internal Organisation Regulations was enacted. Through this provision, FIFA established the FIFA Compensation Sub-Committee. Its members were the Chairman of the FIFA Finance Committee, the Chairman of the FIFA Audit and Compliance Committee and one independent member.
32. On 1 January 2014, the FIFA Compensation Sub-Committee enacted the Compensation Policy, through which it set up internal rules that governed the remunerations of (1) the FIFA President, (2) the FIFA Secretary General, (3) members of the FIFA Executive Committee, and (4) key FIFA management. Article 6.2.2 of the mentioned policy confirmed the right of the FIFA President, FIFA Secretary General and FIFA Deputy Secretary General to receive annual ordinary and extraordinary bonus payments. Mr Blatter, as FIFA President, was entitled to receive ordinary and extraordinary bonus payments as follows:

*"FIFA President*

*The FIFA President receives an annual bonus between 0% and 50% of his base salary based on annual performance criteria. In addition, after completing his four-year term and reaching the predefined objectives of his term, the FIFA President receives a mandate bonus between 0% and 100% of his four-year base salary".*

33. In its first meeting on 3 October 2013, the CSC confirmed that the criteria has been met, thus, triggering the thirty-five percent bonus entitlements in relation to the 2013 FIFA Confederations Cup Brazil to be paid to Messrs Valcke and Kattner accordingly to their 19 October 2011's amendment agreements.
34. In the same meeting, the CSC decided to replace the bonus structure as established in Mr Blatter's amendment agreement of 19 October 2011, with a performance-based of four year agreement.
35. On the same day, an amendment to Mr Blatter's employment agreement was concluded and authorised by Messrs Grondona and Valcke on behalf of FIFA. The bonus amount payable to Mr Blatter under this new amendment of 3 October 2013 was not stipulated in the agreement.
36. In line with the 19 October 2011 amendment to Mr Blatter's employment agreement, Mr Blatter was entitled to a total bonus payment of CHF 12 million. The bonus payment's structures was: where the criteria concerning the 2013 FIFA Confederations Cup Brazil were met, thirty-five percent of the aggregate bonus amount would be paid in December 2013. Similarly, if the criteria concerning the 2014 FIFA World Cup Brazil were met, the remaining amount –sixty-five percent of the aggregate bonus– would be paid in December 2014.
37. FIFA's bonus commitments to Mr Blatter under the 19 October 2011 amendment agreement were not disclosed as a related-party transaction in FIFA's 2011 and 2012 financial statements.
38. With respect to the bonuses of Messrs Valcke and Kattner, in its meetings of 3 October 2013 and 24 September 2014 the CSC confirmed that the criteria triggering such entitlements under the respective 2011 amendment agreements were satisfied. The bonus of Mr Kattner was therefore paid in December 2013 and December 2014. The bonus of Mr Valcke in connection to the 2014 FIFA World Cup Brazil™ (65% of the aggregate) was also paid in December 2014 (as per the 2011 amendment agreement). However, at Mr Valcke's express request, and upon Mr Blatter's approval, the bonus in connection to the FIFA Confederations Cup Brazil 2013 (35% of the aggregate) was paid to Mr Valcke in September 2013. In other words, the payment of the respective bonus was approved by Mr Blatter before the CSC could meet and confirm that the criteria triggering the bonus entitlement was met.
39. Neither the 2011 nor the 2012 FIFA financial statements contained provisions, accruals or liabilities for the bonuses of Messrs Blatter, Valcke and Kattner. This was confirmed by Mr Martin Schumacher, the Head of FIFA Finance & Accounting. The 2013 FIFA financial statements only recorded the bonuses in connection to the FIFA Confederations Cup Brazil 2013 paid to Messrs Valcke, and Kattner (35% of the aggregate bonus amounts as per the 2011 amendment agreements) as "salaries". The same applied to the bonuses in connection to the 2014 FIFA World Cup Brazil™ (65% of the aggregate bonus amounts) paid to Messrs Valcke, and Kattner, which were also

reflected as “salaries” in the 2014 FIFA financial statements. It furthermore appears that Mr Kattner again failed to share the relevant information with the staff of the FIFA Finance and FIFA Human Resources divisions that he was the director of.

#### **7. Mr Blatter’s amended employment contract of 3 October 2013**

40. As mentioned previously, on 3 October 2013 the CSC decided to replace the bonus payment’s structure established through Mr Blatter’s amendment agreement of 19 October 2011, with a four-year performance-based agreement. No bonus payments were executed to Mr Blatter under the amendment agreement of 19 October 2011.
41. That same day, Messrs Valcke and Grondona signed a new employment agreement for Mr Blatter on behalf of FIFA, replacing Blatter’s previous amendment agreement of 19 October 2011. The new amendment of 3 October 2013 called for Mr Blatter’s bonus to be determined by the CSC after the 2015 FIFA Congress.
42. In its meeting dated 30 May 2015, the CSC approved and awarded Mr Blatter with a CHF 12 million bonus payment (the same amount as the previous bonus as per the 2011 amendment agreement) in relation to his 2011-2014 term as FIFA President and the fulfilment of his statutory duties.

#### **8. Amendment agreements of 10 June 2014 in relation to the FIFA Confederations Cup Russia 2017 and the 2018 FIFA World Cup Russia™**

43. On 10 June 2014, Messrs Valcke and Kattner entered into additional amendment agreements with FIFA in connection with the FIFA Confederations Cup Russia 2017 and the 2018 FIFA World Cup Russia™, which provided for a CHF 11 million bonus to Mr Valcke, and a CHF 4.5 million bonus to Mr Kattner, to be paid in 2017 (35%) and 2018 (65%). The amendment agreements were signed by the same persons as before on behalf of FIFA (Messrs Blatter and Grondona for Mr Valcke’s agreement, and Messrs Blatter, Valcke, and Grondona for Mr Kattner’s) and included criteria for the payment of the bonuses very similar to the previous 2011 amendment agreements. Once more, it appears that the relevant FIFA financial statements (in particular those for the year 2014) did not contain provisions, accruals or liabilities for the bonuses of Messrs Valcke and Kattner, and that the FIFA Finance and FIFA Human Resources divisions were once more not informed of the bonus commitments. It further appears that Domenico Scala, acting as Chairman of the CSC and Chairman of the FIFA Audit and Compliance Committee, may have been privy to the bonus information at the time.

#### **Conclusions of the investigatory chamber**

44. Following the careful analysis of the gathered information and documentation, the investigatory chamber concluded that Mr Blatter breached numerous provisions of the FCE 2012:
  - By engaging in conflict of interests while being the FIFA President and one of the key persons with regard to the stipulation and implementation of extraordinary bonus payments addressed to top FIFA officials, at the same time that, he was among the beneficiaries of such bonus payments;
  - By accepting an undue economic benefit of the total amount of CHF 23 million, split over the years 2010 to 2014, as a result of the conflict of interest created by the allocation and execution of extraordinary bonus payments between limited top-ranking FIFA officials;



45. As a consequence of the foregoing, Mr Blatter was found to have breached articles 13 paras. 3 and 4 (General Rules of Conduct), 15, 19 paras. 2 and 3 (Conflict of interests) and 20 par. 1 (Gifts and other benefits) of the FIFA Code of Ethics, edition 2012.

## **B. PROCEEDINGS BEFORE THE ADJUDICATORY CHAMBER**

### **Opening of adjudicatory proceedings**

46. On 29 September 2020, Mr Blatter was informed that the adjudicatory chamber had opened proceedings based on the investigatory chamber's Final report as per art. 68 par. 3 of the FCE.

### **Summary of Mr Blatter's written position to the adjudicatory chamber**

47. On 6 November 2020, submitted his written position making the following statements:
- FIFA lacks jurisdiction since it opened proceedings in 2016 after Mr Blatter's resignation and withdrawal from football;
  - The new ethics proceedings were opened precisely when it was decided that the matter between Dr Kattner and FIFA could not be settled out of court;
  - An institutional bias prevents FIFA from investigating/adjudicating the case impartially and independently. This is due to the alleged lack of independence from the Ethics Committee members vis-a-vis the Council and President of FIFA that can dismiss them;
  - There is no separation between the respective chambers since the same administrative staff at FIFA who drew up the Final report will be involved in the adjudicatory decision or are at least in close contact with the staff of that chamber. Moreover, FIFA staff cannot be independent, being employed by FIFA;
  - The bonus/employments contracts are not abusive since (i) all employment contracts had been signed by the persons/committees responsible, (ii) Mr Blatter's salary did not increase between 2008 and 2015, and (iii) his annual income (salary and bonuses) between 2007 and 2015 ranged from CHF 2.4M to 7.7M, in line with the guidelines of the Compensation Sub-Committee;
  - Julio Grondona (then Chairman of the Finance Committee) submitted the proposed bonus allocation to Mr Blatter. Mr Blatter had no influence on the amounts/drafting of the bonuses payments;
  - Mr Blatter never received the "bonus" for the 2014 World Cup.
48. Since the position of Mr Blatter contained what appeared to be an objection for the recusal of the chairman of the adjudicatory chamber (and the Ethics Committee in general), it was transmitted to the chairman of the FIFA Appeal Committee on 24 November 2020, in accordance with art. 38 par. 5 of the FCE. On 15 December 2020, the chairman of the FIFA Appeal Committee decided to reject the relevant objection.

## **II. CONSIDERATIONS OF THE ADJUDICATORY CHAMBER**

## A. COMPETENCE AND APPLICABLE LAW

### Competence

49. Art. 30 of the FCE defines a primary (par. 1) and subsidiary (par. 2) competence of the FIFA Ethics Committee. According to the first paragraph of the said article, if the relevant conduct has been committed by an individual elected, appointed or assigned by FIFA to exercise a function, directly concerns their FIFA-related duties or responsibilities, or is related to the use of FIFA funds, the Ethics Committee shall be entitled to investigate and judge the matter.
50. At the time of the facts relevant to the present case, Mr Blatter was the FIFA President, elected by/at the FIFA Congress.
51. Consequently, the FIFA Ethics Committee is entitled to investigate and judge Mr Blatter's conduct, as per art. 30 par. 1 of the FCE.
52. In this respect, Mr Blatter's argument that the relevant investigation proceedings against him were initiated in 2016, after he withdrew from football - is irrelevant and therefore his claim with respect to an alleged lack of jurisdiction of FIFA must be rejected.

### Applicability of the FCE *ratione materiae*

53. The adjudicatory chamber notes that, according to the Final report, there are several indications of potential improper conduct in terms of the FCE by Mr Blatter. In particular, during the investigations, possible violations of the General duties (art. 13), Duty of loyalty (art. 15), Conflicts of interest (art. 19) and Offering and accepting gifts or other benefits (art. 20) in the FCE have been identified. The factual circumstances raise questions of potential misconducts in terms of the FCE.
54. Consequently, the FCE is applicable to the case according to art. 1 of the FCE (*ratione materiae*).

### Applicability of the FCE *ratione personae*

55. According to art. 2 of the FCE, the Code shall apply, inter alia, to "officials", as per the definitions section in the FCE and FIFA Statutes.
56. By virtue of his position as FIFA President (cf. par. 1 above), Mr Blatter was an official within the meaning of the definition given in the FCE and the FIFA Statutes during the period presently relevant.
57. As a consequence, at the time the relevant actions and events occurred, and in view of Mr Blatter's position in football at the time, the FCE applies to him according to art. 2 of the FCE (*ratione personae*).

### Applicability of the FCE *ratione temporis*

58. The relevant facts described in previous sections of this decision occurred (mainly) between 1 December 2010 and 10 June 2014.
59. With regard to the applicability of the FCE in time, art. 3 of the FCE stipulates that the (current) FCE shall apply to conduct whenever it occurred, unless a more favorable provision was in force at the time of the facts (principle of *lex mitior*).
60. In the present case, the legal provisions of the respective articles are deemed equivalent in the various editions of the FCE (i.e. 2009, 2012, 2018, 2019, and 2020).

61. In this context, following the relevant case law and jurisprudence, the adjudicatory chamber notes that the spirit and intent of the 2009 - 2020 editions of the FCE are duly reflected in the below articles of the FCE, which contain equivalent provisions:
- Art. 13 of the FCE (General duties) has a corresponding provision in the 2009 edition of the Code (art.3), as well as in the 2012, 2018 and 2019 editions (art. 13)
  - Art. 15 of the FCE (Duty of loyalty) has a corresponding provision in the 2009 edition of the Code (art.9), as well as in the 2012, 2018 and 2019 editions (art. 15)
  - Art. 19 of the FCE (Conflicts of interest) has a corresponding provision in the 2009 edition of the Code (art.5), as well as in the 2012, 2018 and 2019 editions of the Code (art.19);
  - Art. 20 (Offering and accepting gifts or other benefits) has a corresponding provision in the 2009 FCE (art. 10), as well as in the 2012, 2018 and 2019 editions (art. 20).
62. In consideration of all the above, the adjudicatory chamber concludes that the different FCE editions cover the same offence.

*Lex mitior*

63. The principle of *lex mitior* foresees that the accused should benefit from the most favourable law, imposing the lesser penalty.
64. With respect to the breaches of general duties (art. 13), duty of loyalty (15), conflicts of interest (art. 19) and offering and accepting gifts or other benefits (art. 20), the adjudicatory chamber takes note that the 2009 FCE and 2012 FCE do not foresee any minimum or maximum sanction for the aforementioned provisions. However, the 2018, 2019 and current FCE stipulate a minimum fine of CHF 10,000 as well as a general maximum ban for a duration of two years for the relevant infringement. Therefore, it would appear that the current FCE would be more favourable to the accused.
65. Consequently, the material rules of the current (2020) FCE are applicable to the case, according to art. 3 of the FCE (*ratione temporis*), and in accordance with the principle of *lex mitior*.

## **B. PROCEDURAL ISSUES**

### **Objection to the chairperson of the adjudicatory chamber**

66. In his position dated 6 November 2020, Mr Blatter claimed that all members of the FIFA Ethics Committee are institutionally biased and lack independence in relation to the FIFA Council and FIFA President. As mentioned previously, this claim was considered to represent an objection for the recusal of the chairman of the adjudicatory chamber (and the Ethics Committee in general) and, as such, it was transmitted to the chairman of the FIFA Appeal Committee, in accordance with art. 38 par. 5 of the FCE.

67. In this respect, the Panel would like to first state that, in full accordance with art. 35 par. 5 of the FCE, the objection against the chairperson of the adjudicatory chamber (hereinafter “the Chairperson”) was dealt by the chairperson of the FIFA Appeal Committee. The respective chairperson was also provided with the position of the chairperson of the adjudicatory chamber in this respect.
68. After examining the relevant documents, the chairperson of the FIFA Appeal Committee decided on 15 December 2020 to dismiss the respective objection submitted by Mr Blatter against the Chairperson.
69. In this respect, the Panel would like to make the following additional considerations with respect to Mr Blatter’s objection.
70. First of all, the Panel would like to stress that the independence of any member of the FIFA Ethics Committee is provided by art. 34 of the FCE, which establishes clear rules and requirements for such membership (in particular the interdiction for members of the Ethics Committee and their immediate family members to belong to any other judicial body within FIFA, to the FIFA Council or to any standing committee of FIFA, as well as the interdiction – for Ethics Committee members – to belong to any body or carry out any position with regard to FIFA, a confederation or a member association, other than being member of a judicial body at FIFA, confederation or national level). These requirements have evolved over time, becoming more restrictive over the latest revisions of the FCE in 2018 and 2019, during the tenure of the current chairperson of the Ethics Committee.
71. Furthermore, the institutional independence of the judicial bodies of FIFA is explicitly stated/stipulated at art. 50 of the FIFA Statutes - the most important regulations of the organization which also contains specific and strict rules regulating the FIFA judicial bodies, in particular their composition, election and organization (art. 52 and 54). In addition, the FIFA Governance Regulations (in force since 2016) set further conditions concerning eligibility checks conducted by the FIFA Governance/Review Committee on all members of the independent committees of FIFA (including the Ethics Committee) prior to their (re)election or (re)appointment (art. 4), as well as independence requirements (art. 5) and other rules concerning judicial bodies (art. 38) such as eligibility and independence reviews.
72. Furthermore, it should be stressed that the fact that the chairperson or Mr Al Kamali, have been involved in the adjudication of the case of Mr Kattner has no consequence on the ability of the Panel to deliver a sound and fair decision in this case. Mr Blatter’s case is completely separate from that of Mr Kattner and there is absolutely no reason to believe that the chairman expressed any opinion on Mr Blatter’s case other than in the context of the present proceedings. By the same token, there is no element from Mr Kattner’s case or else that could provide the chairperson with first-hand knowledge of disputed evidentiary facts material to the proceedings.
73. Regarding the involvement of the secretariat, whose independence Mr Blatter has criticized in his letter dated 6 November 2020, art. 33 of the FCE sets out the tasks attributed to each chamber’s secretariat. For the sake of transparency, it should be reminded that both chambers rely on a separate group of staff and that the members of the Ethics Committee shall manage their investigations and proceedings and render their decisions entirely independently and shall avoid any third-party influence (see art. 34 FCE).

74. In view of the above, there is no element (nor has any evidence been brought forward in this respect) that could indicate any personal bias or prejudice of the chairperson (and of Mr Al Kamali) concerning Mr Blatter, or any other interest that could be affected by the outcome of these proceedings.
75. Moreover, there is no indication, nor any claim, that would link the allegations to any of the conditions for withdrawal (for grounds of impartiality) clearly specified at art. 35 of the FCE. In particular, Mr Blatter has not alleged, let alone proven or demonstrated that the chairperson or Mr Al Kamali have: a direct interest in the outcome of the present matter; a personal bias or prejudice concerning him; nor first-hand knowledge of disputed evidentiary facts material to these proceedings; expressed an opinion concerning the outcome of the proceedings, other than as part of the adjudicatory proceedings; or have dealt with the case in a different function (other than as chairperson and member of the adjudicatory chamber respectively).
76. The Panel would also like to recall that, since the opening of the adjudicatory proceedings on 29 September 2020, the Chairperson has consistently shown transparency and swiftness in answering all Mr Blatter's queries and procedural requests. Such approach and procedure have been made in line with the FCE, the constant practice and the jurisprudence of the adjudicatory chamber.
77. It should be stressed that Mr Blatter's claim of an institutional bias of the Ethics Committee (as a whole) does not satisfy the procedural requirements of art. 35 of the FCE, which clearly establishes that objections can only be submitted "against a **member** of the Ethics Committee believed to be biased" (emphasis added).
78. Finally, Mr Blatter's general recusal of the entire (or all the members of the) Ethics Committee would contravene a general principle of law – the rule of necessity according to which a recusal cannot result in a lack of competence for any court or tribunal. In other words, should Mr Blatter's objection against the Ethics Committee be granted, then it would be impossible for the above-mentioned ethics proceedings to be conducted or continued, which cannot be acceptable (and would constitute an abuse of law).

## C. ASSESSMENT OF POTENTIAL ETHICS VIOLATIONS

### a) Possible violation of art. 19 of the FCE 2020 (Conflicts of interest)

#### 1. Wording of the relevant provision

79. Art. 19 of the FCE describes the conflicts of interest as follows:

*"1. Persons bound by this Code shall not perform their duties (in particular, preparing or participating in the taking of a decision) in situations in which an existing or potential conflict of interest might affect such performance. A conflict of interest arises if a person bound by this Code has, or appears to have, secondary interests that could influence his ability to perform his duties with integrity in an independent and purposeful manner. Secondary interests include, but are not limited to, gaining any possible advantage for the persons bound by this Code themselves or related parties as defined in this Code.*

*2. Before being elected, appointed or employed, persons bound by this Code shall disclose any relations and interests that could lead to situations of conflicts of interest in the context of their prospective activities.*

*3. Persons bound by this Code shall not perform their duties (in particular preparing, or participating in, the taking of a decision) in situations in which there is a danger that a conflict of interest might affect such performance. Any such conflict shall be immediately disclosed and notified to the organization for which the person bound by this Code performs his duties."*

## **2. Persons involved**

80. The first requirement of art. 19 par. 1 of the FCE is that the person acting must be bound by the FCE.
81. As already established, at the relevant time of the conduct (between 2010 and 2014), Mr Blatter was the FIFA President, and therefore a football official according to the respective decision in the FCE. Consequently, he was bound by the Code of Ethics.

## **3. Secondary interest**

82. In accordance with the content of art. 19 par. 1 of the FCE, secondary interests relate to gaining any possible advantage for the persons bound by the Code themselves or related parties.
83. The Panel found that Mr Blatter had secondary interests in connection with the bonuses awarded through the amended employment contracts of 2010 and 2011.
84. It is not contested that Mr Blatter was awarded extraordinary bonuses in the total amount of CHF 23 million in relation to the 2010 FIFA World Cup South Africa (CHF 11 million), as well as in connection to the 2013 FIFA Confederations Cup Brazil and the 2014 FIFA World Cup Brazil (CHF 12 million).
85. These extraordinary bonuses, which were separate from Mr Blatter's salary, expense allowance, contractual benefits and ordinary yearly bonuses, were based on amended employment contracts signed in 2010 and 2011 by a small group of FIFA senior management, including also Messrs Valcke and Kattner, the FIFA Secretary General and FIFA Deputy Secretary General, respectively. From the documents mentioned and explanations made in the Final report, it is clear that the relevant contracts were only known and executed among these same officials, who were either the signatory or beneficiary parties to the agreements. More specifically, for all of the amendments made to Messrs Valcke's and Kattner's employment contracts, Mr Blatter was a signatory party (amendments dated 1 December 2010, 30 April 2011, 19 October 2011 and 10 June 2014). Likewise, for all Mr Blatter's amendments, Messrs Valcke and Grondona were the authorising parties (amendments dated 1 December 2010, 19 October 2011 and 3 October 2013). Furthermore, Mr Grondona received extraordinary bonuses of USD 1 million per year, between 2010 and 2014 (the year of his death), which were not based on any written agreement and started at the exact time of the first amendment to the employment contracts of Messrs Blatter, Valcke and Kattner – 1 December 2010.
86. Together, Messrs Blatter, Valcke and Kattner were granted with a total of CHF 64.5 million in extraordinary bonuses, while Mr Grondona received more than USD 4.5 million also as extraordinary bonuses, all approved by the members of the same group.

87. In view of the above, it is established that Mr Blatter had secondary interests in relation to the extraordinary bonuses he accepted or received between 2010 and 2015, which represented financial advantages gained in the respective period.

#### **4. Influence over the official's ability to perform his duties with integrity in an independent and purposeful manner**

88. In his position as FIFA President, Mr Blatter has duties to perform not only towards the organization he was leading, but also the various bodies, committees and officials of such entity. In accordance with the FIFA Statutes (art. 32 of the 2010 edition) the FIFA President is the only one who can propose the appointment and dismissal of the FIFA Secretary General, in the present case Mr Valcke. The FIFA President is also supervising the work of the general secretariat (art. 32), that Mr Kattner (as Deputy Secretary General and Director of Finance) was a part of. Finally, the FIFA President is a member of the FIFA Council, named the Executive Committee during the period presently relevant, where he presides over its meetings. Mr Grondona was a member of the FIFA Executive Committee, which was the body appointing the chairman of the FIFA Finance Committee (cf. art. 31 of the FIFA Statutes 2010).
89. According to the content of the Final report and the findings of the investigatory chamber, the four officials directly involved in the amendments of the employment contracts, Messrs Blatter, Grondona, Valcke and Kattner, set-up a scheme through which they were allowing themselves to obtain extraordinary benefits with a minimum of effort. This vicious circle saw three of them (Blatter, Grondona and Valcke) signing the amendment contracts of the others and approving the respective extraordinary bonuses, while the fourth (Kattner) was in charge of implementing the payment of such bonuses (as well as of keeping the matter "off the books", by not reflecting the bonuses in the FIFA financial statements and not reporting them to the FIFA auditors).
90. This *modus operandi* continued throughout the years (between 2011 and 2014) by means of signing various amendments to the relevant employment contracts, which only altered the amounts of the bonus payments and the justification behind (linking it to specific FIFA tournaments, such as the 2013 FIFA Confederations Cup Brazil, the 2014 FIFA World Cup Brazil, the 2017 FIFA Confederations Cup Russia and the 2018 FIFA World Cup Russia).
91. The lack of any corporate governance mechanisms of "checks and balances" before October 2013, when the CSC had its first meeting, meant it was fairly easy for this inner circle of high-ranking officials to sign and approve their own bonuses and salary increases, without any supervision or control from an internal or external body in FIFA. Furthermore, the involved officials actively concealed the awarding of these bonus payments, by not fully and transparently declaring them in the FIFA financial records as extraordinary bonuses.
92. In his capacity as FIFA President, Mr Blatter had to sign and approve extraordinary bonuses to other high-ranking FIFA officials, namely, Messrs Grondona, Valcke and Kattner, while being aware that those officials were either signing/approving his extraordinary bonuses (for a total of CHF 23 million) or implementing the payment of such amounts. Mr Blatter was therefore not in a position to perform his duties - signing the amended employment contracts for the other high-ranking officials and approving their respective extraordinary bonuses - with integrity and in an independent manner due to his private secondary interests - receiving his bonuses, the approval and implementation of which was dependent on the same officials.

## 5. Danger that a conflict of interests affects the performance of duties

93. Paragraph 3 of art. 19 of the FCE expands the definition of a conflict of interests to situations in which there is a danger of a conflict of interests (arising). This means that such a conflict does not have to be concrete or potential, but merely represent a risk, for art. 19 of the FCE to be applicable.
94. In the present case, even if Mr Blatter had not realized the existing or potential conflict of interest arising from the aforementioned situations, he should have taken into account the risk he was exposing himself to. It is clear to the Panel that the performance of Mr Blatter's duties as FIFA President (with respect to the signing of the amended employment contracts and approving the respective bonuses of Messrs Grondona, Valcke and Kattner) was, at the very least, in danger of being affected by a conflict of interest (receiving significant extraordinary bonuses signed/approved by Messrs Grondona, Valcke and Kattner during the same period). This danger should have been apparent also to Mr Blatter, when having to sign the relevant agreements on behalf of FIFA, and should have prompted him to refrain from performing these duties/acts.

## 6. Disclosure and notification

95. According to art. 19 par. 3 of the FCE, officials who may find themselves in a situation in which the performance of their duties might be affected by an existing, potential or even the danger of a conflict of interest are not only obliged to not perform such duties, but also to disclose and notify the relevant conflict of interest to their respective organization.
96. Therefore, in the present case Mr Blatter should not only have refrained from being involved in the signing of the amended employment contracts and approving the respective bonuses of Messrs Grondona, Valcke and Kattner, but also disclosed/notified the conflict of interest that was (potentially) influencing the performance of his duties.
97. However, from the content of the case, no evidence indicates that Mr Blatter discussed such conflict of interest with any official or body of FIFA. In particular, there is no proof that Mr Blatter sought advice from, or at least informed, the Ethics Committee on the matter, a simple action which may have averted the present proceedings.

## 7. Conclusion

98. After examining all the relevant facts of the matter, the Panel considers that Mr Blatter found himself in situations in which a conflict of interest affected (or at the very least there was a danger that it could affect) the performance of his duties. These situations occurred between 2010 and 2014, when he signed, on behalf of FIFA, the amended employment contracts of Messrs Valcke and Kattner (together with Mr Grondona and Mr Valcke) and he approved extraordinary bonuses of approximately CHF 46 million for Messrs Valcke, Kattner and Grondona. In these cases, Mr Blatter's secondary interests stemmed from the fact that, at the same time, his own amendment agreements entitling him to bonuses of CHF 23 million were signed, approved or implemented by the same officials (Valcke, Kattner and Grondona).
99. Moreover, the Panel finds that the process of awarding extraordinary bonuses to Messrs Blatter, Valcke and Kattner (in particular those in relation to the 2010 FIFA World Cup South Africa, the FIFA Confederations Cup 2013 and the 2014 FIFA World Cup Brazil) through the 2010 and 2011 amendment contracts (as well as later ones),



as well as to approve the bonuses of Mr Grondona in the period 2010 – 2014, was conducted in a manner that is not compatible with ethics and the FCE. In particular, the Panel considers that, through their conduct, these senior officials of FIFA (President, Secretary General, Chairman of the Finance Committee and Deputy Secretary General) gave the appearance of creating a vicious circle, approving, and authorizing the payment of extremely significant amounts of bonuses among themselves, mostly without any kind of oversight (until 2013, when the Compensation Sub-Committee formally started its activity, and even afterwards). With respect to Mr Blatter's performance of his duties, such as signing on behalf of FIFA the relevant amendment agreements of Messrs Valcke, Kattner and Grondona and approving the respective extraordinary bonuses for these officials, the Panel considers that this can be found to breach art. 19 of the FCE due to Mr Blatter's direct involvement in the aforementioned process, despite obvious (danger of a) conflict of interest affecting his conduct.

100. In view of the above, the Panel considers that Mr Blatter is found to have violated art. 19 of the FCE.

**b) Possible violation of art. 20 of the FCE 2020 (Offering and accepting gifts or other benefits)**

**1. Wording of the relevant provision**

101. Art. 20 par. 1 provides as follows

*1. "Persons bound by this Code may only offer or accept gifts or other benefits to and from persons within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, where such gifts or benefits:*

*a) have symbolic or trivial value;*

*b) are not offered or accepted as a way of influencing persons bound by this Code to execute or omit an act that is related to their official activities or falls within their discretion;*

*c) are not offered or accepted in contravention of the duties of persons bound by this Code;*

*d) do not create any undue pecuniary or other advantage; and*

*e) do not create a conflict of interest. Any gifts or other benefits not meeting all of these criteria are prohibited."*

*2. If in doubt, gifts or other benefits shall not be accepted, given, offered, promised, received, requested or solicited. In all cases, persons bound by this Code shall not accept, give, offer, promise, receive, request or solicit from anyone within or outside FIFA, or in conjunction with intermediaries or related parties as defined in this Code, cash in any amount or form. If declining the gift or benefit would offend the giver on the grounds of cultural norms, persons bound by this Code may accept the gift or benefit on behalf of their respective organisation and shall report it and hand it over, where applicable, immediately thereafter to the competent body. "*

## 2. Persons involved

102. The first two elements set out in art. 20 par. 1 of the FCE are that (i) the person acting must be bound by the FCE and (ii) the counterpart must be a person within or outside FIFA, an intermediary or a related party as defined in the Code (see the definitions section of the FCE). As already established, Mr Blatter is an official bound by the FCE.

## 3. Gift or other benefit

103. With regard to the term “gift or other benefit”, the adjudicatory chamber considers that this refers to pecuniary or any other advantage, any kind of betterment or advancement of economic, legal or personal, material or non-material nature (cf., by way of analogy, Andreas Donatsch et al. [eds.], StGB Kommentar, 19th ed., 2013, preliminary observations on art. 322ter-322octies, N 8; Günter Stratenwerth and Wolfgang Wohlers, Schweizerisches Strafgesetzbuch, Handkommentar, 3rd ed., 2013, N 4 on art. 322ter).

104. In the present case, it is undisputed that the extraordinary bonuses accepted or received by Mr Blatter, for a total of CHF 23 million, represented financial benefits. The same goes for the bonuses of Messrs Valcke, Grondona and Kattner, for a total of approximately CHF 46 million that Mr Blatter approved (and thus offered to these officials).

## 4. Exceptions set out in art. 20 par. 1 let. a to e of the FCE

105. Not every kind of gift or other benefit, however, falls under the scope of art. 20 par. 1 of the FCE. Rather, it is necessary, for a violation of that provision to occur, that the relevant benefit does not meet the criteria set out in art. 20 par. 1 let. a to e of the FCE. In particular, a gift or benefit cannot be accepted if it has more than a mere symbolic or trivial value (let. a). Similarly, the other conditions of art. 20 par. 1 (let. b to e) must also be fulfilled – cumulatively – in order for the gift or benefit to be accepted as such by the beneficiary.

106. The relevant extraordinary bonuses and payments approved, offered, accepted and/or received by Messrs Blatter, Valcke, Grondona and Kattner between 2010 and 2014 (as well as the other ones planned according to the 2014 amendment agreement) cannot reasonably be considered a symbolic or trivial advantage, regardless of whether they are taken individually (i.e., for each official, namely CHF 23 million for Mr Blatter, CHF 30 million for Mr Valcke, CHF 11,5 million for Mr Kattner and USD 4,583,333 for Mr Grondona) or collectively in the amount of approximately CHF 69 million.

107. Furthermore, as it was explained previously (cf. par. 92 above), Mr Blatter was fully aware that his amended employment contracts were signed by Messrs Valcke and Grondona, who approved his extraordinary bonuses, and that Mr Kattner was implementing the payment of such bonuses to him. At the same time, Mr Blatter had, in his capacity as FIFA President, the authority to sign and approve, on behalf of FIFA the amended employment agreements and related bonuses of Messrs Valcke, Grondona and Kattner. This situation and awareness clearly influenced Mr Blatter’s performance of his duties and the execution of the acts related to his official activities, namely the signing and approving of the relevant agreements and bonuses, as well as created a conflict of interest, as established prior (cf. par. 98 above).

108. Moreover, as FIFA President and an official bound by the FCE and in accordance with article 13 paras. 3 and 4 of the said code, Mr Blatter had to be aware of the impact of his conduct on FIFA’s reputation, and should have therefore behaved in a dignified

and ethical manner and acted with complete credibility and integrity at all times. Additionally, Mr Blatter was obliged to refrain from any activity or behaviour that might give rise to the appearance or suspicion of improper conduct. By signing (on behalf of FIFA) employment agreements and approving extraordinary bonuses to the amount of approximately CHF 46 million for the benefit of Messrs Valcke, Grondona and Kattner, as well as by accepting bonuses approved or implemented by the latter officials, to the amount of CHF 23 million, Mr Blatter has given rise to suspicion of improper conduct and consequently has acted in contravention of his duties as provided in article 13 paras. 3 and 4 of the FCE.

109. With respect to the calculation and overall nature of the extraordinary bonuses approved and received by Mr Blatter, the following considerations should be made.
110. First, it can be seen from the Final report and relevant supporting evidence that the determination of the bonuses was not the result of a clean and orderly decision-making process carried through by an independent and specialized corporate body that was adequately protecting the interests of FIFA, but rather the result of secret decisions taken by an inner circle of FIFA senior management containing very general and broad concepts such as the success of the FIFA World Cups.
111. Even after March 2013, when the CSC was established, it merely adopted in written form of what had de facto been established by Messrs Blatter, Valcke and Kattner three years before and had been put into practice since that time. With respect to Mr Blatter, according to the modification of his employment contract by the CSC, his extraordinary bonus payments were no longer based on the success of the FIFA World Cups but on his performance as FIFA President (four-year performance's based bonus) to be determined by the aforementioned body. However, the amount of such bonuses remained unchanged (CHF 12 million) and the bonuses were awarded to him by decision of the CSC.
112. Moreover, as previously mentioned (cf. par. 91 and 110 above), Messrs Blatter, Valcke and Kattner ensured that the approval and payment of their respective bonuses was made as discreetly as possible, avoiding any attempts at transparency towards the FIFA Executive Committee and the FIFA Congress, the responsible bodies for approving FIFA's annual accounts, as well as towards the internal FIFA administration. Although the bonus payments were approved all at once, they were then paid in yearly instalments and recorded as "salaries" in the annual accounts of FIFA, which only showed the total salaries paid by FIFA during a year, without any specific information. The payment in instalments also avoided the inclusion of the entire bonus amounts in FIFA's financial figures for the respective year, which would have been discovered during the relevant audit of the organization. To the same purpose, it appears that Mr Kattner kept different versions of the amendment contracts of Messrs Blatter, Valcke and his own. Those versions were in substance identical to the signed versions of the 1 December 2010 contract, with the only difference that all references to work performed in connection with the 2010 FIFA World Cup South Africa were removed, leaving the employee's "exceptional services" as the sole justification for the bonuses.
113. All of the above elements indicate that the gifts and benefits received and offered/approved by Mr Blatter, in the form of extraordinary benefits created undue pecuniary advantages for himself and Messrs Valcke, Grondona and Kattner.

## 5. Conclusion

114. In the light of the foregoing, the adjudicatory chamber finds that Mr Blatter has breached art. 20 par. 1 of the FCE by accepting and receiving extraordinary bonuses in the amount of CHF 23 million, signed, approved or implemented by Messrs Grondona, Valcke and Kattner, and by concomitantly approving/offering extraordinary bonuses in the total of approximately CHF 46 million for Messrs Valcke, Grondona and Kattner (through the signing of the amendment employment contracts of the respective officials, on behalf of FIFA).

### c) Possible violation of art. 15 of the FCE (Duty of loyalty)

115. Art. 15 par. 1 of the 2020 FCE provides that persons bound by the FCE shall have a fiduciary duty to FIFA, the confederations, associations, leagues and clubs.

#### 1. Persons involved

116. The first element set out in art. 15 par. 1 of the FCE is that the person acting must be bound by the FCE. Mr Blatter was bound by the FCE at the time of the alleged conduct, by virtue of his position as a FIFA football official as already discussed, therefore the first requirement of art. 15 of the FCE is fulfilled.

#### 2. Fiduciary duty

117. The second element establishes a “fiduciary duty” on persons bound by the FCE to various bodies (FIFA, the confederations, associations, leagues and clubs).

118. In general terms, a fiduciary duty is defined as a legal obligation by which one person (the fiduciary) must protect and promote the interests of another (the beneficiary). Conversely, a breach of fiduciary duty occurs when someone who is placed in a position of trust, acts in a way that is detrimental to the interests of the beneficiary or is likely to damage its reputation.

119. In the present case it is established that, in his function as FIFA President, Mr Blatter held a position of trust and was therefore expected to act with loyalty towards the aforementioned organization, as well as ethically, when performing his functions.

120. The Panel found that Mr Blatter has violated his fiduciary duties towards FIFA in connection with the amendments to the employment contracts of Messrs Valcke and Kattner dated 30 April 2011, with respect to (at least) two particular aspects: the excessive contract term of more than eight years and the severance payments to be paid (even) in the event of contract termination for good cause.

121. First of all, it is important to stress that the alterations made to the contract duration were implemented less than a month before the FIFA presidential election in of May 2011, during which Mr Blatter was running against Mr Mohammed Bin Hammam, the outcome of which was uncertain. These modifications, signed by Mr Blatter, suggest that the objectives of Messrs Valcke and Kattner were either to ensure the perpetuation of their positions as FIFA Secretary General and FIFA Finance Director, respectively, or, at least, to secure a financial benefit in the event of a change of leadership at the top of FIFA.

122. The amended contractual provisions were clearly detrimental to FIFA’s best interests, both by binding the organization to long-term contracts with its senior staff (one of which was actually the head of the FIFA administration), and by exposing it to

significant financial burdens in the event that these contracts were terminated (for any cause).

123. Moreover, the severance clauses providing for the payment of indemnity even in the event of termination for a good cause makes it clear that the amendments to the employment contracts were formulated unilaterally for the only benefit of certain high-ranking employees. These provisions go beyond what is reasonable and permissible as there was not enough reason that could justify such generous behavior by FIFA as the employer.
124. In addition, there is no evidence that Mr Blatter had objected the severance clauses included in Messrs Valcke and Kattner's amendment contracts. On the contrary, Mr Blatter authorized and signed the contract's modification, even though it was clear that those clauses were obviously detrimental to the interest of FIFA. On his end, it is obvious that Mr Blatter wanted to secure the loyalty and support of Messrs Valcke and Kattner in the upcoming presidential elections (and possibly for the duration of his next presidential term), in exchange for the benefits secured through the amended contracts he signed.

### **3. Conclusion**

125. In light of all the above considerations, the Panel finds that Mr Blatter has violated his fiduciary duty towards FIFA and breached art. 15 par. 1 of the FCE by authorizing amendments to Messrs Valcke and Kattner's employment agreement that were obviously detrimental to the finances of FIFA, and were prepared with the sole intention to enrich Messrs Valcke and Kattner with FIFA funds (in case of their termination).

#### **d) General conclusion**

126. Overall, and in light of the considerations and findings above, the adjudicatory chamber holds that Mr Blatter, by his conduct presently relevant, has violated arts. 15 (Duty of Loyalty), 19 (Conflicts of interest) and 20 (Offering and accepting gifts or other benefits) of the 2020 FCE.
127. Lastly, with regard to the obligations set forth in art. 13, the Panel found that the potential breaches of the said article were already sufficiently consumed by the respective breaches of arts. 15, 19 and 20 of the FCE.

## **D. SANCTIONS AND DETERMINATION OF SANCTIONS**

128. According to art. 6 par. 1 of the FCE, the Ethics Committee may pronounce the sanctions described in the FCE, the FIFA Disciplinary Code, 2019 edition ("FDC") and the FIFA Statutes.
129. When imposing a sanction, the adjudicatory chamber shall take into account all relevant factors in the case, including the nature of the offense, the offender's assistance and cooperation, the motive, the circumstances, the degree of the offender's guilt, the extent to which the offender accepts responsibility and whether the person mitigated his guilt by returning the advantage received (art. 9 par. 1 of the FCE). It shall decide the scope and duration of any sanction (art. 9 par. 3 of the FCE).
130. When evaluating the degree of the offender's guilt, the seriousness of the violation and the endangerment of the legal interest protected by the relevant provisions of the FCE need to be taken into account. In this respect, it is important to note that Mr

Blatter held the highest position in football as FIFA President and, as such, had a tremendous responsibility to serve the football community as a role model.

131. Furthermore, Mr Blatter had an extensive career in professional football at senior level in FIFA for more than 30 years. Therefore, Mr Blatter has to be considered a very experienced and highly professional football official, based on his extensive background both in terms of his various mandates and years of activity. Yet, his conduct revealed a pattern of disrespect for core values of the FCE, violating various provisions of the FCE.
132. In this respect, it is important to stress that, as the President of FIFA, Mr Blatter held the most prominent position in association football worldwide at the time of the relevant conduct (2010 – 2014). Accordingly, he was an extremely influential official in world football and within FIFA. By his conduct, the integrity and objectivity of FIFA have therefore been exceedingly violated. FIFA's reputation has doubtlessly incurred serious and long-lasting damage. Moreover, through his behavior, the accused has engendered considerable mistrust in the integrity, objectivity and honesty of FIFA's internal working processes.
133. Furthermore, it is not an act of negligence which is at stake here, but deliberate actions on the part of the accused, who was fully aware of the amount of all the relevant bonuses of Messrs Valcke, Grondona and Kattner when approving them, as well as his own bonuses and of the fact that his own bonuses were being approved by Messrs Valcke and Grondona. In this respect, it should also be noted that the accused was free at all times to break off the intended acts and thus to avoid the endangerment or violation of the protected legal interest. In view of these circumstances, the accused's degree of guilt must be regarded as serious and his behavior as inexcusable.
134. As for the motive, it is clear that Mr Blatter was pursuing his own personal and financial interests. In particular, only from the extraordinary bonuses stemming from the 2010 and 2011 amendment agreements, Mr Blatter would be granted and obtain extremely high pecuniary advantages of CHF 23 million in the period 2010 - 2014, on top of his normal salary and yearly contractual bonus.
135. With respect to the reprehensibility of the behavior, it should be noted that Mr Blatter was also a member of the FIFA Executive Committee at the time of his relevant conduct, the very body that established the FIFA Code of Ethics. Moreover, it should be noted that, as the President of FIFA, the accused also had a responsibility to serve as a role model on worldwide level. All in all, the accused's behavior relevant in the present context must be regarded as completely reprehensible.
136. The circumstances of the present case have also to be considered as particularly aggravating. The accused is the President of FIFA. Accordingly, he was expected to comply with the highest standards of integrity and transparency. The fact that it was him who committed concurrent violations of FCE provisions turns out to be particularly detrimental to FIFA's reputation. Also, the accused has, by approving the relevant bonuses of Messrs Valcke, Grondona and Kattner for an amount of approximately 46 million, caused considerable financial damage to FIFA.
137. The Panel also notes that Mr Blatter has not expressed awareness of wrongdoing or remorse for his actions (a circumstance that is suited to mitigate the culpability of an offender, according to the case law of FIFA's judicial bodies).

138. To sum up, the adjudicatory chamber is of the view that the guilt of the accused in the present case is serious, and virtually no aspects exist that could mitigate the degree of his guilt.
139. With regard to the type of sanction to be imposed on Mr Blatter, the adjudicatory chamber deems that a ban on taking part in any football-related activity is appropriate in view of the inherent, preventive character of such sanction in terms of potential subsequent misconduct. In the light of this, the adjudicatory chamber has chosen to sanction Mr Blatter by banning him from taking part in any football-related activity (art. 7 par. 1(j) of the FCE; art. 56 par. 2(f) of the FIFA Statutes; art. 6 par. 2 lit. c) of the FDC).
140. With respect to the duration of a ban (see art. 9 par. 2 and 3 of the FCE), the adjudicatory chamber points out that art. 15 par. 2 of the FCE (Loyalty) establishes a ban maximum duration of two years, while arts. 19 (Conflicts of interest) and 20 (Offering and accepting gifts or benefits) provide a maximum duration of five years for serious case. As previously discussed, there is no doubt as to the seriousness of the case at hand.
141. Moreover, art. 11 of the FCE foresees that, where more than one breach has been committed, the sanction other than monetary sanctions shall be based on the most serious breach, and increased as appropriate, depending on the specific circumstances. In this respect, the Panel notes that, in the 2018 edition of the FCE, art. 11 has a slightly different content, providing that, in case of concurrent infringements, the sanction other than monetary sanctions shall be based on the most serious breach, and increased **up to one third** as appropriate, depending on the specific circumstances (emphasis added). In view of the above, and in line with the principle of *lex mitior*, the Panel has decided to apply the most favorable version of the FCE with respect to the calculation of the sanction of Mr Blatter, meaning that art. 11 of the 2018 edition of the FCE would be applicable.
142. In the present case, the Panel considers that, while all breaches are serious (or rather extremely serious), the principal violation committed by Mr Blatter was that of accepting and offering gifts (art. 20 of the FCE).
143. In view of the above, and in accordance with the content of art. 11 of the FCE 2018, as well as art. 20 par. 4 of the FCE, the adjudicatory chamber concludes that, in the present case, the duration of the ban to be imposed has a maximum limit of six years and eight months (meaning the sanction of five years for the breach of art. 20 of the FCE, increased by one third – 20 months).
144. In the present case, and after having taken into account all relevant factors of the case as outlined above (cf. par. 130 et seqq. above), the adjudicatory chamber deems a ban on taking part in any football-related activity (administrative, sports or any other) at national and international level for a period of six (6) years and eight (8) months to be appropriate for the violation of arts. 15, 19 and 20 of the FCE committed by Mr Blatter. In view of the fact that the previous ban from taking part in any football-related activity imposed on Mr Blatter has not yet been purged, the present ban will only start deploying effects upon the expiry of the previous one (on 8 October 2021).
145. Furthermore, the adjudicatory chamber is of the opinion that the imposition of a ban on taking part in any football-related activity is not sufficient to sanction the misconduct of Mr Blatter adequately, in particular given the gravity of the matter and

the significant financial gain involved. Hence, the adjudicatory chamber considers that the ban imposed on Mr Blatter should be completed with a fine.

146. The amount of the fine shall not be less than CHF 300 and not more than CHF 1,000,000 (art. 6 par. 2 of the FCE in conjunction with art. 6 par. 4 of the FDC). Furthermore, art. 20 par. 3 of the FCE stipulates a financial sanction, represented by a minimum fine of CHF 10,000, and that any amount unduly received shall be included in the calculation of the fine.
147. In the case at hand – taking into account the circumstances of the case (in particular the extremely prominent official positions held by Mr Blatter in association football, as well as the enormous amounts that were accepted, received or approved/offered by him in the relevant period, for a total of approximately CHF 69 million), the adjudicatory chamber determines that only the maximum fine of CHF 1,000,000 would be appropriate. Accordingly, Mr Blatter shall pay a fine of CHF 1,000,000.
148. Finally, art. 20 par. 3 of the FCE provides that, in addition to the fine, the gift or benefit unduly received should be returned, if applicable. Therefore, Mr Blatter should return to FIFA the amount of all the relevant extraordinary bonuses unduly received in relation to the amended employment agreements signed in the period 2010 - 2014.

## **E. PROCEDURAL COSTS**

149. The procedural costs are made up of the costs and expenses of the investigation and adjudicatory proceedings (art. 54 of the FCE).
150. Mr Blatter has been found guilty of a violation of arts. 15, 19 and 20 of the FCE and has been sanctioned accordingly. The adjudicatory chamber deems that no exceptional circumstances apply to the present case that would justify deviating from the general principle regarding the bearing of the costs. Thus, the adjudicatory chamber rules that Mr Blatter shall bear the procedural costs (art. 56 par. 1 of the FCE).
151. In the present case, the costs and expenses of the investigation and the adjudicatory proceedings add up to [...].
152. According to art. 57 of the FCE, no procedural compensation shall be awarded in proceedings conducted by the Ethics Committee. Consequently, Mr Blatter shall bear his own legal and other costs incurred in connection with these proceedings.



### III. DECISION OF THE ADJUDICATORY CHAMBER

1. Mr Joseph S. Blatter is found responsible for having breached art. 15 (Duty of Loyalty), art. 19 (Conflicts of interest) and art. 20 (Offering and accepting gifts or other benefits) of the FIFA Code of Ethics 2020 edition, by his conduct in his position as FIFA President.
2. Mr Blatter is hereby banned from taking part in any kind of football-related activity at national and international level (administrative, sports or any other) for six years and eight months, in accordance with article 7 lit. j) of the FIFA Code of Ethics in conjunction with art. 6 par. 2 lit. c) of the FIFA Disciplinary Code. However, the aforementioned ban shall only start after the expiration (on 8 October 2021) of the ban previously imposed on Mr Blatter that is currently being purged.
3. Mr Blatter shall pay a fine in the amount of CHF 1,000,000 within 30 days of notification of the present decision.
4. Mr Blatter shall pay costs of these proceedings in the amount of [...] within 30 days of notification of the present decision.
5. Mr Blatter shall bear his own legal and other costs incurred in connection with the present proceedings.
6. This decision is sent to Mr Blatter. A copy of the decision is sent to the chairperson of the investigatory chamber of the FIFA Ethics Committee, Ms Maria Claudia Rojas.

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#### NOTE RELATED TO THE FINANCIAL SANCTION:

The payment of the fine and costs of the proceedings can be made either in Swiss francs (CHF) to account no. [...] or in US dollars (USD) to account no. [...], with reference to case no. "Adj. ref. no. 7/2020 (E16-00017)" in accordance with art. 7 let. e) of the FIFA Code of Ethics.

#### NOTE RELATED TO THE PUBLICATION:

The public may be informed about the reasons for any decision taken by the Ethics Committee. In particular, the chairperson of the adjudicatory chamber may decide to publish the decision taken, partly or in full, provided that the names mentioned in the decision (other than the ones related to the party) and any other information deemed sensitive by the chairperson are duly anonymised (cf. article 36 of the FIFA Code of Ethics).

**NOTE RELATED TO THE APPEAL PROCEDURE:**

In accordance with art. 82 par. 1 of the FCE and art. 58 par. 1 of the FIFA Statutes, this decision can be appealed against to the Court of Arbitration of Sport ("CAS") in Lausanne, Switzerland ([www.tas-cas.org](http://www.tas-cas.org)). The statement of appeal must be sent directly to CAS within 21 days of notification of this decision. Within another ten (10) days following the expiry of the time limit for filing the statement of appeal, the appellant shall file with CAS a brief stating the facts and legal arguments giving rise to the appeal (see art. R51 of the Code of Sports-related Arbitration).

FÉDÉRATION INTERNATIONALE  
DE FOOTBALL ASSOCIATION



Mr Vassilios Skouris  
Chairperson of the adjudicatory chamber  
FIFA Ethics Committee