



Arbitration CAS 2014/A/3477 Pro Duta FC v. PSSI Club Licensing Appeal Committee (CLAC) & Football Association of Indonesia (PSSI), award of 24 September 2014

Panel: Prof. Luigi Fumagalli (Italy), President; Ms Sophie Dion (France); Mr Fabio Iudica (Italy)

Football

Denial of a club licence to participate in the national championship

CAS jurisdiction

Scope of review (of a federation's internal adjudicatory bodies)

New decision or referral according to Article R57 of the CAS Code

Fulfilment of the infrastructure criteria contemplated by the national licensing regulations

1. In the event the statutes of an association provide jurisdiction for internal national disputes to an arbitral tribunal of the association and only grant the CAS jurisdiction for those disputes prior to the creation of such internal arbitral tribunal, the CAS will have jurisdiction until the full creation of the respective arbitral tribunal as foreseen under the association's statutes. Furthermore, once CAS jurisdiction is established it does not cease to exist following the full creation of the association's arbitral tribunal. This is because jurisdiction has to be determined at the time the petition is filed and it is not affected by subsequent changes to its factual and/or legal bases.
2. Provided the Licensing Regulations of an association foresee that in case of the denial of an application for a licence, the club applying for the licence has to be provided with the reasons for the denial, but nevertheless the reasons are not provided to the club whose application is denied, an appeal against the licence denial decision may not be dismissed on procedural grounds only. Instead, the appeals body also has to review the entitlement of the club to the licence.
3. According to Article R57 of the CAS Code, a CAS panel can (i) issue a new decision, replacing the decision annulled, or (ii) refer the case back to the previous instance for further consideration and a final decision. If the second option may be preferable in instances in which, for example, factual or technical elements are missing or further investigation is necessary, the first option is preferable, however, when the CAS panel finds that all elements necessary for a decision have been provided and that therefore, for the sake of procedural economy, no referral back to the previous instance is warranted.
4. If the licensing regulations require that the applicant provides a written contract with the owner of the stadium it will use in order to fulfil the infrastructure criteria needed for the club license to be granted, a simple letter merely expressing generic availability to grant the possibility to use the requested stadium and mentioning some conditions to which such use would be subject does not satisfy the requirement, even accompanied by the fulfilment of the conditions mentioned in that letter, without a contract in writing.

1. BACKGROUND

1.1 The Parties

1. Pro Duta FC (hereinafter referred to as the “Appellant” or the “Club”) is an Indonesian football club with its registered office in Medan, Indonesia. It is a member of the Football Association of Indonesia.
2. The PSSI Club Licensing Appeal Committee (hereinafter referred to as the “First Respondent” or “CLAC”) is a judicial body of the Football Association of Indonesia.
3. The Football Association of Indonesia (Persatuan Sepakbola Seluruh Indonesia, hereinafter referred to as the “Second Respondent” or “PSSI”) is the governing body of football in Indonesia, and is a member of the Fédération Internationale de Football Association (hereinafter referred to as “FIFA”) and of the Asian Football Confederation (hereinafter referred to as “AFC”).

1.2 The Dispute between the Parties

4. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence offered in the course of the proceedings¹. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
5. The dispute between the parties, object of this arbitration, is related to the events which affected the Indonesian football movement in the last few years.
6. In fact, in recent times, two different, competing top football leagues existed in Indonesia, organized by separate entities: the Indonesian Premier League (hereinafter referred to as the “IPL”), organized by PT Liga Prima Indonesia Sportindo, and the Indonesian Super League (hereinafter referred to as the “ISL”), organized by PT Liga Indonesia Sportindo. ISL was not under the jurisdiction of PSSI. The Appellant was one of the clubs that in the season 2013 competed in the IPL tournament.
7. More exactly, the clubs participating in the 2013 competitions were the following:

	IPL	ISL
1.	Semen Padang FC	Persipura
2.	Pro Duta FC	Arema Cronus Indonesia
3.	Perseman Manokwari	Mitra Kukar
4.	Persiba Bantul	Persib
5.	PSM Makassar	Sriwijaya FC

¹ The documents transmitted to the Panel and referred to in this award contain, in their English translations, various misspellings: they are so many that the Panel could not underscore them with “*sic*” or otherwise. In addition, the Panel notes that the English translations of the documents filed by the parties remained unchallenged. The Panel shall therefore make reference to the texts submitted by the Appellant or by the Respondents, without need of further specification.

6.	PSIR Rembang	Barito Putera
7.	Persebaya	Putra Samarinda
8.	Persijap	Persiram
9.	Perseper Palangkaraya	Gresik United
10.	Persiraja	Persepam MU
11.	PSLS Lhokseumawe	Persija
12.	Arema	Persela
13.	Bontang FC	Persiba Balikpapan
14.	Persema	Persita Tangerang
15.	Persibo	Pelita Bandung Raya
16.	Persija	Persidafon
17.		Persiwa
18.		PSPS

8. In that context, efforts were made by PSSI to unify the Indonesian top football organizations, with the creation of a single top league. As a result, on 7 June 2012, a Memorandum of Understanding (hereinafter referred to as the “MoU”) was signed between PSSI, ISL and the Save Indonesian Football Committee, an entity representing the interests of a number of PSSI members (hereinafter referred to as the “KPSI”), in order to properly safeguard *“the integrity of the Indonesian football”*, guarantee *“its sustainability and development”*, and in that regard *“identify the roles and responsibilities of each party”*. The MoU was also signed by representatives of FIFA and of AFC, as *“witnesses”*.

9. The MoU provided, *inter alia*, the following:

“2. *The Status of the ISL*

ISL agrees to immediately come under the jurisdiction of PSSI, particularly with respect to disciplinary matters, player administration and transfer, and appointment of match officials until one and only one top-tier professional football league is established. Until such time, ISL may continue to operate autonomously.

3. *The Status of KPSI*

The parties agree that KPSI will be dissolved and cease to exist as a so-called national football governing body. Furthermore, the parties agree that KPSI will be dissolved and cease to exist as a body immediately after the next PSSI congress.

4. *The Establishment of a Joint PSSI Committee*

The parties agree to establish a joint PSSI committee comprised of members from each parties to evaluate the IPL and ISL in order to create one and only one top-tier Indonesian football league as soon as possible. The Committee shall work under the supervision and in close cooperation with AFC’s Task Force Indonesia and be responsible for working with FIFA and AFC on the review of the PSSI statutes and association matters.

The Joint PSSI Committee shall be composed as follows:

- *Chairman: to be appointed by PSSI;*
- *Deputy Chairman: to be appointed by ISL/KPSI;*
- *Members: 3 members to be appointed by IPL and 3 members to be appointed by ISL/KPSI.*

5. *PSSI Congress*

The parties agree to hold a PSSI Congress by the end of 2012, which shall include the adoption of new statutes. The composition of the PSSI Congress shall remain as the PSSI Congress held 9 July 2011 in the presence of FIFA and AFC and the Congress agenda shall be approved by the AFC Task Force Indonesia. The verification of the composition of such congress shall be discussed and determined by the Joint PSSI Committee in order to avoid illegitimate members from participating”.

10. In accordance with the MoU, therefore, a PSSI Joint Committee was established, with the following “*Terms of Reference*”:

“The Committee shall:

- a) evaluate both the Indonesian Premier League (IPL) and ISL to establish one and only one top-tier Indonesian professional football league as soon as possible under the jurisdiction of PSSI;*
- b) establish a timeline for the implementation of the newly established top-tier Indonesian professional football league covering commercial and sporting aspects;*
- c) carry the revision process of the PSSI statutes under the supervision of FIFA and AFC;*
- d) develop strategies to ensure that the PSSI congress takes place and adopts the relevant statutory amendments in accordance with the PSSI statutes and relevant decisions of FIFA and AFC;*
- e) develop solutions for other association matters, including the verification of PSSI membership/voting delegates and the reinstatement of the four expelled PSSI Executive Committee members to the PSSI Executive Committee; and*
- f) deal with any other matter the AFC Tasks Force Indonesia may requested from time to time.*

The Committee shall take all decisions in accordance with the relevant statutes and decisions of FIFA and AFC”.

11. On such basis, an extraordinary congress of PSSI was held on 17 March 2013. The resolution adopted on that occasion reads as follows:

“Considering:

- a. That PSSI is the highest football sports organization in Indonesia, which carry out the functions, duties and responsibilities as stipulated in the PSSI Statutes.*
- b. That competition is a pillar of Indonesian football clubs followed by PSSI members with professional and amateur status.*
- c. The fact that the current implementation of dualism happen competition by FIFA is a problem to be resolved.*
- d. That it is necessary the existence of a concept and program of the football competition in Indonesia, including the unification of the competition against the competition dualism happen.*

e. That the concept and program unification above competition should be regulated in the Decision of PSSI Extraordinary Congress 2013.

Remembering:

- 1. PSSI Statutes;*
- 2. Decision of Second PSSI Congress 2011 No. 10/KONGRES-II/PSSI/2011 regarding Restructuring Share Ownership of PT. Liga Indonesia;*
- 3. Decision Letter No. SKEP/21/JAH/III/2011 regarding implementation of the Professional League delegation revocation of PT. Liga Indonesia.*
- 4. Memorandum of Understanding between PSSI, KPSI and ISL, dated 7 June 2012.*

Observing:

- 1. A result of PSSI Exclusive Committee Meeting dated 27 February 2013 in Jakarta.*
- 2. Position Paper and Presentation of PT. Liga Prima Indonesia Sportindo in PSSI Extra Ordinary Congress 2013 dated 17 March 2013 in Jakarta.*
- 3. Position Paper and Presentation of PT. Liga Indonesia in PSSI Extra Ordinary Congress 2013 dated 17 March 2013 in Jakarta.*
- 4. Suggestions, proposals and opinions expressed in the PSSI Extra Ordinary Congress 2013 dated 17 March 2013 in Jakarta.*

DECIDE:

Stipulate:

FIRST:

Both Indonesia Premier League and Indonesia Super League 2013 are under jurisdiction of PSSI.

SECOND:

Indonesia football pyramid as follows:

<i>STRATA I</i>	<i>-</i>	<i>PROFESSIONAL</i>
<i>STRATA II</i>	<i>-</i>	<i>PROFESSIONAL</i>
<i>STRATA III</i>	<i>-</i>	<i>AMATEUR</i>
<i>STRATA IV</i>	<i>-</i>	<i>AMATEUR</i>
<i>STRATA V</i>	<i>-</i>	<i>AMATEUR</i>

THIRD:

Number of Indonesia football competition participants as follows:

<i>STRATA I</i>	<i>-</i>	<i>18 Clubs</i>
<i>STRATA II</i>	<i>-</i>	<i>36 Clubs</i>
<i>STRATA III</i>	<i>-</i>	<i>66 Clubs</i>
<i>STRATA IV</i>	<i>-</i>	<i>100 Clubs</i>
<i>STRATA V</i>	<i>-</i>	<i>not limited</i>

FOURTH:

League operator in Indonesia is PT Liga Indonesia with the functions and authority as follows:

- a. Share structure of PT Liga Indonesia is 99% owned by Clubs participating in Strata 1 and 1% owned by PSSI as special share.*

- b. Running independently professional competition, including authorities to operate business and to implement autonomy league.*
- c. Preparing regulations and professional competition manual.*
- d. Professional competition is under jurisdiction of PSSI, including but not limited, match officials, disciplinary enforcement, and player administration.*

FIFTH: *To order PSSI and PT. Liga Indonesia to revoke ongoing lawsuit and processed under district court as to share ownership of PT. Liga Indonesia.*

SIXTH: *To settle the transfer of shares of PT Liga Indonesia in accordance with the decision of the PSSI Congress in 2011 on Restructuring Shares of PT Liga Indonesia.*

EIGHT: *Amateur league operator is Badan Liga Sepakbola Amatir (BLAI) with the functions and authority stipulated under Organizational Regulation.*

NINTH: *Participants of a special competition in transition in season 2014 and beyond as follows:*

a. Strata I followed by 18 clubs ISL 2013 and 4 clubs IPL 2013 which not included Persema, Persibo Bojonegoro, Persebaya IPL, IPL Persija and Arema IPL.

b. Strata II followed by 44 Clubs Divisi Utama under PT. Liga Indonesia 2013 and PT. Liga Prima Sportindo 2013, which not included PSMS IPL and Solo FC.

c. Strata III, IV and V followed all clubs under PT. Liga Indonesia and PT. Liga Prima Indonesia Sportindo 2013.

TENTH: *To revoke and to declare that invalidity of Decree No. SKEP/21/JAH/VIII/2011 regarding Revoking Delegation of Professional League Organization from PT. Liga Indonesia”.*

12. In summary, the foundations were created for the establishment of a new Indonesian Super League (hereinafter referred to as the “New ISL”), and, in that context, it was decided (as indicated) that “18 clubs ISL 2013 and 4 clubs IPL 2013” would participate in the season 2014 of the New ISL.
13. On 28 September 2013, the Executive Committee of PSSI approved the new Club Licensing Regulations, Edition 2013 (hereinafter referred to as the “Licensing Regulations”), defining the licensing system and the required standards and criteria for clubs participating, or seeking to participate, in the New ISL. Under such Licensing Regulations, a club is required to possess a license (hereinafter referred to as the “License”) in order to participate in the New ISL.
14. On 2 October 2013, a meeting was held in Jakarta in order to adopt a system for the identification of the clubs eligible to participate in the New ISL. On that occasion, it was decided

that play-off games would be played in order to determine six clubs of the IPL, which, together with Semen Padang (being the club at the time ranking first in the IPL 2013 season standings), could apply for a License and be selected as one of the four clubs from the IPL to participate in the New ISL.

15. On 9 October 2013, the PSSI informed the clubs of the IPL of the applicable play-off regulations and fixtures. As a result, the IPL clubs were divided into two groups:
 - i. Group K, composed of PSM Makassar, Persija, Bontang FC, PSLS Lhokseumawe and the Club; and
 - ii. Group L, composed of Persepar, Persiba Bantul, Perseman, PSIR, and Persiraja.
16. In a letter to the Club dated 16 October 2013 (No. 2051/AGB/224/X-2013), the PSSI confirmed *inter alia* “That the top 3 clubs of the final play-off table in each group shall have a right to participate in PSSI verification process”.
17. On that basis, the Club took part in play-off games, ranking first in Group K. As a result, it gained the right to apply for a License.
18. On 15 November 2013, the PSSI explained to all potential participants in the New ISL the various steps and procedures for the granting of a License², as follows:
 - “1. PSSI will carry out the verification process (licensing process) to potential participating clubs of ISL 2014 as stipulated in the PSSI Club Licensing Regulations.
 2. PSSI has established and set the body in charge of the Club Licensing i.e. Club Licensing Department (CLD), Club Licensing Committee (CLC) and the Club Licensing Appeal Committee (CLAC).
 3. The process of verification (licensing process) will be run by the Club Licensing Department and will start from 21 November 2013 until the date of 5 December 2013.
 4. Verification method that will run consists of two (2) ways of sending documents by the club and assessment by the CLD to the club.
 5. Clubs are required to submit documents requested by CLD (list attached document) within the deadline specified in point 3 above. At all other times, the CLD will not accept documents sent by the club and is considered non-existent.
 6. All documents submitted are valid and in accordance with the actual facts. If found deficient documents or documents that are not valid, the CLD will be delivered in writing to the club.
 7. To the assessment performed by CLD, then the club will be informed in writing of the assessment schedule and to each club in order to prepare the required criteria (attached).
 8. All documents requested emailed to ... and in hard copy (courier) to ... Club Licensing Department.
 9. The process of verification (licensing process), the club is obliged to appoint and assign Club Licensing

² The Appellant submits however that such letter was received by one of its officers only as an attachment to an email of 26 November 2013.

Officer and delivered to the CLD no later than 18 November 2013.

10. *After the process of verification (licensing process) is completed, the results of the verification will be submitted to the CLC for later decided on the licensing status of the club.*
 11. *CLC will convey the decision of the club and are not eligible to obtain a license on the date of 10 December 2013 in writing.*
 12. *Against which club did not get a license, have the right to appeal to the CLAC by submitting an appeal reason clearly and in detail. ...”.*
19. In a letter to the Club dated 19 November 2013 (No. 426.22/5680/UPTDRUSUNAWA), Dr. Dedi Ahdiat of the Government of Karawang Regency answered a request of the Club to use the Singa Perbangsa stadium as follows:
- “2. *... in principle we not mind to allow PRO DUTA FC in using Singa Perbangsa Stadium as the club home ground during the participation on the IPL unification League and 2014 ISL competition.*
3. *With conditions as follows:*
- a. *Comply to the local regulation No. 5 year of 2009, dated 1 April 2009 on retribution of the usage of local assets*
 - b. *To maintain order and security*
 - c. *To maintain cleanliness and the beauty either inside and outside of the stadium neighborhood*
 - d. *Coordination with the relevance agency/institute in order to maintain order and security*
 - e. *In the event of physical damage to building, either outside or inside of the stadium field, will be in responsibility and charge of the user”.*
20. In a meeting held on 9 December 2013, the Club Licensing Committee of PSSI (hereinafter referred to as the “CLC”), considering the “*verification result*” of the licensing process, decided (as recorded in a decision No. CLC/001/XII/2013 dated 11 December 2013) the following:
- “1. *Twenty five (25) clubs that have submitted the licensing process failed to satisfy the licensing criteria for professional clubs based on the results of verification in the process of licensing (licensing process) conducted by Licensing Department. Thus none of the 25 clubs can be considered as a professional club. Results of the verification attached to this letter.*
 2. *Requesting the Club Licensing Department to deliver this decision to all of the applicants.*
 3. *Informing all the applicants whereas they will have the right to appeal to the Club Licensing Appeals Committee by lodging a memori banding (document explaining the reason of appeal) at the latest than 7 (seven) days from the date of notification of the Club Licensing Department”.*
21. On 10 December 2013, a meeting of the PSSI Executive Committee was held. The results of such meeting were summarized as follows:
- “1. *Competition 2014*
 - *PSSI through the Club Licensing Department has conducted the licensing process (21 November 2013 – 5 December 2014) for 25 candidates Club of ISL 2014.*

- *After verification process, including the verification of documents and on-the-spot check, the Club Licensing Committee decided that 25 clubs do NOT QUALIFY and not entitled to be granted a license.*
 - *To maintain the continuity and integrity of ISL 2014, the Executive Committee decided to focus only on the infrastructure aspect and financial aspect.*
 - *Judging from both aspects, there are 22 nominations: Sriwijaya FC, Persita Tangerang, Persib Bandung, Persija Jakarta, Pelita Bandung Raya, Gresik United, Persela Lamongan, Persepam Madura United, Arema Indonesia, Persiba Balikpapan, Putra Samarinda, Mitra Kukar, Barito Putera, Persiram Raja Ampat, Persipura Jayapura, Persebaya Surabaya, Persik Kediri, Semen Padang, Persija Jepara, Persiba Bantul, PSM Makassar.*
 - *Special note for infrastructure aspects of Persita Tangerang, Persiram Raja Ampat, Perseru Serui - (they) need to relocate the stadium, Persiba Balikpapan, Persik Kediri, Persela Lamongan – (they) need to improve their stadium.*
 - *Notes for financial aspects of the Persija Jepara, Persiba Bantul, Pelita Bandung Raya, Persela Lamongan, Persepam Madura United, Perseru Serui and Persik Kediri.*
 - *Whereas, for a club that is given above mentioned notes, they will have one week to complete or complement the deficiencies of the requirements.*
 - *To delegate the implementation of this decision to the Competition Committee and in relation with the technical aspects of this decision, (the competition committee) is requested to coordinate with PT Liga Indonesia in order to execute this Exco decision”.*
22. In other words, PSSI announced on 10 December 2013 (§ 21 above) that twenty-two teams fulfilled the criteria concerning “*infrastructure aspect and financial aspect*” to participate in the New ISL, following a decision to focus only on those aspects, after that, on 9 December 2013 (§ 20 above), “*the Club Licensing Committee [had] decided that 25 clubs do NOT QUALIFY and [are] not entitled to be granted a license*”. The Appellant was not included in the list of those twenty-two teams.
23. On 11 December 2013 (No. 047/PDFC_MGT/XII (2013)), the Appellant requested PSSI to disclose its reasons to exclude the Club from the New ISL. In that connection, the Club announced its intention to appeal against the exclusion, and outlined that, “*for the sake of drafting an appeal brief, we hope to immediately be granted the Decree of the verification results, as the PSSI only provide one week to appeal*”.
24. In a letter dated 12 December 2013 (bearing No. CLD/045/XII/2013), the licensing manager of the PSSI informed the Appellant that the following had been decided:
- “1. *Pro Duta FC cannot meet the licensing criteria based on the results of the verification of professional clubs in the licensing process. Results of the verification attached to this letter*[³].
 2. *That to this, the club has the right to appeal the denial of the license associated with the appeal brief to the Club Licensing Appeal Committee no later than 7 (seven) days from the date of this letter*”⁴.

³ The Appellant submits that this attachment was never received. At the hearing, then, the Respondent filed a copy of such document, and the Appellant was given the possibility to comment it (§ 45 below).

⁴ Translated text filed by the Appellant from the Indonesian original. The translation of the same letter filed by the

25. On 18 December 2013 (No. 059/PDFC_MGT/XII/2013), the Club filed its appeal with the CLAC, requesting it *“to declare that Pro Duta FC passed verification Club Professional ... to order PSSI to grant Pro Duta FC a license of Professional Club ... to declare Pro Duta FC entitled to participate in ISL 2014”*. In support of its position, the Club *inter alia* emphasized:
 - i. with regard to the “1) Financial Criterion”, that:

“Pro Duta FC does not have a significant financial issue in particular with regard to:

 - *No payment arrears of clubs transfer activity.*
 - *Do not have arrears of payment to the employee or the social or tax authorities.*

Financial conditions of Pro Duta is healthier compared with come clubs still have players salary arrears ...”; and
 - ii. with respect to the “2) Infrastructure Criterion”, that:

“Pro Duta filed Singaperbangsa Stadium eligible to ISL 2014 due to Singaperbangsa Stadium also filed by Persita Tangerang ...”.
26. On 27 December 2013, the CLAC issued the decision No. 07/CLAC/XII-2013 (hereinafter referred to as the “Decision”) as follows:
 1. *to refuse all of the appeals of the petitioner.*
 2. *to corroborate the decision of the Club Licensing Committee (CLC) ...”*.
27. In support of the Decision, the following reasons were stated:

“REGARDING THE FACTS OF THE CASE

 1. *That the Club Licensing Regulations have been approved by the PSSI EXCO at the meeting on 28 September 2013 and they came into force as of 5 November 2013.*
 2. *That PSSI has requested the prospective Clubs for Indonesia Super League 2014 to follow the Verification of ISL Club 2014 with the Letter Number: 2271/CLD/01/XI-2013 of 15 November 2013.*
 3. *That the Petitioner has sent the verification documents on 29 November 2013.*
 4. *That the Club Licensing Committee (CLC) has sent the letters to PSSI Executive Committee with Number: CLC/001/XII/2013 concerning the Result of the Decision of Licensing Process.*
 5. *That the Club Licensing Department has issued the Letter Number: CLD/045/XII/2013 of 12 December 2013 concerning the Submission of the Result of the Licensing process.*
 6. *That in the letter, the Club Licensing Committee notifies that:*
 - a. *“That Pro Duta FC failed to comply with the criteria for the granting of license of professional clubs based on the result of the verification in the licensing process. The verification result is as*

Respondents appears to be slightly different in the final portion of the second paragraph, as it makes reference to “... 7 (seven) days from the date of notification from the Club Licensing Department”. At the hearing, however, the Respondents confirmed that the “notification from the Club Licensing Department” is to be intended as the same letter of 12 December 2013.

attached to this letter”.

- b. “That regarding such matter, any club is entitled to file an appeal if it is not granted such license by submitting an Appeal Brief to the Club Licensing Appeal Committee in not later than 7 (seven) days as of the date of this letter”.*
7. *That the Petitioner filed the appeal on 18 December 2013.*

CONSIDERATIONS

1. *That the Club Licensing Regulations have been approved by PSSI Executive Committee (EXCO) at the meeting held on 28 September 2013 and they came into force on 5 November 2013.*

Authorizing the Club Licensing Appeal Committee (CLAC):

1. *CLAC shall pronounce an appeal filed in writing to the decision of the Club Licensing Committee and make a final decision as to whether the license may be granted.*
2. *An appeal can only be filed by:*
 - a. Any petitioner whose license is refused by CLC;*
 - b. Licensee, whose license is revoked by CLC.*
 - c. Licensing Manager.*
3. *CLAC shall make its decisions based on the decision of CLC and all evidences delivered by the Petitioner of Appeal connected to the submission of the appeal. The other evidences submitted to CLAC after the specified deadline shall not be considered.*
4. *In the event that the License is not granted, any decision shall be made in writing and including any reason for such decision.*
2. *That with due observance of the objections of the Petitioner of the Appeal questioning “it is not valid and it is not the decision of the Decision Making Bodies”. Having taking notice of the form of the letter of the Licensing Manager of PSSI number: CLD/045/XII/2013 of 12 December 2013 concerning the submission of the Result of the Licensing process it is evident that the said letter is a notification it is not the decision as set forth by the petitioner.*
3. *That the Result of the Decision of the Licensing process is the Decision with the Letter Number CLC/001/XII/2013 of 11 December 2013 that submitted to PSSI Executive Committee.*
4. *That with the existing authority, Club Licensing Appeal Committee (CLAC) is not authorized to examine and review the additional documents delivered by the petitioner”.*

2. THE ARBITRAL PROCEEDINGS

2.1 The CAS Proceedings

28. On 20 January 2014, the Club filed a statement of appeal with the Court of Arbitration for Sport (hereinafter referred to as the “CAS”), pursuant to Article R48 of the Code of Sports-related Arbitration and Mediation (hereinafter referred to as the “Code”), to challenge the Decision. Such statement of appeal contained the appointment of Mr M. Idwan Ganie as an arbitrator.

29. In a letter of 29 January 2014, the Appellant specified, following a request of the CAS Court Office of 22 January 2014, the provisions invoked as basis for the CAS jurisdiction to hear the appeal filed against the Decision.
30. On 31 January 2014, the Club filed its appeal brief, in accordance with Article R51 of the Code, together with 31 exhibits. In its appeal brief, the Appellant submitted an application for provisional and conservatory measures, pursuant to Article R37 of the Code, seeking the following relief:

“To order the Respondents to publicly disclose the arguments behind the decision of the Club Licensing Committee No. CLC/001/XII/2013 dated 11 December 2013.

To order the PSSI to postpone/suspend the implementation of 2014 ISL competition until a final decision of this arbitration”.
31. On 3 February 2014, the CAS Court Office notified to the Respondents the Appellant’s appeal brief and invited them to file their position with respect to the Appellant’s request for provisional and conservatory measures.
32. On 11 February 2014, the Respondents filed their comments with respect to the Appellant’s request for provisional and conservatory measures, challenging the jurisdiction of the CAS to deal with the present matter and, as a subsidiary, requesting that the application be denied. At the same time, the Respondents appointed Mr Fabio Iudica as an arbitrator.
33. On 15 February 2014, as announced in their letter of 11 February 2014, the Respondents filed with the CAS Court Office copy of the Regulations of the PSSI Sports Arbitration Tribunal dated 18 November 2013 (hereinafter referred to as the “Arbitration Regulations”).
34. On 17 February 2014 the President of the CAS Appeals Arbitration Division issued an order on the Appellant’s application as follows:

“1. The application for provisional and conservatory measures filed by Pro Duta FC on 31 January 2014 is denied.

2. The present order is rendered without costs, except for the Court Office fee of CHF 1’000 paid by Pro Duta FC which is retained by the Court of Arbitration for Sport”.
35. On 17 February 2014, Mr M. Idwan Ganie declined to accept the appointment as an arbitrator.
36. In a letter of 23 February 2014, the Appellant raised a number of issues relating to its petition for provisional measures, including with reference to the Respondents’ counsel power of attorney.
37. On 24 February 2014, the Appellant appointed Ms Sophie Dion to be a member of the Panel.
38. By communication dated 17 March 2014, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Ms Sophie Dion and Mr Fabio Iudica,

arbitrators.

39. On 31 March 2014, the Respondents filed their answer, pursuant to Article R55 of the Code, together with 11 exhibits.
40. In a letter dated 8 April 2014, the Appellant reiterated its objections to the Respondents' counsel power of attorney and to the compliance by the Respondents of the time limit to file their answer.
41. On 8 April 2014, the CAS Court Office informed the parties that the issue of the Respondents' counsel power of attorney would be dealt with by the Panel. At the same time, but without prejudice to any decision that the Panel could take, the CAS Court Office confirmed to the Appellant that the Respondents' answer was filed in compliance with the applicable time limits, because:

"following the CAS letter of 3 February 2014, the Respondents have applied that the deadline for their answer be fixed after the payment of the advance of costs by the Appellant (see Respondents' letter of 17 February 2014). Such request was granted by letter of 17 February 2014 in accordance with Article R55 of the Code of Sports-related Arbitration. On 10 March 2014, after having received the payment by the Appellant of its share of the advance of costs, the CAS Court Office granted a new deadline of 20 days to the Respondents to file their answer in accordance with the same provision. Therefore, the answer filed by the Respondents on 31 March 2014 is deemed admissible, 30 March 2014 being a non-business day".

42. On 17 April 2014, the parties were informed by the CAS Court Office that the Panel had decided to hold a hearing in the present procedure.
43. A hearing was held on 7 July 2014 at the CAS Alternative Hearing Centre in Kuala Lumpur, Malaysia, on the basis of the notice given to the parties in the letter of the CAS Court Office dated 2 May 2014. The Panel was assisted at the hearing by Mr William Sternheimer, Counsel to CAS. The following persons attended the hearing:
 - i. for the Appellant: Mr Catur Agus Saptono, legal officer, Ms Elisabeth Novarina, Secretary, Mr Amin, Team Manager, Mr Ahamad Muhammad, Finance Manager, Mr Liano Mahardika, Licensing Officer, as well as Mr Teuku Syahrul Ansari, Ms Melly Indriasari and Mr Heru Tri Pratikto, counsel;
 - ii. for the Respondents: Mr Joko Driyono, Secretary General of PSSI, Mr Aristo Pangaribuan, legal director of PSSI, Mr Azwan Karim, foreign affairs director of PSSI, and Mr Vitus Derungs, counsel.

44. At the hearing, the parties made submissions in support of their respective cases, as already stated in the written briefs, and answered questions from the Panel. In that context, and *inter alia*:
 - i. the Appellant contended that it had learnt of the creation by the PSSI of the National

Sports Arbitration Tribunal (hereinafter referred to as the “Arbitration Tribunal”) only from the Respondents’ answer in these arbitration proceedings, and explained that the appeal is still pursued, notwithstanding the fact that the New ISL has been played since February 2014, in order to show its good standing to its stakeholders (sponsors, supporters, etc.);

ii. the Respondents:

- confirmed that the exception, contained in the answer to the Appellant’s request for provisional measures, of failure to comply with the time limit for an appeal to CAS was no longer pursued;
- explained the steps taken by the PSSI to create the Arbitration Tribunal, indicating that the adoption of the Arbitration Regulations was finally announced at the PSSI Congress of 26 January 2014;
- described the decisions taken at the “*judicial*” level by the CLC and at the “*political*” level by the Executive Committee in December 2013 with respect to the admission of clubs to the New ISL, confirming that the Club failed to meet the relevant criteria as, for instance, it did not have a written contract for the use of the stadium (very far from its headquarters) it had designated for its home matches, it had not provided audited financial statements, and it had overdue payables;
- filed, as per the Panel’s request, copy (in Indonesian language) of a document constituting the attachment of the letter of 12 December 2013 (§ 24 above).

45. At the same time, the Panel, acting pursuant to Article R44.3 of the Code, applicable in these proceedings in accordance with Article R57 of the Code, granted (i) a deadline to the Appellant to comment on the PSSI letter of 12 December 2013 (§ 24 above) and its attachment, and to file its license application, together with its exhibits, translated into English, and (ii) deadlines to the Respondents to provide an English translation of the document filed at the hearing and to reply to the Appellant’s comments on the letter of 12 December 2013 and its attachment. Such instructions were confirmed in letters of the CAS Court Office transmitted on 7 and 9 July 2014.

46. At the conclusion of the hearing, the parties expressly stated that they did not have any objection in respect of their right to be heard and to equal treatment in these arbitration proceedings.

47. In accordance with the Panel’s directions:

- i. on 15 July 2014, the Appellant provided CAS with its comments on the letter of 12 December 2013 and its attachment, and filed its license application, together with its exhibits;
- ii. on 17 July 2014, the Respondent lodged with CAS a translation of the document filed at the hearing;
- iii. on 14 August 2014, within an extended deadline, the Respondents filed with CAS a reply to the Appellant’s comments on the letter of 12 December 2013 and to the Appellant’s license application.

48. On 28 August 2014, the Appellant filed an unsolicited letter, intended to address the contents of the Respondents' submission of 14 August 2014.
49. In a letter of 3 September 2014, following the Respondents' objection to the admissibility of the Appellant's letter, the parties were informed that a decision in this respect would be taken in the present award. The Panel deems the Appellant's letter inadmissible as it was unsolicited and no exceptional circumstances justified such filing.

2.2 The Position of the Parties

50. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Panel, indeed, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

a. *The Position of the Appellant*

51. In its prayers for relief, as indicated in the statement of appeal and confirmed in the appeal brief, the Club requested the Panel:
 - “ To annul a decision No. 07/CLAC/XII-2013 passed by Club Licensing Appeal Committee dated 27 December 2013.
 - To declare that PRO DUTA FC is eligible to get a license of professional club.
 - To order PSSI to grant PRO DUTA FC a license of professional Club.
 - To declare and officially state that PRO DUTA FC is eligible to participate in the 2014 Indonesia Super League (ISL) as one of four IPL clubs.
 - To order PSSI to include PRO DUTA FC as a participant in Indonesia Super League (ISL) 2014.
 - To decide that the appeal costs shall be bond entirely by the Respondents or, alternatively, exclusively by PSSI”.
52. In other words, and in essence, the Club requests this Panel to set aside the Decision, to grant the License and to enter it into the New ISL.
53. In that regard, the Appellant preliminarily confirms the CAS jurisdiction to hear its appeal against the Decision. In support of this contention, the Appellant refers to Article 69 of the PSSI Statutes, as amended by the PSSI Congress of 17 June 2013, under which PSSI and its entities, including CLAC, consented to CAS arbitration with respect to “any disputes of national dimensions as long as no national sports Arbitration Tribunal has been installed and recognized by the congress of PSSI within the country”. As a result, CAS jurisdiction would exist, since, at the time the appeal was filed, no “independent Arbitration Tribunal under Art. 69 of the PSSI Statutes” had been established.
54. From a procedural point of view, the Appellant, then, challenges the power of attorney submitted by the Respondents' counsel to represent the PSSI and CLAC in these CAS proceedings, as not signed by the Presidents of PSSI and of CLAC, in accordance with the

relevant provisions.

55. In the merits, the Club challenges the “legality” of the Decision, and submits that it has fulfilled “every aspect of 5 (five) requirement of club licensing criteria (sporting, infrastructure, personnel and administration, legal and finance)” set by the Licensing Regulations, “compared with 22 (twenty two) clubs currently set by the PSSI as participants of 2014 ISL Competition”.
56. With respect to the “legality” of the Decision, the Appellant identifies the following violations of the Licensing Regulations:
 - i. “the making of PSSI Club Licensing Appeal Committee (CLAC) was not transparent and not accountable, because PSSI never published how to recruit personnel of CLAC and names of the office bearer of CLAC”;
 - ii. “CLAC should correct the errors made by PSSI Club Licensing Committee (obligation to notice a decision of Club Licensing Committee) and did not charge those such errors to a License Applicant (PRO DUTA) which acting in good faith”;
 - iii. “PSSI Club Licensing Committee neglect its obligation to notice its written decision to all the License Applicants (especially PRO DUTA FC)”;
 - iv. “in deciding an appeal, PSSI Club Licensing Appeal Committee should be wiser to consider the violation made by the PSSI Club Licensing Committee to notice its written decision to all the License Applicants (especially PRO DUTA FC)”;
 - v. “the decision of PSSI overrule the PSSI Club Licensing Regulations 2013 ... in determining 22 participating clubs of 2014 ISL ...”;
 - vi. “a decision of PSSI to prioritize only 2 aspects (Infrastructure and Financial) is unlawful because the PSSI Club Licensing Regulations 2013 required 5 criteria (Sporting, Infrastructure, Personnel & Administrative, Legal, and Financial) as a whole”.
57. At the same time, the Club invokes the principle (deriving also from FIFA rules) under which a club’s entitlement to participate in domestic league championships depends on sporting merit, and that sporting merit “shall prevail” in the case no licensing system is established. As a result, according to the Appellant, “in the present case, PSSI shall only take 4 clubs to represent the IPL 2013 to perform on the ISL 2014 as a result of the unification league. Therefore, in accordance with the sporting merit principle as said above, PSSI must take PRO DUTA FC (altogether with Semen Padang FC, Perseman and PSM as eligible clubs to participate in ISL 2014) because PRO DUTA FC is the runner-up of IPL 2013 season”. In other words, “if PSSI declared that ISL 2014 was not subject to the Club Licensing System, PSSI shall take clubs (especially 4 clubs of IPL 2013) under Sporting Merit Principle”.
58. In any case, the Appellant submits that it met the two criteria (regarding infrastructural and financial aspects) “prioritized” (however unlawfully) by PSSI. Indeed, the Club submits that it is “better than some of 22 clubs ... stated eligible by PSSI”. More specifically, the Appellant remarks the following:
 - i. with regard to the “infrastructure aspect”:

“PRO DUTA FC has nominated Singaperbangsa stadium ...

PSSI has declared that Persita Tangerang has met infrastructure aspect by using Singaperbangsa stadium ..., that the same stadium for PRO DUTA FC”;

- ii. with regard to the “financial aspect”:

“PRO DUTA FC has no payables overdue towards football clubs arising from transfer activities, employee and social/tax authorities, compared with the other 15 clubs ...”.

59. Finally, with respect to the attachment to the letter of 12 December 2013, containing “*the results of the verification*”, the Appellant preliminarily underlines the difficulty in evaluating it, without considering and comparing it to “*the verification results of every license applicant*”. It therefore requests the Panel to consider and compare the Appellant’s results with those of other applicants. The Appellant, then, addressed the issues stated at the hearing by the Respondent as reasons for the denial of the license as follows:

“1) *The Appellant Did Not Provide A Written Contract With The Owner(s) Of The Stadium*

Based on the attachment (valuation result) of The Respondent letter of 12 December 2013, can be seen that from the table of infrastructure criteria point I.01 about “Approved Stadium for ISL and/ or AFC Club Competition”, the Appellant obtain a check mark from the licensor on Singaperbangsa Stadium. It indicates that the licensor have been considered that the Appellant have secure its right to use the stadium for the ISL. It is true that The Appellant did not provide a written contract with the stadium owner or administrator but the Appellant have filed an approval letter from the administrator of Singaperbangsa Stadium (exhibit 21A & 21B of Appeal Brief) to use the stadium as club home ground in order to participate the 2014 ISL.

Practically a written contract with the stadium owner for using the stadium only in the form of approval letters from the owner/ administrator, since in Indonesia most stadium is owned by its local government and the use of the stadium marked by the payment of retribution to the local government;

The approval letter from the administrator of Singaperbangsa Stadium was a concrete proof that The Appellant as a license applicant has a stadium available to play in for the ISL, and apparently by granting the check mark on the description (“approved stadium for ISL and AFC Club Competition”) for the Appellant, the licensor deem that the approval letters could replace a written contract since both of them represent the same interest/ objectives. This fact also attest that the licensor see no substantive problem despites of no written contract be provided. Therefore, the Respondent premises to not grant a professional club license to The Appellant because of The Appellant did not provide a written contract with the owner(s) of the stadium is unreasonable.

2) *The Appellant Did Not Provide The Audited Financial Statement*

That based on the attachment (valuation result) to The Respondent letter of 12 December 2013, can be seen that from the table of financial criteria point F.01 description about “The Audited Financial Statement”, The Appellant obtain a check mark from the licensor. This indicates that the licensor has acknowledged that the Appellant has submitted its financial statement and verify that the statement was audited. Thus regarding to this fact, the Respondent premises to not grant a professional club license to the Appellant because of The Appellant did not provide an audited financial statement is also unreasonable.

3) *The Appellant considered have payables overdue towards football clubs arising from transfer activities*

That since PSSI never specifies a format on how this criteria/description shall be presented, then the

Appellant decided to display the club conformity in the form of statement letters. The Appellant has submitted a statement letter No. 040/PDFC-VER-13 signed by the club Director (Mr. Wahyu Wahab Usman) which certify and claim that the Appellant as a football club has no outstanding payment of transfer activity either club to another club, PSSI, AFC, FIFA, as well as others in the football activity commencing on December 31 in the year before the license. To support the statement, The Appellant also submits the attached and independent Auditor's Report No. 140/KAP-MP/LA/XI/2013 of Dra. Mellina Pangaribuan Public Accounting Firm for the period of January to December 31, 2012, besides that in fact that the Appellant did not do any transfer activity in the mentioned period;

Thus, in terms of the Respondent statement that the Appellant considered have payables overdue towards football clubs arising from transfer activities based on the attachment (valuation result) of The Respondent letter of 12 December 2013 (Financial Criteria point F.03), The Appellant perceive that there has been a misunderstanding in term of submitted documents. Probably the licensor count no document because the difference of the submitted document from licensor's ideal. So that by this commentary, it should consider that the Appellant has shown to the licensor/licensing committee that the Appellant has no payables overdue towards football clubs arising from transfer activities. Therefore, the Respondent argument and the licensor verification result regarding to this matter should be deem no longer justified".

b. The Position of the Respondents

60. In their prayers for relief, as indicated in their answer to the appeal, the Respondents requested from the CAS the following:

- "a. The appeals arbitration procedure shall be terminated due to a lack of jurisdiction of CAS;*
- b. In the alternative, the Appeal shall be dismissed;*
- c. The procedural costs of CAS shall be borne by the Appellant;*
- d. Each of the two Respondents shall be awarded compensation for its legal expenses in the amount of CHF 15'000".*

61. In other words, the Respondents request that the appeal be dismissed because of lack of CAS jurisdiction, or as being ungrounded in its merits.

62. With regard to jurisdiction, the Respondents indicate that on 5 November 2013 the Arbitration Tribunal was established by PSSI, with its Arbitration Regulations entering into force on 18 November 2013. More specifically, the Respondents indicated that the Executive Committee of PSSI approved such Arbitration Regulations on 11 November 2013. Therefore, the Respondents emphasize that:

"15. The conditions stipulated in Art. 69 of the Statutes of PSSI for a national arbitration tribunal to be validly set up, i.e. 1) the regulations drawn up by the Executive Committee of PSSI and 2) the installation of the national arbitration tribunal by the Congress of PSSI, have therefore both been fulfilled.

16. Therewith, the reference to CAS mentioned in Art. 69 of the Statutes of PSSI has – by automatic consequence – become void. In other words, at the latest since 18 November 2013, i.e. when the Regulations of the PSSI Arbitration Tribunal had come into force, CAS does not any longer have jurisdiction in internal disputes concerning PSSI.

17. As a result thereof, CAS does not have jurisdiction to pass a decision as to the substance of the matter at hand. The present proceedings shall therefore be terminated without entering into the substance”.

63. In any case, the Respondents submit that, even if the CAS would find to have jurisdiction, the appeal filed by the Club should be dismissed *“for reasons as to the substance”*.

64. In that regard, the Respondents note the following:

- i. *“the license procedure carried out by PSSI in 2013 for the new ISL ... followed regular proceedings and was always clear and transparent”;*
- ii. *“... the consensus reached between the members of PSSI on 17 March 2013 to create one unified league starting in the year 2014, consisting of 18 clubs of ISL and 4 clubs of IPL remained uncontested and therefore became final and binding. Also the Appellant supported such decision of the Congress of PSSI without any reservation”;*
- iii. *“... the Appellant also supported the agreement reached between the members of IPL on 2 October 2013 that a play-off modus shall be carried out, by means of which 6 clubs were determined that would be entitled to apply together with the club Semen Padang FC for a license of the new ISL, and that 4 out of these 7 teams would finally, as a result of the license proceedings, be admitted to the new league”;*
- iv. *“... all the clubs applying for a license of the new ISL had not fulfilled the requirements established in the License Regulations. In view of such failure of all the candidates, the PSSI Executive Committee was right to reduce the license criteria, in deviation from the License Regulations, to the infrastructural and financial criteria. Considering that the Executive Committee of PSSI was competent to approve the License Regulations, the Executive Committee was obviously also the body of PSSI that was entitled to implement a modification of these rules. The decision of the Executive Committee to implement a deviation from the License Regulations was never appealed by the Appellant or any other party and therefore became final and binding”.*

65. In light of the foregoing, the Respondents contend that *“the CLC rightfully took the decision not to award the Appellant a license for the new ISL due to its failure to fulfil the necessary license criteria, and the CLAC was, in its turn, correct by rejecting the Appellant’s first instance appeal”*. In any case, *“the Appellant has not submitted any evidence to CAS that would demonstrate that it had fulfilled the financial and infrastructural license criteria. The Appellant has not even submitted the license application that it had initially filed to PSSI”*. As a result, *“in view of the lack of any evidence for the Appellant’s position that it had fulfilled the financial and infrastructural license criteria, its position therefore remains a simple and ungrounded allegation that is not corroborated by any evidence. Consequently, the Appellant’s position is entirely contested by the Respondents and shall not be followed by CAS”*.

66. When confronted, in the course of the CAS proceedings (§ 47 above), with the Club’s license application, the Respondents noted the following:

- i. with respect to the criterion regarding infrastructure, that the *“approval letter issued by the owner of the ... stadium is not fulfilling the license criterion”*, since it *“is merely a unilateral statement”* and *“cannot be deemed as a bilateral contract”*;

- ii. with regard to the criterion concerning finance, that
 - a document filed with the CAS (§ 47(i) above), stating that the Club has no overdue payables for transfer activities, was not part of the original documentation submitted with the license application;
 - while the filing of audited financial statements can be conceded, the Club did not provide PSSI with statements regarding payables to other clubs.

67. Finally, the Respondents emphasize the following:

“... even in the ... event that the Appellant would have fulfilled the financial and infrastructural license criteria, PSSI would still have been entitled to reject the Appellant’s license application. In fact, as 4 applicants of the IPL already fulfilled the financial and infrastructural license criteria and thus were granted a license for the new ISL, a fifth candidate that would also have fulfilled these criteria would have had to be rejected, since only 4 starting spots were assigned to the IPL by the uncontested decision of the Congress of PSSI dated 17 March 2013.

49. In this respect, like in any license procedure where a limited number of licenses or starting spots for a sporting competition is to be assigned to a bigger number of applicants who fulfil the relevant objective admission criteria, the deciding body had a certain scope of discretion when awarding the licenses.

50. As a result, even in the hypothetical and contested event that the Appellant had fulfilled the applicable license criteria, PSSI would have been entitled to reject the Appellant’s license request, in application of its own and rightfully used scope of discretion”.

3. LEGAL ANALYSIS

3.1 Jurisdiction

68. The jurisdiction of CAS is disputed by the Respondents, which submit that no arbitration agreement or clause in the PSSI Statutes provides it.
69. In accordance with the Swiss Private International Law Act (Article 186), the CAS has the power to decide upon its own jurisdiction.
70. Article R47 of the Code states that:
- “An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”.*
71. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognize the CAS as an arbitral body of appeal.
72. The Appellant relies on Article 69 of the PSSI Statutes as a basis for CAS jurisdiction. According to such provision, as amended on 17 June 2013 by the PSSI Congress:

“PSSI shall create an Arbitration Tribunal, which shall deal with all internal national disputes between PSSI, its members, Players, Officials and match and players’ agents that do not fall under the jurisdiction of its judicial bodies. The Executive Committee shall draw up special regulations regarding the composition, jurisdiction and procedural rules of this Arbitration Tribunal.

As long as within the Republic of Indonesia no national sports Arbitration Tribunal has been installed and recognized by the Congress of PSSI, any dispute of national dimension may only be referred in the last instance to the Court of Arbitration for Sports (CAS) in Lausanne (Switzerland)”.

73. More specifically, the Appellant indicates that no such independent arbitration tribunal had been established at the time the statement of appeal was filed with the CAS: therefore, the jurisdiction to hear the appeal would remain with CAS according to the second paragraph of Article 69 of the PSSI Statutes. On the other hand, the Respondents indicate that, by decree dated 5 November 2013, the Arbitration Tribunal was established and that the regulations governing such tribunal were adopted a few days later: therefore, according to the Respondents, since 5 November 2013 the CAS has no jurisdiction over national disputes in Indonesian football⁵.
74. The Panel notes, on the basis of the documents filed in this arbitration and the declarations rendered by the Respondents at the hearing, that:
 - i. on 5 November 2013, by a decree (No. SKEP/87/JAH/XI/2013) adopted by the President of the PSSI, the Arbitration Tribunal was established, *“with the duties and powers as stipulated in article 69 of the PSSI Statute”* (i.e., to deal *“with all internal national disputes between PSSI, its members, Players, Officials and match and players’ agents that do not fall under the jurisdiction of its judicial bodies”*), and the PSSI’s General Secretary was ordered to prepare the regulations containing the composition, jurisdiction and procedure of such tribunal for submission to the PSSI Executive Committee for approval;
 - ii. on 11 November 2013, the Executive Committee of PSSI approved the Arbitration Regulations;
 - iii. on 18 November 2013, by a decree (No. SKEP/88/JAH/XI/2013) of the PSSI President the Arbitration Regulations were adopted;

⁵ The Panel notes that the Respondents did not specifically dispute the CAS jurisdiction with respect to CLAC. Indeed, since CLAC is a body of PSSI it does not appear to be a separate entity with autonomous standing: therefore the CAS jurisdiction to hear a claim specifically addressed to CLAC, named as a respondent, could be doubted (see for a comparable situation the CAS award of 11 September 2008, CAS 2007/A/1370&1376, with respect to the Brazilian *Superior Tribunal de Justiça Desportiva do Futebol*). However, as the matter was not raised by the Respondents, the Panel will not deal with it, also in consideration of the fact that any determination in its respect is immaterial to the outcome of this arbitration. In the same way, the Panel remarks that the Respondents did not dispute the Appellant’s interest to file an appeal against the Decision and to request its admission to the New ISL at a point in time in which a large part of the 2014 season of the New ISL has already been played. The Appellant, in any case, confirmed at the hearing the reasons of its ongoing interest in pursuing its requests for relief. Having those explanations in mind, and considering that any determination on this issue would not change the fate of the Appellant’s claims, the Panel deems it unnecessary to deal with the matter.

- iv. on 26 January 2014, the Congress of PSSI acknowledged the creation of the Arbitration Regulations.
- 75. In light of the foregoing, the Panel notes that at the time the statement of appeal was filed with the CAS (*i.e.*, on 20 January 2014), the Arbitration Tribunal had been “*installed*” (since 18 November 2013 at the latest), but not yet “*recognized by the Congress of PSSI*”, this latter event having occurred (as per the Appellant’s declarations) only on 26 January 2014: contrary to the Respondents’ submissions, in fact, the date of “*recognition*” of the Arbitration Tribunal by the Congress of PSSI cannot be considered to be the date on which the PSSI Statutes were amended to provide for the establishment of a domestic arbitration tribunal. In fact, according to Article 69, second paragraph of the PSSI Statutes, as amended, such recognition appears to be required as a specific, distinct action to be taken by the Congress, additional to the approval of the statutory basis for the creation of such tribunal: indeed, the interpretation proposed by the Respondents would deprive the reference to the “*recognition*” of the Arbitration Tribunal by the Congress of PSSI of any meaning, if in any case implied in the amendment of Article 69 of the PSSI Statutes.
- 76. As a result, the Panel finds that, on 20 January 2014, CAS had jurisdiction to hear the appeal filed by the Club against the Decision, since at that time one of the conditions for the substitution of the CAS jurisdiction with the jurisdiction of the Arbitration Tribunal (*i.e.*, the recognition by the PSSI Congress) had not been satisfied yet.
- 77. At the same time, the Panel holds that CAS jurisdiction did not cease to exist following the “*recognition*” of the Arbitration Tribunal by the Congress of PSSI on 26 January 2014. Under a well-known principle (the so-called “*perpetuatio iurisdictionis*” principle), recognized in the Swiss legal system (ATF 116 II 9, consid. 5, judgment of the Swiss Federal Tribunal of 15 February 1990, citing precedents and doctrine) and applicable in CAS proceedings, in fact, jurisdiction has to be determined at the time the petition is filed and it is not affected by subsequent changes to its factual and/or legal bases⁶.
- 78. CAS has therefore jurisdiction to deal with the present matter.

3.2 Appeal Proceedings

- 79. As these proceedings involve an appeal against decisions rendered by a national sports federation, brought on the basis of rules providing for an appeal to the CAS, in a dispute relating to the issuance of a license, they are considered and treated, for the purposes of the Code, as appeal arbitration proceedings in a domestic non-disciplinary case.

3.3 Admissibility

- 80. The compliance by the Club with the deadline set in Article R49 of the Code to file the statement of appeal against the Decision is no longer challenged by the Respondents. No

⁶ This conclusion makes it unnecessary for the Panel to examine whether the Arbitration Tribunal is really independent, and, if not, to determine the consequences for the CAS jurisdiction of any such finding. The Panel expresses no position on the point.

further internal recourse against the Decision is available to the Club within the structure of PSSI. The appeal filed by the Club is therefore admissible.

3.4 Scope of the Panel's Review

81. According to Article R57 of the Code:

"the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. ..."

3.5 Applicable Law

82. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

83. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute

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

84. In the present case the "applicable regulations" for the purposes of Article R58 of the Code are, indisputably, the PSSI regulations, because the appeal is directed against a decision issued by CLAC, which was passed applying PSSI's rules and regulations.

85. In addition to the PSSI's regulations, Indonesian law applies to the merits of the dispute, Indonesia being *"the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled"*. The Panel, however, notes that it was not directed to the application of any provisions of Indonesian law.

3.6 The Dispute

a. Procedural Issues

86. The Appellant challenges the power of attorney submitted by the Respondents' counsel to represent PSSI and CLAC in these CAS proceedings, as not signed by the Presidents of PSSI and of CLAC in accordance with the relevant provisions.

87. Article R30 ["Representation and Assistance"] of the Code so provides:

"The parties may be represented or assisted by persons of their choice. The names, addresses, electronic mail addresses, telephone and facsimile numbers of the persons representing the parties shall be communicated to the CAS Court Office, the other party and the Panel after its formation. Any party represented by an attorney or other person shall provide written confirmation of such representation to the CAS Court Office".

88. The Panel notes that on 9 February 2013 the Respondents' counsel actually provided the CAS Court Office with the powers of attorney he had received from PSSI and CLAC. The question raised by the Appellant, in fact, only relates to the authority of the General Secretary of PSSI,

who signed them, to grant counsel the powers to represent PSSI and CLAC in these CAS proceedings. The Appellant, more specifically, contends that under the Statutes of PSSI only its President, as its legal representative, has the authority to appoint attorneys to act on behalf of PSSI; in the same way, only the President of CLAC has the power to appoint attorneys representing CLAC.

89. The Panel however remarks that no indication has been given by the Appellant under Indonesian law that the alleged breach of the PSSI Statutes would imply the nullity *vis-à-vis* third parties of the actions performed, and briefs signed, by the representative appointed by an officer of PSSI allegedly exceeding the powers he has under the PSSI Statutes. It is in fact conceivable that such a breach only implies a responsibility, within the organization, of the officer, without consequences in the relations with third parties.
90. In addition, the Panel notes that at the hearing the Appellant did not raise again the issue and discussed the merits of the dispute with the PSSI counsel and the PSSI representatives.
91. As a result, the Panel concludes that the Appellant's objection to the powers of the Respondents' counsel is to be dismissed.

b. The Merits of the Appeal

92. The object of these proceedings is the Decision, which dismissed the Club's appeal against the denial of the License. The Appellant contends, in essence, that the Decision is illegal, and that the License had to be granted: it therefore requests, *inter alia*, an award declaring that the Club is entitled to receive such License. On the other hand, the Respondents deny the Appellant's claim and submit that the Club was not entitled to the License. In other words, the dispute relates to the "legality" of the Decision, and, ultimately, to the entitlement of the Club to the License.
93. Preliminarily, the Panel notes that the dispute finds its origin, and possibly its explanation, in a confusion created when, in December 2013, the PSSI had to take its decisions with respect to the granting of licenses under the Licensing Regulations: even though the various bodies of PSSI acted in good faith and for good cause, misunderstandings occurred in the licensing process – eventually leading to the Decision. The Panel in fact remarks that:
 - i. the Licensing Regulations provided for five different sets of criteria, but since no Indonesian clubs complied with them all, the Executive Committee decided to focus only on two of those criteria, in order to allow the New ISL to be played;
 - ii. after such resolution of the Executive Committee, adopted on 10 December 2013, the decision of the CLC was released on 11 December 2013, indicating that no club qualified for a License under the Licensing Regulations;
 - iii. on 11 December 2013, the Club requested the reasons for its exclusion, but, in the letter of 12 December 2013, the attachment purportedly describing the results of the verification process relating to the Club was missing;

- iv. the Club was advised, in the letter of 12 December 2013, that it had the right to file an appeal against the denial of a license;
 - v. the Club filed an appeal, by indicating, *inter alia*, that it had not received the decision (with the grounds) excluding it;
 - vi. CLAC eventually dismissed the appeal, because the Club had not challenged the CLC decision not to grant the Licence, but the administrative letter notifying it of such decision.
94. In summary:
- i. the Executive Committee of PSSI deviated from the Licensing Regulations (even though for good cause – because otherwise no New ISL could be played), and admitted clubs to the New ISL on the basis of only the criteria regarding “*Infrastructure*” and “*Finance*”. In other words, the decision to qualify the clubs for the New ISL was taken at the “political level” by the Executive Committee, without a license having been issued to those clubs in accordance with the Licensing Regulations;
 - ii. the Appellant, considered not to satisfy those criteria, was excluded, but the reasons were not received. The Appellant sought to appeal against such exclusion, but its request was eventually dismissed: the reason for the appeal (i.e., that no decision with reasons had been provided) turned out to be the reason for its dismissal.
95. The Panel finds such procedure to be inconsistent with the Licensing Regulations in at least two aspects. Indeed, under the Licensing Regulations:
- i. only clubs possessing a License could participate in the New ISL, as indicated by Article 1 – “*General Provisions*”, heading “*Commencement of the Licensing Process and License Requirements*”, para 2 of the Licensing Regulations. However, the Executive Committee decided to start the New ISL with clubs which had not satisfied all the criteria to obtain a License⁷, and
 - ii. the decision of the CLC to deny a License had to include “*the reasons behind the decision*”, as required by Article 3 – “*Licensors*”, heading “*The Club Licensing Committee*”, para 2 of the Licensing Regulations, but no reasons were provided to the Appellant to justify its

⁷ The resolution adopted by the Executive Committee to “reduce” the criteria for the granting of a License, or to start the New ISL with clubs which had not satisfied all the conditions established by the Licensing Regulations, is not *per se* challenged in these proceedings, whose object is the Decision adopted by CLAC. The Panel, therefore, shall not examine whether the Executive Committee had the power to adopt such resolution and depart from the Licensing Regulations. In addition, the Panel underlines that, as explained in the text (§§ 105-108 below), since the Club has not satisfied at least one of the two criteria made relevant by the Executive Committee of PSSI, it could not *a fortiori* obtain the Licence if all five criteria were applied. In other words, the Appellant would not have any interest in challenging the resolution of the Executive Committee, since its position would always remain the same. The facts that no other club would not have obtained the License if all the criteria contemplated by the Licensing Regulations had been applied or that, following the resolution of the Executive Committee, other clubs might have received a License they were not entitled to are also immaterial to the condition of the Appellant, which could not in any case of their basis obtain a License.

exclusion.

96. In other words, the Panel finds that the CLAC was wrong in dismissing the appeal on procedural grounds, but had to consider the Appellant's petition in its merits – i.e. verify whether the resolution not to admit the Club to the New ISL on the basis of its alleged failure to comply with two of the criteria of the Licensing Regulations was correct or not. This conclusion, however, does not mean that the Club was entitled to receive a License or be admitted to the New ISL: it was only entitled to have the denial of its application reviewed.
97. As a result, the Decision has to be set aside. This conclusion makes it unnecessary for the Panel to consider all the other Appellant's submissions relating to the "legality" of the Decision (see § 56(i)-(iv) above), as in any case the Panel holds that the Decision cannot stand.
98. On the basis of such finding, this Panel has now the option, given by Article R57 of the Code, (i) to issue a new decision on the Club's application for the License, replacing the Decision annulled, or (ii) to refer back the case to PSSI for further consideration and a final decision.
99. The Panel notes indeed that this second option may be preferable in instances in which, for instance, factual or technical elements are missing or further investigation is necessary. In the current case, however, the Panel finds that all elements necessary for a decision have been provided and therefore that, for the sake of procedural economy, no referral back to the previous instance within PSSI is warranted: the Panel is in the condition to render a decision on the Appellant's requests concerning the issuance of the License.
100. The Club applied for a license to participate in the New ISL. The conditions for the granting of a License are set by the Licensing Regulations. Indeed, as explained by Article 2 – "Procedure", heading "Criteria Regulations", para. 2 of the Licensing Regulations, the five criteria therein established are graded into three separate categories, defined as follows:

"A" Criteria – "MANDATORY"	<i>If the License Applicant does not fulfil any "A" Criteria, then it shall not be granted a License.</i>
"B" Criteria – "MANDATORY"	<i>If the License Applicant does not fulfil any "B" Criteria, then it is sanctioned as specified by the Licensor but can still receive a License.</i>
"C" Criteria – "BEST PRACTICE"	<i>The Criteria are best practice recommendations. Non-fulfilment of any "C" Criteria does not lead to any sanction or to the refusal of the License. Certain "C" Criteria may become "MANDATORY" at a later stage.</i>

101. As submitted by the Respondents in this arbitration, the Appellant allegedly failed to satisfy the criteria concerning "Infrastructure" and "Finance". Such contention corresponds to the decision of the Executive Committee to start the New ISL with clubs that had satisfied at least those two criteria.

102. The “*Infrastructure Criteria*” are contemplated by the Licensing Regulations at their Article 7. One of the “objectives” of such criteria is to ensure that License Applicants (i.e., the clubs applying for a License, as the Club) “*have an approved stadium available for playing club competition matches*” satisfying specific conditions regarding the available facilities and equipment. Under point No. I.01, Article 7 of the Licensing Regulations, then, in pursuing such objective, mentions the following condition, graded “A”:

“The License Applicant must have a stadium available to play in the ISL and AFC Club Competitions. The License Applicant either:

- a) own the stadium, or*
- b) can provide a written contract with the owner(s) of the stadium or with owners of the different stadia it will use. This contract must guarantee the use of the stadium for all ISL and the AFC Club Competitions home matches for respective upcoming season, for which the License Applicant qualifies in sporting terms ...”.*

103. The Appellant submits that such condition was satisfied because it had provided the PSSI with a letter of Dr. Dedi Ahdiat of the Government of the Karawang Regency (§ 19 above), allegedly confirming the availability for the Club’s home matches of the Singaperbangsa Stadium. Such letter, in the Appellant’s opinion, should stand as the written contract mentioned as condition No. I.01 of Article 7 of the Licensing Regulations, since that letter, and the fulfilment of the conditions therein mentioned, was sufficient for the Appellant to have the right to use the Singaperbangsa Stadium.
104. The Panel does not agree with the Appellant’s submission.
105. The Panel, in fact, notes that in such letter the Head of Dinas Cipta Karya, Karawang Regency, merely expressed the generic availability (“*in principle we do not mind*”) to grant the Club the possibility to use the requested stadium, and mentioned some conditions to which the use would be subject. Such letter therefore does not directly contain a firm commitment of the owner of the stadium to allow the use of the stadium and therefore does not stand as the written contract contemplated under condition No. I.01 of the Infrastructural Criteria.
106. The Panel is not convinced by the Appellant’s argument that such letter is the only document required, since in Indonesia “*most stadium is owned by its local government*”. The Panel, in fact, notes that this situation, and the applicable Indonesian regulations, are certainly known to the PSSI, but still the Licensing Regulations require a written contract with the owner, and are not satisfied by a generic letter of availability, even accompanied by the fulfilment of the conditions mentioned in that letter, without a contract in writing.
107. In addition, the Panel notes that the question whether a stadium is available to the Club does not correspond to the issue whether the stadium in question is approved for PSSI and/or AFC competitions: indeed, even conceding that the Singaperbangsa Stadium was approved for competitions such fact does not mean that it was available to the Club on the basis of a written contract, as requested by the Licensing Regulations.
108. In summary, the Panel holds that condition No. I.01 of the Infrastructural Criteria within the

Licensing Regulations was not satisfied by the Club. As a result, the Club was not entitled, for this reason, to be granted the License and to be admitted in the New ISL.

109. Such conclusion makes it irrelevant for the Panel to consider the additional ground (failure to meet the financial criteria) on which, according to the Respondents, a License could not be granted.

3.7 Conclusion

110. In light of the foregoing, the Panel holds that the Decision challenged by the Club is to be set aside. However, the Club's request to be declared eligible to obtain a License for the participation in the New ISL is to be dismissed. As a result, and for the same reasons, all other consequential requests submitted by the Appellant are to be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. CAS has jurisdiction to hear the appeal filed on 20 January 2014 by Pro Duta FC against the decision No. 07/CLAC/XII-2013 issued on 27 December 2013 by the PSSI Club Licensing Appeal Committee (CLAC).
 2. The request of Pro Duta FC to set aside the decision No. 07/CLAC/XII-2013 issued on 27 December 2013 by the PSSI Club Licensing Appeal Committee (CLAC) is granted and the decision No. 07/CLAC/XII-2013 is set aside.
 3. The requests of Pro Duta FC
 - “To declare that PRO DUTA FC is eligible to get a license of professional club.*
 - To order PSSI to grant PRO DUTA FC a license of professional Club.*
 - To declare and officially stated that PRO DUTA FC is eligible to participate in the 2014 Indonesia Super League (ISL) as one of four IPL clubs.*
 - To order PSSI to include PRO DUTA FC as a participant in Indonesia Super League (ISL) 2014”.*are dismissed.
- (...)
6. All other motions or prayers for relief are dismissed.