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TRANSFERS OF FOOTBALL PLAYERS
A practical approach to implementing FIFA rules

Michele Colucci **and** *Ornella Desirée Bellia* **(eds.)**

PART II

NATIONAL TRANSFERS OF PLAYERS

A. Antonini, B. Arnaud, A. Bozza, P. Capello, R. Chu, S. Civale, M. Clariá, C. Couse, V. Eleuterio, L. Ferrer, M. Garcia Caba, A. Galdeano, T. Gunawardena, J. Leal, J. Lobão, S. Malvestio, G. Marino, A. Mialhe, K.T. Morris, M. Motta, O. Ongaro, L. Pastore, V. Plavjanikova, A.N. Reck, T. Pereda Rueda, N. A. Santiago, M. Spadini, M. Tenore, L. Tettamanti, R. Trevisán, J.F. Vandellós, J. Wilkens, D. Wu, K.N. Zemberis

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INTRODUCTION

Football is a global marketplace where talented players move frequently from one club to another.

Since footballers' contracts are now more lavish than ever, the interests at stake are also huge. As a consequence, footballers, clubs, and intermediaries, are often involved in extended, exhausting negotiations to close employment and transfer agreements, which have multifaceted contents, encompassing sport activity and image marketing.

In such a context, it becomes obvious that the stakeholders' lawyers bear the responsibility to carefully and diligently conceive, negotiate, and draft the relevant contracts' clauses.

They do so within the legal framework designed by FIFA over the years and shaped mostly by the evolution of the CAS and FIFA jurisprudence. So, it is unsurprising that the transfer regulatory framework has been amended several times.

The last reform has recently been endorsed by the FIFA Football Stakeholders Committee which debated and agreed some measures in the spirit of positive dialogue between parties with mutual interests in the effective functioning of the transfer rules.

Taking into account the legal and economic context of the transfer system, the ongoing reform process, and the consolidated digest of FIFA and CAS jurisprudence, this book has the realistic ambition to provide football stakeholders and lawyers with an updated and comprehensive overview of all the sensitive questions, which seriously matter for the transfer of players, such as:

What are the indispensable facts and legal acts that clubs and players should consider in order to complete a mutually profitable and successful transfer agreement?

What are the main provisions that clubs, players, and intermediaries should focus on while concluding a contract?

Furthermore, what are the federations' responsibilities, duties and operative measures?

How do the regulatory provisions governing football transfer and employment agreements work in practice?

The Authors of this publication are practitioners and scholars who answer those and other questions, exploiting their proven, professional experience as in-house lawyers or legal counsels to clubs, Football Associations, and players.

They provide a comprehensive overview of all matters related to the transfer of players.

This book is updated with the latest amendments to the *FIFA Regulations on the Status and Transfer of Players* published in March 2020.

It is divided into two parts: the first one has an international scope and puts emphasis on the main contractual clauses drafted in the context of a transfer in light of the relevant FIFA regulations and international case law.

Highlighted topics include training compensation, third party ownership, transfer of minors, intermediaries and international tax issues.

The second part concentrates on national transfers. Following the same outline, the Authors analyse the relevant domestic regulatory frameworks by underlining and explaining in detail the peculiarities of each system from a practical viewpoint.

On the basis of such analysis the editors draw the main conclusions in order to identify and validate the best practices and to hopefully contribute to upgrading the legal framework of the football transfer system.

The editors wish to sincerely thank James Mungavin for his linguistic revision and valuable comments, Durante Rapacciuolo for his precious suggestions, and Antonella Frattini for her patience and her meticulous work in editing the book.

Last but not least, a word of thanks to all the Authors who – despite their busy agendas – found the time and the necessary concentration to write the chapters which have made this book unique.

Ornella Desirée Bellia and *Michele Colucci*

Zurich – Brussels, 13 April 2020

PART II

NATIONAL TRANSFERS OF PLAYERS

NATIONAL TRANSFERS IN ARGENTINA

by *Mariano Clariá*[*] and *Rafael Trevisán*[**]

1. National Framework

1.1 The Structure of the Argentine Football Pyramid

1.1.1 The Argentine Football Association

The Argentine Football Association ("AFA") is the national governing body of football in Argentina. As a representative of a South American country, the AFA is a member of CONMEBOL.

The AFA is the governing body responsible for regulating the Argentine football and implementing the Laws of the Game, as directed by the International Football Association Board (the "IFAB"). Consequently, the AFA gives domestic effect to international rules and has jurisdiction over on-field and off-field disciplinary matters. The AFA also regulates 'Intermediary Activity' at a domestic level, with delegated authority from FIFA. Supplementary to its regulatory role, the AFA manages the Men's and Women's senior and under age Argentine national teams, various domestic cup competitions, including the Copa Argentina. The AFA also runs the Women's football tournaments.

1.1.2 The Superliga Argentina de Fútbol

The *Superliga Argentina de Fútbol* is an association recognized by the AFA Statutes, integrated exclusively and compulsorily by the clubs participating in the First Division, and within its main functions we find the organization of the top

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division of Argentine football, as well as the commercialization and distribution of TV rights of said competition.

It is recognized in the Statutes of the AFA, in Articles 10,[1] 18 paras. 2[2] and 6, 79 para. 2[3] and especially in Article 81.

Pursuant to Article 18, para. 2, there will only be one national league of the first division of professional football in Argentina, which will be developed and organized by the Superliga, in coordination with the AFA.

In Article 79, para. 2, AFA temporarily assigned to the Superliga, for its management, commercialization and distribution, the audiovisual exploitation rights of the tournaments organized by Superliga.

The Superliga has the power to perform the economic and financial supervision of its members and also to set the conditions to be met by the clubs in order to participate in their competitions.

The coordination with AFA was to be implemented through an agreement signed by both associations. On 27 July 2017, the AFA and the Superliga signed the coordination agreement through which the matters subject to coordination between said institutions are regulated in accordance with Article 81 of the Statute of the AFA.

Through this coordination agreement, the AFA and the Superliga agreed that the latter is also in charge of the organization of the underage competitions involving clubs from the top division, including the so-called "*reserva*" division.

2. Registration and Transfer Rules

There are several rules in Argentine football regarding the registration and transfer of players.

In this section, we will address the following issues regarding registration and transfer rules in line with art 6 of RSTP of FIFA:[4]

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[1] *AFA Statues. Article 10. Admission and Members. AFA Members are: a) First Division Clubs; b) First "B" National Clubs; c) First "B" Metropolitan Clubs; d) First "C"; e) First "D"; f) Sportive Jurisdiction of Leagues and Federal "A" Clubs, organized under the Federal Counsel orbit; g) Women's Football Association; h) Futsal Association; i) Beach Soccer Association; j) Former Players Association; k) Former Referees Association; l) Former Football Coaches Association; m) Professional Football Superliga, with voice but no votes.*

[2] *AFA Statues. Article 18. Clubs, leagues, sportive jurisdictional leagues, regional associations (or leagues) and other clubs aggrupation's Status. ...There only will be a national league from the actual category of first division of professional football in the national territory, that will be developed and organized by the Superliga, in accordance with provisions of Article 81 of the Statutes.*

[3] *AFA Statues. Article 79, para. 2. The AFA temporarily assigns to the Superliga, for its management, marketing and distribution, the rights of audiovisual exploitation in any of the present formats and those future ones that could arise according to the advance of the technology, of the tournaments which organization is delegated to the Superliga in this statue, this assignment being rendered ineffective in case the Superliga ceased in its existence or, for whatever reason, stopped organizing the competitions assigned to it in this statute.*

[4] Art 6 RSTP inc 2. "*The first registration period shall begin after the completion of the season and shall normally end before the new season starts. This period may not exceed 12 weeks. The second*

a) Transfer Windows

Art. 215 of the "*Reglamento General*" of the AFA establishes certain rules regarding the periods of contract registration:

Art. 215o. *The period to formulate transfer requests will be the one between the day following the end of the National Championship and the day before the start of the First Division Championship in the following season. Notwithstanding the foregoing, transfer requests to act in First Division teams of First Category clubs may be accepted by the A.F.A. in the period between the day following the end of the First Division Championship and the day before the start of the National Championship of the same season if there is a requirement formulated by more than 3/4 of the clubs of the category.*

Art. 4 of the CBA 557/09[5] establishes that the AFA will determine the periods in which the contracts shall have to be registered, taking into account the organization of the championships, the needs of the clubs, the number of free agent players and the particular circumstances of each case.

Therefore, the period for the registration of contracts shall not be shorter than the period between the end of a championship and/or tournament and the start of the next, but a complementary term shall be provided for the exceptions established in the CBA, mentioned hereunder.

Each year, in the specific Regulations of each tournament, it is determined *inter alia* when the period for the Registration and Transfer of Players closes. Usually, the closing occurs at 8:00 pm on the Thursday prior to the start of the tournament, both in the winter and summer windows.[6]

This raises some difficulties, since the closing of both windows does not match with the closing of the transfer window in the main competitions in Europe, where many players of Argentine clubs tend to be transferred, so once the period for the Registration and Transfer of Players in Argentina is closed, players are usually transferred – or the player exercises the buyout clause – and the club cannot sign a replacement for said player.

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registration period shall normally occur in the middle of the season and may not exceed four weeks. The two registration periods for the season shall be entered into TMS at least 12 months before they come into force (cf. Annexe 3, article 5.1 para. 1). FIFA shall determine the dates for any association that fails to communicate them on time".

[5] CBA 577/2009. *Article 4. Contracts registration periods. The AFA will determine in which periods contracts must be registered, considering the championship organization, clubs needs, the number of players free of contract and the particular circumstances of each case. The period for the registration of contracts shall not be less than the period between the end of a championship and/or tournament and the start of the next, with the exception of granting a complementary period at the close of the registration, provided for in this agreement.*

[6] *Superliga's Tournament Regulation 2018/2019. Article 15. Players Registration and Transfers. 15.1. It is established that the Players Registration and Transfers will be open since July 1° 2018 until 8 PM of the last Thursday before the beginning of the tournament, that is to said Thursday August 9 2018. The closure will be Thursday August 16 2018, 8 PM only for clubs with the intention to incorporate players from "foreigner" clubs.*

This happened in August 2017, with the player Lucas Alario and Club A. River Plate. The aforementioned player had a valid contract with CA River Plate. A few days before the closing of the transfer window in Germany but after the transfer window closed in Argentina, Lucas Alario exercised the buyout clause, leaving River Plate and signing a new contract with the club Bayer Leverkusen from Germany. Since the transfer window in Argentina was already closed, River Plate was not able to sign a new player. This was aggravated by the fact that the most important continental competition in South America – the Copa Libertadores – is played, since 2017, with its calendar at odds with the calendar of the Argentine competitions (Copa Libertadores annually, from January to December, and the Superliga from August to May). Therefore, River Plate was not able to replace one of its most important attackers to face the final instances of the 2017 Copa Libertadores.

As a result of this, for the Superliga 2018/2019[7] a new provision was incorporated in the Competition Regulations that establishes that, in the event that a player leaves a Club affiliated to Superliga exercising a buyout or termination clause included in the employment contract, in order to sign a new contract with a foreign club, this Club may replace said player only with another player not registered in a Club member of the Superliga, within ten (10) business days subsequent to the date in which the club became aware of this fact. In order for the replacement of the player to be carried out in the terms indicated above, the exercise of the buyout or termination clause by the Player must have been made before 31 August 2018 (in the Argentine winter window) or before 31 January 2019 (in the Argentine summer window).

For the Superliga 2019/2020, and due to fact that the transfer window in other leagues ends after the start of the Argentine tournament, another exception was established for those cases in which a club transfers a player to a club from a different federation after the closing of the transfer period in Argentina.[8] Indeed, the closure of the Registration of Registrations and Transfers of Players ended on September 5, 2019 at 8 p.m. only for clubs that intended to incorporate a player not registered in a Club member of the Superliga, either free or from a "foreigner club" and only if it had transferred any player to a foreign club between the start of the tournament and August 30 2019. Only one player may be registered for each transfer made under the conditions indicated previously.

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[7] *Superliga's Tournament Regulation 2018/2019. Article 15.3. In case a player has been decupled form a Superliga Club exercising the termination contract clause with the objective to sign a new contract with a foreigner club, the Superliga Member Club shall be able to replace that player for another non registered player in any Superliga Member Club, within ten (10) business days since the club was informed about the execution of the termination contract clause by the player. For the replacement to be done the way indicated previously, the execution of the termination contract clause must have been done before August 31 2018.*

[8] Art. 21.2 of the Superliga 2019/2020 "*Tournamente Regulation*".

On the other hand, another particularity in Argentine football is the dissociation between the closing day of the period for the Registration of Players Registration and Transfer and the closing day of the transfer window in the FIFA Transfer Matching System.[9]

Usually, those who negotiate with an Argentine club tend to check the closing date of the FIFA TMS window and take it as a reference to know until when the Argentine club can incorporate a player. However, save for some exceptions specifically provided for in the regulations and/or in the collective agreement, the actual deadline to consider is the closing of the Registration of Players Registration and Transfer period indicated in the competition's regulations.

This circumstance grants certain advantages with respect to other countries, since in general the FIFA TMS is open in Argentina to incorporate players after the closing of the Players' Registration and Transfer period, which in some cases allows Argentine clubs to be reinforced for the final instances of the Copa Libertadores,[10] although these players cannot play in the local competitions until the reopening of the Players´ Registration and Transfer period.

b) Special situations required to register players outside the Players´ Registration and Transfer Period

Free Players

With regard to free *players*, Art. 13 last para. of the CBA 557/09[11] provides that in the event that a player obtains the freedom to contract due to non-payment of salaries or wages by the club, the AFA shall grant him an additional term of twenty (20) business days, in order to be able to register a contract with a new club, even when the registration of contracts period has closed.

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[9] For example, although the Registration of Players Registration and Transfer had ended in Argentina on September 5, 2019, the FIFA TMS transfer window is still open in Argentina until October 25, 2019 www.fifatms.com/es/itms/worldwide-transfer-windows-calendar/.

[10] *The regulations of the Conmebol competitions, such as the Copa Conmebol Libertadores, allows the modification of the list of eligible players in several and different moments of the tournament, situations specifically provided for in the competition regulations, published on the South American Football Confederation website.*

[11] CBA 557/2009 Art 13. *The footballer, by himself or through FAA, will communicate the termination of the contract to the AFA, which will be obliged, if applicable, to declare the freedom of contract within ten (10) business days and grant a term of twenty (20) business days, so that he can register a contract with the entity of his choice, even when the contract registry is closed. If after that period of ten business days the AFA omits the fulfillment of the previous obligation, obstruct or by any other means, maintain the express or implicit refusal to declare the freedom of contract, the soccer player, with prior notice to the AFA for the term of two (2) business days, may go to law before the Labour courts of Capital Federal demanding the declaration of freedom of contract with all the effects that derive from it and the condemnation to the AFA to the payment of the accrued assets until the date of termination of his contract, plus what he would have received if the same subsisted, until the judicial declaration of freedom of contract, plus compensation for seniority and omission of notice and, if applicable, for vacations not enjoyed.*

As for injured players, Art. 17, subsection 1.3,[12] last para. of the CBA 557/09 establishes that if a player is free to contract and continues to be unable to carry out his professional activity as a result of an accident or illness, and upon medical discharge, the registration of contracts has already closed, the AFA must grant an additional term of twenty (20) business day in order to be able to register a contract with a new club.

Replacement due to serious injury or suspension

Each club has the right to have a number of professional football players without any limitation. If due to illness, injury or suspension a football player should remain inactive for a period of more than four (4) months, the club may sign another player as his replacement, while still fulfilling the obligations contracted with him.[13]

The club that wants to make use of this right of replacement of an injured or suspended player shall submit a request to the AFA, with certain requirements, within a period of five (5) days from the moment of the injury, the illness or the sanction suffered by the player. The injury shall be verified by the Medical Department of the AFA.

The injury or the decision that imposes the sanction shall not be of a date that exceeds the date in which 70% of the matches of the competition are played. In the Regulations of each championship, it should be established at what date that 70% applies.

A condition needed in order to be able to use this right is that the player to be replaced has been fielded (either in the staring team or in the bench) in the first or reserve team in at least 25% of the matches of the competition. It does not matter the position of the player to be replaced, unless the injured player is a goalkeeper, in which case he can only be replaced by another goalkeeper.

The replaced player will be able to rejoin the team after the medical discharge is informed reliably by the club, but never before 4 months.

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[12] CBA 557/2009 Art. 17. "*If a player is free to contract and continues to be unable to complete his professional activity as a result of an accident or illness, and upon medical discharge, the registration of contracts is closed, the AFA must grant an additional term of twenty (20) business day in order to be able to register a contract with a new club*".

[13] CBA 557/09 Article 10. *Hired number of players. Each club has the right to hire the number of players it wishes without limitations. If, sue to of illness, injuries or suspension, the player shall remain inactive for more than four (4) months, the club shall be able to hire other player in replacement, without failing to comply its obligations with the injured player.*

c) Restrictions regarding Foreign Players

c.1) Limit of Foreign Players

Since 5 January 2018 and according to Art. 31 of CBA 557/09,[14] the clubs playing in the top division category (Superliga), may enter into and register contracts up to a maximum of six (6) foreign football players per club. Only five (5) of those players, whether professional or amateur, will be able to be fielded in each official match (either in the starting team or in the bench).

In the remaining categories, the clubs may enter into and register contracts up to a maximum of five (5) foreign football players for each club. Only four (4) of these players, whether professionals or amateurs, can be fielded in an official match (either in the starting team or in the bench).[15]

As of the 2018/2019 season, if a club participating in the top division category that decides to modify the list of foreign players and reaches the maximum allowed (6), then at least two (2) of them shall have participated in a minimum of ten (10) official matches with the national team of their country of origin.[16]

c.2) Loan of Foreign Players

Foreign players temporarily assigned by an Argentine club to another Argentine club will not release a place for a foreigner but will also count as a foreigner player in the transferee club.

However, since January 2018, a foreign player temporarily assigned by an Argentinean club to a foreign club for a period of time not less than one year

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[14] CBA 557/09. *Article 31. AFA and FAA agreed: 1.- Clubs that are direct and indirect affiliated to AFA, enrolled to First A Category, can celebrate and register no more than six (6) foreign players for each club. Only five (5) of them, being professional or amateur, are enabled to sign the spreadsheet of each official match. The rest of the professional categories can celebrate and register no more than five (5) foreign players for each club. And only four (4) of them being professional or amateur, are enabled to sign the spreadsheet of each official match.*

[15] *CBA 557/09 Article 31, para. 3. Foreign football players that were temporary transferred by clubs that are direct and indirect affiliated to AFA, enrolled to First A, National First B, First B, First C and Federal B Categories, to a foreign club for a period of time no less than a year, would not hold the foreign quota for the transferor club within the period of the temporary transfer, as long as there's a clause that establishes that there would not be an advance refund. In that means, the transferor club can only register a contract with a new foreign player for a period that does not exceed the temporary transfer lapse.*

[16] CBA 557/09. *Article 31, para. 4. From the 2018/2019 season the club that participates in the First "A" tournament and decides to modify the list, with good faith of its foreign players reaching the maximum allowed, must have at least two (2) players who have participated in at least ten (10) official matches in the national team of their country of origin. .(The wording of this requirement generates confusion, since it could be interpreted that if a club has 5 foreign players, the condition of 10 matches in the national team of their country of origin would not apply to any of them, but if the club signs one more player and reaches 6 foreigners, 2 of them should meet the condition of the 10 matches in the national team of their country of origin).*

will not count towards the foreigner quota for the transferring club during the term of the temporary assignment, as long as it is established in a contractual clause that there will be no anticipated return of the assigned player. In this case, the transferring club may only register a contract with a new foreign player for a term that does not exceed the lapse of the temporary assignment.[17]

c.3) Suspension of the registration of a foreign player due to injury

The regulation does not refer at any time and specifically to the possibility of releasing a quota of foreigners through the de-registration or suspension of the registration of a player. However, there was a case in which the AFA, with the support of FAA, and based on the regulations referred to in the previous paragraph (Art. 31, para. 2 CBA 557/09) and in Art. 10 of the CBA 557/09, decided that it was possible to suspend the registration of a foreign player who had suffered an injury that kept him off the field for more than four months, and consequently the club could incorporate a foreign player instead of the injured player, clarifying that at the time the injured player recovers, the club shall have to choose which of the two can be fielded.

3. Employment Contracts (Standard Contract and Main Clauses)

3.1 Players' Contracts

The only officially professional sport discipline in Argentina is football, without prejudice to the constant evolution from amateurism to the professionalism of the rest of the sports disciplines.

In 1969, in the "*Ruiz v. CA Platense*"[18] case, a decision from all the judges established that the player's relationship with the club was of a labour nature,[19] which led to the enactment of the Law on the Statute of the Professional Football Player (Ley 20.160)[20] and, a few years later, in 1975, the first Collective Bargaining Agreement for Football Players entered into force (CBA 430/1975).[21]

The aforementioned Collective Agreement was in force for thirty-four years (34), until 2009, when, as a consequence of the acknowledgement of the Lex Sportiva International and the precedents of the Court of Arbitration for Sport

[17] Article 31 para. 2 of CBA 557/09.

[18] *Ruiz Silvio c / CA Platense s/ Dismissal*, Judgment N ° 125 of 1510 1969, elDial.com - AA3240.

[19] J.M. Rivas, *La Ley* 1969, 736/771, note regarding a judgment about football players: "*...in the judgment under consideration there were three tesis sustained, althought the two first ones concluded in the same statement that prevail the judgment 1) the sub exam contract is a true special employment contract; 2) due to the contract being innominate, it must be regulated as the contract that appears to be similar, in this case, the employment contract*".

[20] Ley 20.160 (La Ley, ADLA 1973, XXXIII-A, Estatuto del Jugador de Fútbol, 298/304. – Law 20.160 Statute of the Football Player.

[21] CBA n. 430/1975, Case N° 579440/1975.

(*Peñarol v. Paris Saint Germain. Rodriguez*),[22] Argentina was forced to adapt its internal regulations, modifying the Collective Bargaining Agreement of Soccer with the signature of the CBA 557/2009,[23] in which the concept of the "Fixed Term Contract" – as opposed to the unilateral extensions –, in line with the principle of Contractual Stability, was recognized.[24]

3.2 Age to sign Sport employment Contracts

As can be seen from Article 5 of CBA 557/09,[25] football players in Argentina can enter into a sports employment contract only after the age of 16. Beyond the provisions of the CBA, this is also regulated in a special law on child and adolescent labour,[26] which establishes the following:

1. The work of persons under sixteen (16) years of age in all its forms, whether or not there is a contractual employment relationship, whether paid or not, is prohibited. Any law, collective agreement or any other normative that establishes a minimum age for admission to employment other than that established in the second para., shall be considered for that sole purpose modified by this norm.
2. Persons between sixteen (16) years of age and under eighteen (18) years of age may enter into an employment contract with the authorization of their parents or guardians. Such authorization is presumed when the adolescent lives on their own.
3. People from 18 years old onwards can conclude an employment contract.

3.3 Sport Empoyment Contracts

3.3a) Fixed Term Employment Contract

After the leading *Bueno-Rodriguez* case,[27] the new Collective Labour Agreement 557/09 came into force, which establishes in Article 5 two types of contracts:
1) Fixed-term contract,

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[22] CAS 2005/A/983&984. *Bueno y Rodriguez c/ Peñarol de Uruguay*, The text of this important award is available at www.centrostudisport.it/PDF/TAS_CAS_ARCHIVIO/194.pdf (last visited on 2 July 2019).

[23] CBA n. 557/2009.

[24] A. Galeano - H. González Mullins, "*A un año del leading case Bueno y Rodriguez c/ Peñarol de Uruguay*", Por Alvaro Galeano y Horacio González Mullins, el Dial.com, 9 October 2007. See R. Trevisan, *El futuro del fútbol Sudamericano a la luz de la nueva Reglamentación FIFA y de un reciente laudo arbitral del TAS*, elDial.com - DC9AC, 14 September 2006.

[25] CBA 557/09. Article 5.1.1. The club with players who have completed sixteen (16) or more years of age, registered in their favor in the registry or incorporated by transfer of their contract or incorporated by being free of contract, may enter into a promotional contract with such players for a professional (1) year of duration with the following extension options.

[26] Art. 2, Law 26.390 Child Labour Protection.

[27] CAS 2005/A/983 & 984 *Club Atlético Peñarol c. Carlos Heber Bueno Suarez, Cristian Gabriel Rodriguez Barrotti & Paris Saint-Germain*, award of 12 July 2006.

2) Promotional professional contract.

With respect to the fixed-term contract, the club, with players who have reached sixteen (16) or more years of age, may enter into fixed-term employment contracts without any extension, for a minimum period of one (1) year and maximum of five (5) years (article 93 LCT).

Without prejudice to the current regulation in the Labour Contract Law that sets the term of fixed-term contracts between 1 to 5 years, we warn that in order to guarantee the enforceability of these contracts in the international field of Professional Football, Art. 18.2 of the FIFA RSTP must be observed, which prohibits the conclusion of sports employment contracts for periods of more than 3 years, when the Player is under 18 years of age, stating that clauses that have a longer term will not be recognized.[28]

This recommendation finds support in the internal scope according to the criteria established by the precedent case law *Interplayers v. Sosa Roberto s Damages*,[29] where it was established that the federative statutory provisions have the character of law in a material sense for the parties. In line with this criterion, and considering that Article 18 of the FIFA RSTP has the character of compulsory regulation for the 211 member associations of FIFA, according to the provisions of Art 1. para. 3 of the FIFA RSTP, we recommend respecting this criterion, otherwise a sports employment contract concluded with a minor for a period of more than 3 years could be unenforceable and invalid both at national and international level.

3.3b) Promotional Contract

Once the player reaches the contracting minimum age (16) and until 18 years old, the Collective Labour Agreement allows the signing of a common fixed term labour contract, or the "Professional Promotional Contract", which provides a year contract period and gives the Club the opportunity to extend it for a year or two, depending on the age of the minor.[30]

These promotional contracts are often used by clubs from inferior categories of Argentinian football (First "C", Federal A), which usually use them to retain talents at their earliest age without having to be financially obligated for a longer period of time, and with the possibility of extending the contract in the event that the player progresses.

In order to use these extension provided by this type of contracts ("promotional") and for them to be valid, clubs shall communicate and notify them Law 20.160 and the Collective Labour Agreement 557/09, establishes certain to

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[28] Art. 18, para. 2 of FIFA RSTP: "…Players under the age of 18 may not sign a professional contract for a term longer than three years. Any clause referring to a longer period shall not be recognized".

[29] Interplayers S.A. c/ Sosa, Roberto Carlos s/ daños y perjuicios", JA 2003-II, 513.

[30] CBA 557/09, Art. 6, para. 1, "Professional promotional contract: Application and validity. Extension System".

the player in the following terms: (i) in the case of first extension, before May 31 of the immediate following year, and (ii) in the case of second extension, before April 30 of the following year.

Additionally to this obligation, it is mandatory and necessary for the Club to deposit in AFA a certified copy of the reliable communication and give the player a raise of 20% of his gross remuneration.

In case the club does not exercise the extension or it exercises deficiently or late, the contract will be automatically extinguished, and the player has the right to claim these compensations: (i) if the first extension is not exercised, a compensation equal to one basic salary; (ii) if the second extension is not exercised, a compensation equal to two basic salaries, without prejudice to claiming for a compensation by seniority and omission of notice established by Art. 245 and 232 of the Labour Contract Law.

3.3c) First Contract Offer

Law 20.160 and the Collective Labour Agreement 557/09, establishes certain requirements that turn an amateur player into a professional one, and that circumstance is relevant in the way it forces the parties to formalize the first labour contract.

In particular, the above-mentioned law indicates two cases in which the player acquires the status of "professional" and therefore the offer of a labour contract is required, namely:

a) when the player turns 21 years old between July 1° June 30 of the next year (para. 1, Art. 11 Collective Labour Agreements 557/09),
b) when the player plays in 25% of the matches of a season (para. 2, Art. 11, Collective Labour Agreements 557/09). In fact, Article 11 of the collective labour agreement in its first para. establishes that, when a player reaches 21 years of age between 1 July and 30 June of the following year, the club must send a letter, offering the subscription of the first contract before 31 May of the year in which he reaches the aforementioned age. The timely referral of this letter establishes an employment relationship between the club and the player, valid until 30 June of the following year, and the club must pay the player at least the salary and the basic prizes agreed between the AFA and the guild of football players, according to the category in which the club plays. Of course, the parties can negotiate the subscription of the contract and agree to better conditions.

Although the relationship is established from the moment the letter is sent to the player, he can accept or reject the offer made by the club; but in all cases the player will be linked to the club until 30 June of the following year, receiving the minimum wage previously indicated.

As in the promotional contract, in this case the club is also obliged to deposit a copy of the letter sent to the player or copy of the contract signed by the

player, within 10 days. The lack of deposit of the contract within the period indicated, is sufficient cause for the player to automatically acquire the condition of free agent.

For its part, the second para. of this article establishes that, when the player who intervenes in the dispute of 25% of the official matches of the "Division" First of the official championship organized by the AFA for the categories: First A, First B National, First B and/or Major Selection, playing or integrating as substitute the designated team for each match, during a season, the club must send a letter offering the subscription of the first contract.

As in the previous case, the timely referral of this letter implies the beginning of the employment relationship between the club and the player, even if the player has not accepted the offer of the club, in which case the relationship will be extended for the duration of the corresponding season.

If the parties do not sign a contract before 31 May of the following year, the player will be free to contract at the end of the club's participation in the corresponding tournament.

This special system through which the parties are forced for a minimum period of one year if the requirements described here are met, is a legacy of the old system implemented by Law 20.160, and that it is practically in disuse, given the current dynamics of the movement of players, the young promises acquire the quality of professionals before they meet the requirements regulated by the standard under analysis.[31]

3.4 Deadline to register Sport employment contracts

The club, within a maximum period of ten working days from the date of the signing of the contract of sporting employment relationship with the player, shall submit to AFA the three remaining copies for it to make the corresponding registration and then deliver one to FAA (Players Union) and another one to the contracting club.

The player, within the same period, may submit to the AFA the copy of the contract in his possession so that its registration is certified or, failing that, may be registered. Failure to submit the respective copies of the contract to the AFA by one of the parties will not invalidate the contract registered by the other.

This registration of the contract gives birth to the federative rights, from which a double patrimonial content is revealed, one of strict labour nature

[31] In the case n. 25409/2019 – "*MONTERO, ALEJO GASTON c/ CLUB ATLETICO VELEZ SARFIELD Y OTRO s/ACCION DE AMPARO*" before the National Labour Appeals Court (Cámara Nacional de Apelaciones del Trabajo Sala I) on September 2, 2019, the court decided that a player in that situation (the Club A. Velez Sarsfield had offered him the first contract according to para. 1°, Art. 11 Collective Labour Agreements 557/09) was free to sign contract with another club. It shall be noticed that this decision was a provisional measure and the case is still to be decided on the merits.

(Player-Club relationship), and the other aspect is linked to the economic rights derived from the aforementioned registrations rights.[32]

It is important to add that the lack of federative registration of the contract does not affect the validity and enforceability of it between the parties, being a matter of strict administrative / federative nature, which in its case will prevent the Club from aligning the Player during the respective tournaments.[33]

3.5 Remuneration and Bonuses

In Argentina, Clubs sign professional contracts with the Players on the basis of standard forms provided by and submitted to the Argentine Football Association. In such forms, only the concept "Salary" appears as fixed and monthly compensation. The accrued salary must be paid within four business days following the expiration of the month to which it corresponds.[34]

The salary cannot be lower, in any case, than the amount agreed between the AFA and Argentine Football Players Union (FAA) for each category, amount that is adjusted periodically. Currently, the minimum salary for First Division players during the 2019/2020 season amounts to $ 34.500 (gross).[35]

The player also has the right to receive the additional annual salary, provided in art. 121 of the LCT, equal to 50% of the highest monthly remuneration accrued for any concept – except the prize for tournament or championship –.

However, there is also the possibility of establishing in the AFA form the amounts that the club commits to pay as prizes for obtaining points, friendly matches, national or international championships, etc. The CBA establishes that the professional football player will receive, in addition to the basic salary, the prizes that are agreed upon. The basic prize per point won will be equal to five percent (5%) of the basic salary previously established for each of the categories.

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[32] R. Trevisan, *El Contrato de Afiliación Deportiva a la luz del derecho de retención*, ElDial.com - DCC73 9 October 2005.

[33] CAS 2013/A/3133: The Panel is however satisfied that there is established precedent (CAS 2007/A/1351 para. 4.4.15 and TAS 2006/A/1008 & 1104 para. 67) that under Swiss Law, the registration of a contract is an administrative act that does not have, in principle, an impact in its validity.

[34] Labour Contract Law. Art. 128: "The payment will be done once the period is expired, within four business days for monthly or fortnightly payment and three business days for weekly payment".

[35] Once FAA and AFA reach an agreement, the new basic salaries of players of professional categories for the 2019-2020 season were defined. The amounts, which were published in Gazette No. 5501 of the AFA, are the following:

	Salario Básico
Primera División	$ 34.500
Primera B Nacional	$ 28.000
Primera B	$ 23.000
Torneo Federal A	$ 23.000
Primera C	$ 20.000
Primera Div Femenino	$ 20.000

*) Until 1 September 2019 the sum of $ 34.500 equal to U$S 627, if we take the exchange rate U$S 1 is equal to $ 55 Argentinian pesos.

Notwithstanding this, it is common for clubs to sign, besides the official AFA form, an additional agreement (usually called a private agreement), which establishes the obligations and rights of the parties, tax issues, image rights, release and/or buyout clauses, disciplinary issues, etc.

Likewise, in this private agreement, other compensatory items can be agreed, that are not foreseen in the Collective Agreement 577/09 nor in Law 20.160, but are a usual practice in the football field; however, they differ from club to club both in its denomination as well as in its payment terms.

There are contracts in which the payment of a "prima" is agreed upon for the exclusive subscription of the regulatory sports employment agreement ("prima"), or a special recognition for trajectory "(reconocimiento especial por trayectoria"), a patrimonial compensation ("resarcimiento patrimonial"), reinforcement quota ("cuota refuerzo"), economic rights, housing assistance, image rights, etc.

Consequently, beyond the denomination used in the contracts, when it is an habitual payment and not subject to the fulfillment of a condition, they will be considered as part of the remuneration, that is, they will have the nature of the salary.[36] However, there are some precedents in which it has been considered that the sign-on fee (la "prima") established by the clubs does not have the nature of the salary, since it is considered that it is not due to the provision of services but only for the hiring of the player.[37]

This has tax-related consequences[38] but is also relevant at the moment of evaluating the possible consequences derived from the non-payment by the club.

The contracts can be agreed in the local currency (Argentine pesos) or also in foreign currency. In case of agreement in local currency, parties may negotiate and decide an adjustment with the objective of alleviating the possible impact of inflation.

In case of an agreement in foreign currency (usually US dollars), it is common to agree that the payments will be made in the equivalent in pesos,

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[36] Kato Yusuke c/ C.A. Huracán, CN del Trabajo, Sala X, 29 May 2013, Exdte 3.754/2011, elDial.com – AA8A26; and Morales Hugo c/ C.A.I s/Incidente de Revisión., SCBA, 27 august 2014, Exdte 116.679, elDial.com – AA8A9A.

[37] "Caranta, Mauricio Ariel c/Asociación Civil Club Atlético Boca Juniors s/despido" – CN del Trabajo – SALA IX – 18 March 2013, Expte. 6.439/09 elDial.com – AA7EF2.

[38] AFIP General Resolution N° 2287 published 02/08/2007 establishes a special regime of withholding income tax for the incomes originated in the concepts such as "trajectory special recognition" and "onerous transfer on behalf of the player of his federative economic rights" obtained by professional football players. The aliquot of the withholding ascends, according to art. 5 of the said resolution – condition by the player being enrolled – to two per cent (2%). As is the custom for clubs to agree with football players a net amount of the income tax, this special regime of withholding implies an important financial advantage for clubs: instead of depositing the normal withholding – that can reach 35% – they deposit 2% monthly and defer the rest to the moment that the player has to pay the tax, that is to say, to the moment in which legally they have to submit their financial affidavit at the end of the exercise.

according to the quotation of the foreign currency of the day of each payment. Also, given the volatility of the dollar in the Argentine exchange market, in some cases a cap is agreed in case that the quotation suffers a very sharp rise at some point.[39]

It is important to clearly specify in the contracts the party who will be held responsible for the payment of the income tax, although for the tax agency, the player will always be liable in accordance with the current legislation. In some cases, depending on the bargaining power of the player, the players demand amounts net of income tax. In some other cases, even having negotiated a net amount in the negotiation, the contract reflects the gross amounts after having increased the net amounts in such a way that, after making the corresponding legal withholdings by the club, the player receives the agreed net amount.

In some cases, when the player signs the contract with the club as a free player, an agreement is also signed by which the club partially or fully acquires the economic rights of the player. Regarding the payments committed for this concept, it should be evaluated in each specific case to determine whether or not these payments are of a salary-related nature.

It is also common that, beyond the prizes provided by the CBA in its art. 13,[40] the clubs agree with the players individual prizes or bonuses for performance, such as certain sums for the number of games played, or for obtaining sporting results (such as maintaining the category, classification to international cups or classification as CHAMPION of domestic and/or international tournaments).

In the case of individual prizes but related to the achievement of a certain result by the team (for example, Champion of the Superliga), it is usually also conditioned to the player having effectively integrated the first team during a certain number of matches during said competition.

In some cases, a sum is usually agreed upon for goals scored or, in the case of goalkeepers, for having the less-beaten goal. In the determination of these awards, the parties must negotiate certain circumstances: for example, if the games played representing a third team in case of temporary assignment are considered or not, if a certain amount of minutes is required to consider that the player effectively integrated the first team in an official match, if any official match (including those corresponding to National Cups) is computed as an official match or of there is some limitation, what happens if the player cannot play a game due to an injury or a suspension.[41]

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[39] The mode used by some clubs is to pact a cap, for example related with the increase of the social fee that members pay to the club.

[40] The professional football player receives, besides the basic wage, the agreed prizes. The basic prize for each point earned it's equal to five per cent (5%) of the basic wage fixed for each of the categories listed.

[41] In this regard, Art. 17 of CBA 557/09 establishes: "The football player whose injured in a match or a practice in his club, or has a commuting accident between his house and his work place, duly proven, who can't play, will continue to collect the agreed remuneration, included prices for point earned by the division in which he acted at the time of injury, until discharge and although the

Beyond these individual bonuses agreed in the particular contract of each player according to what was negotiated, the team may negotiate a collective bonus or prize for the whole team – generally represented by the captain and some other referents – in case of obtaining team results. Even if not signed by all the players, said agreement is applicable to the entire team.

Art. 13 subsection b) of the CBA 557/09 establishes that, failure to pay one month's salary, or one of the agreed prizes, or a part of the premium or of the annual supplementary salary or of any other remuneration item, agreed upon in a contract registered before the federation or in a private contract not registered, the player, by himself, or through FAA (the Union), shall give a default notice to the club requesting the payment within two business days, indicating precisely the amounts owed. If within that period the club does not pay in the Union headquarters or does not submit the receipts required by the Labour Contract Law to certify the payment, the player may consider his contract terminated due to the club's fault, in which case he will be able to claim all the remunerations accrued up to the date of the termination, plus all the amounts contemplated in art.15 of the CBA 557/09.[42]

The football player, by himself or through FAA, shall communicate the termination of the contract to the AFA, which will be obliged, if applicable, to declare within ten business days that the player is free to sign a contract with another club and to grant a term of twenty business days, so that the player can register a contract with a new club, even if the registration period is closed.

If after that period of ten business days the AFA has not fulfilled the previous obligation, obstruct or by any other means, maintain the express or implicit refusal to declare that the player is free to sign a new contract, the player, with prior notice to the AFA for the term of two business days, may appear before the labour courts demanding this declaration and the condemnation to the AFA to the payment of the accrued amounts until the date of termination of his contract, plus what he would have received if the same subsisted, until the judicial declaration of freedom of contract, plus other items described in the CBA.

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medical discharge is granted after the expiration of the contract". That is, in case of injury, the CBA protects the player and gives him the right to perceive those awards for points earned, but we believe that this refers only to the awards provided in the CBA, not those that are agreed, within the framework of the autonomy of the will, between the club and footballer, as part of their remuneration variable, whether it is called prize for compliance with objectives, bonus per game played, etc. In this case, it must be agreed to in the contract, the parties being able to agree that the player does not have the right to receive the bonuses for those matches that he cannot dispute due to being injured.

[42] Art. 15 of CBA 557/09 establishes: "Termination of the contract because of the club's compensation: In cases of termination of the employment contract because of the club, the player will be entitled to a special compensation equal to the remuneration that remains to be received until the expiration of the contract term, plus compensation for seniority, due to omission of notice, and where appropriate, for vacations not taken, established in the LCT".

3.6 Private or unregistered agreements

According to Art. 3[43] and 4[44] of Law 20.160 any unregistered contract or agreement that modifies, alters or distorts the content of the registered contract, shall be null and void.

However, CBA 557/09 clarifies that the nullity of a contract foreseen in Law 20.160 may not be invoked by the employer club and the conclusion of any unregistered contract or agreement that establishes remunerative items superior to those agreed in the contract registered at AFA will have broad validity.

These provisions are based on the fact that it has been a common practice in Argentina to have two sets of contracts between clubs and players, one registered before AFA and another private one that was not submitted to the federation.

On top of these provisions, since 2012 anytime a club registers a professional player before AFA, together with the contract to be registered, the club shall submit a letter with the club's letterhead, as an "Affidavit", signed by the President, Secretary and the player, stating that it is the only economic document that links the parties.[45]

3.7 Social Security

In 2003, Decree 1212/2003 was enacted. It established a special regime for the collection and retention of social security contributions corresponding to football players, members of the medical corps, technicians and assistants who serve in the establishments that practice professional football in any category and other personnel dependent on the AFA and the clubs of divisions First A, National B and First B, with AFA acting as an agent of perception and/or retention.

By virtue of this, the clubs, although they present in the affidavits the liquidation of particular and employer social security contributions, do not have to actually pay these amounts to the social security system. In fact, AFA acts as a withholding agent and seven percent (7%) of the total income received in terms of ticketing, player transfers and TV rights is collected for these items.

On 29 March 2019, Decree 231/2019 – amending Decree 1212/2003 – was enacted, increasing the percentage to 7.25% and including other income items in the system. Therefore, once this new Decree enters into force,[46] each time an Argentine club transfers a player, either to another argentine club or to a foreign

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[43] Art. 3, Ley 20.160: "Any contract or convention that modifies, alters or distorts the content of the registered in the Ministry of Social Welfare will be null and void".

[44] Art. 4, Ley 20.160 "No contract will be registered that does not comply with the provisions of this statute and national and international sports regulations, as long as they do not oppose it. The contract that, although registered by mistake, will be considered void for all purposes".

[45] AFA Bulletin 4675 – Executive Committee 24 July 2012, Resolution of 25 July 2012. www.afa.com.ar/upload/boletines/4675.pdf.

[46] It will enter into force on January 1, 2020, as established by Decree 530/2019.

club, it shall pay – before the release of the transfer or ITC – 7.25% of the transfer compensation.

3.8 Club´s Obligations

According to Law 20.160 and CBA 557/09, Clubs in their relationship with players are required:

a) to pay all the economic benefits established in the contract and/or the contracts – registered or not – in the conditions and terms established in them, even if they do not use the services of the player;
b) to grant a weekly rest day, and annually, 30 days of paid leave with the monthly remuneration established in the contracts;
c) to provide complete medical assistance, including psychosomatic and rehabilitation services, to ensure the efficient practice of the player's sporting activity;
d) to have an insurance policy in favor of the player that covers the compensation for generic or specific disability, total or partial, or death, suffered during competitions, in preparation acts or transfers, whatever the means used to do so, be that the event happens in the territory of the country or abroad;
e) to pay for transportation, lodging and food expenses if the player has to travel to fulfill their contracts;
f) to grant a minimum rest period of twelve hours between the end of one day and the beginning of the next;
g) between one game and the next, at least forty-eight hours must have elapsed.[47]

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[47] Circular 1 Superliga, October 11 2017, in which it was established that ….. *Cuando un equipo deba disputar un partido correspondiente a algún certamen organizado por la Confederación Sudamericana de Fútbol y/o por la FIFA, siempre y cuando dicho certamen sea reconocido por Conmebol y/o FIFA como "oficial" (en adelante el "Partido Internacional") y dicho partido fuera programado para disputarse dentro de las 48 horas anteriores o posteriores a un partido correspondiente a dicho equipo por el Campeonato de Primera División organizado por la SUPERLIGA (en adelante el "Partido de la Superliga"), el Club podrá solicitar a la Mesa Directiva de la SAF el adelanto o la postergación únicamente por 24 horas del "Partido de la Superliga", de manera tal que entre la fecha del "Partido Internacional" y la fecha del "Partido de la Superliga" exista un intervalo de dos (2) días completos, sin contar los días de ambos partidos. El plazo para que el Club efectúe la solicitud vencerá a los cinco (5) días hábiles desde que se conocieran ambos calendarios y/o cinco (5) días antes de la fecha prevista para el "Partido de la Superliga", el que ocurra antes. En tal supuesto la Mesa Directiva deberá autorizar el pedido efectuado por el Club solicitante, aún sin el consentimiento de su ocasional adversario, reprogramando dicho encuentro." When a team must play a match corresponding to a contest organized by the South American Football Confederation and / or by FIFA, as long as said contest is recognized by Conmebol and/or FIFA as "official" (hereinafter the "International Match")) and said match was scheduledto be played within 48 hours before or after a match corresponding to said team by the First Division Championship organized by the SUPERLIGA (hereinafter the "Superliga Match"), the Club may request the Board of Directors of the SAF the advance or postponement only for 24 hours of the "Superliga Match", so that between the date of the "International Match" and the date of the "Superliga Match" there is an interval of two (2) full days, not counting the days of both matches.*

In addition to these obligations, the Club has the obligation to provide effective occupation to the player and to grant equal treatment in equal situations, as provided by Arts. 78 and 81 of the Labour Contract Law, of supplementary application.

3.9 Player's Obligations

For their part, players are required:

a) to play football exclusively for the contracting club or in teams representative of the association, in accordance with the respective regulations;
b) to maintain and improve their aptitudes and psychosomatic conditions for the performance of the activity;
c) to play with will and efficiency, putting into action the maximum of his energies and all his ability as a player;
d) to adjust their life regime to the demands of their obligations;
e) to attend any call made by the club or the authorities of the AFA, to intervene in all the matches and in the playing position assigned to them, whatever the day, time and place;
f) to comply with the international sports rules that govern the practice of football and the sports regulations of the club and the AFA, as long as they do not oppose Law 20.160, the CBA 557/09, the employment contract and the LCT;
g) to comply with the training requirements assigned by the club through the persons designated for that purpose. This obligation subsists even when he is suspended, cannot be excused for reasons of employment or work, unless expressly authorized by the club. It shall be the exclusive power of the club to establish the place and time of training, as well as the changes that are necessary in exceptional cases, provided that such changes do not imply injury to the interests of the players;
h) to give notice to the club within 24 hours of the occurrence, of any circumstance that affects the normality of their psychosomatic state, having to accept being examined by the physicians of the club and AFA and follow the coincidental indications of them, provided that they are not contrary to those of the doctor of their choice, in which case the provisions of the LCT will be followed;
i) to partake part in trips related to the participation in sporting events of the club or the AFA that take place in Argentina or abroad;
j) to behave with correctness and discipline in the matches, following the indications of the club, duly respecting the public, the sports authorities, their teammates and the opposing players;

The deadline for the Club to make the request will expire five (5) business days after both calendars were known and / or five (5) days before the scheduled date for the "Superliga Match", whichever occurs earlier. In such case the Board of Directors must authorize the request made by the requesting Club, even without the consent of its occasional adversary, reprogramming said meeting.

k) not to incur in sports misconduct. A sportive suspension applied by the competent disciplinary bodies, according to Art. 19 of CBA 557/09, will be without prejudice to the obligation to continue performing the training exercises for the maintenance of his psychosomatic aptitudes and conditions.

It is common that, for the purpose of specifying those behaviors that are included in subparas b) and c) above, the parties establish in the private contract a series of obligations, namely: (i) duly justify failure to attend a match and/or training session, (ii) not carry out risky activities and/or sports, such as driving motorcycles, jet-skis, regularly attending gambling houses, etc.; (iii) not to make any public declarations offensive to the club, members of the Board of Directors and/or members of the technical staff and/or other employees, (iv) not to expose themselves publicly in places that affect their sports image, (v) undergo all the treatments that the club indicates, including rehabilitation services, in order to ensure the efficient practice of football by the player, (vi) dress and use the official sports teams of the club in all activities related to the club, (vii) attend and grant interviews to the press and/or participate in conferences, either as a group and/or individual, in the hours agreed by the club.

3.10 Disciplinary sanctions

As in any labour relationship, clubs as employers have the power to apply disciplinary sanctions to correct the misconduct of their employees, in this case of the players, which imply a breach of their contractual and/or labour obligations.

However, as established in Art. 67 of Law 20.744 of the Labour Contract (Art. 67) and in Art 18 of CBA 557/09, these measures or sanctions shall be justified and proportionate to the fault committed. Moreover, the validity of any sanction shall be conditioned by its contemporaneity with the fault committed. In order for a club to enforce a disciplinary sanction, it cannot be in default on the payment of any amount due to the sanctioned player.

However, it should be noted that sports violations, that is, those that occur during the dispute of a match and/or competition, shall be judged and sanctioned by the AFA Sport Disciplinary Tribunal.

With regard to the modality of sanctions, in the case of the professional football players, CBA 557/19 establishes only two possible measures in case of non-compliance of its obligations by the player:

1) Warning,
2) Suspension without any remuneration for a fixed period that may not exceed thirty calendar days in a year, counted from the first suspension, with the obligation to continue with their training exercises.[48]

[48] In this regard, it was said – even though it was not determined by any case of jurisprudence – that it wouldn't be reasonable for the suspension to be only economic nor sportive. Currently, a suspended football player must continue with his trainings but it's not clear if he can be aligned. I consider that it's convenient to clarify it and if a football player is suspended or disciplined he must

A special comment deserves the topic of the "economic fine" that is part of the list of measures established by Law 20.160, applicable to football players. On this point, according to the general regime of the Labour Contract Law, economic sanctions that in any way reduce the wages of the employee are prohibited (Art. 131 Law 20,744). This means that a club cannot, as a consequence, penalize with economic fines the contractual or disciplinary breaches of the player/ employee.

However, Art. 20 of Law 20.160 of the "Statute of Professional Football Player" authorizes the application of a fine as a "disciplinary measure".[49] Although this provision is not foreseen in the current CBA 557/09, the economic fine as a disciplinary sanction can be justified with the specificity of football.

3.11 Release, Termination and/or Buy Out Clauses

It is a common and known practice in Argentinian football to incorporate contract termination clauses or buy out clauses on employment contracts between clubs and football players.

The termination contract clauses or buy out clauses are contractual provisions that allow football players to know beforehand what are the consequences of terminating their contracts unilaterally and in advance, without a just cause.

Whether the termination contract clause is set to force the player to carry out the contract or to provide an alternative to real release, it is the football player who, with the knowledge of the economics consequences of his decision, can terminate the contract in advance.

The possibility to contractually set a compensation in favor of the club in the case of an advance termination of the contract in our country, arrived implicitly with the release of current CBA 557/09 through Art. 21 that literally says: "*The dismissal based on a severe breach of the contract made by the player, duly proved in trial, would not confer a compensation for him. In the lack of expressed agreement, Labour Court could arrange a compensation in favor of the club, according to the economic damages caused*".

In this case, the wording refers to a severe breach of the contract made by the player, for which it does not seem suitable for the case of buyout clauses set in favor of players.

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pay for the economic consequences of the sanction. Suffering the sportive suspension will not only harm the player, whose peace of competition will be affected with the risk of losing his place on the team but also it will prejudice the club, who cannot fall back on the player.

[49] Art. 120, Law 20.160. Article 120. "In case the player fails to comply with his obligations to the club, it may: a) Admonish him: b) Apply a fine whose amount, in the same month, may not exceed up to 20% of the monthly salary and prizes he receive; c) Suspend without any remuneration for a fixed period that may not exceed 60 days in the same season, with the obligation to continue with his training; d) Rescind the contract.

As a complement to Art. 21 of the CBA, the AFA, through its internal regulations, established a system of implementation of this type of clauses, which was modified in 2018, with two distinctive stages described down below:

a) First Stage. 2009/2018

In this first stage, the AFA Executive Committee decided that "*the arrangement of a compensation for the player if he decides to request a unilateral termination of the contract … it´s similar, in its effects to the one established in the case of a transfer agreement (the player immediately becomes part of the other club, which provides the money to release the player from his previous contract and therefore it is solidary in that payment – art. 17 FIFA RSTP*".[50] Therefore, this decision clarifies that, in said case, the Player and the new Club shall pay to AFA and the Player's Union, all costs, levies and taxes as if it was a regular transfer, including the 15% to the Player as regulated in Art. 8 of the CBA 557/09.

A few days later, AFA publishes its Bulletin 4337 expanding on the previous one, stating that the payment of the termination clause shall be done before the federation.[51]

b) Second Stage. From 2019 onwards

At the end of 2018, AFA, together with the Player's Union, decided to depart from the previous criterion, and once again regulated the conditions under which a termination clause shall be executed.[52]

Therefore, in order to be free and able to sign a contract with a new club, a player shall previously notify the Club, AFA and FAA about his decision to terminate the contract in advance.

In such case, the player shall only pay the following levies: (i) 2,5% of the amount of the clause to the Player's Union (FAA), (ii) 2% of administrative charges to the Argentine Football Association (AFA), and (iii) 0.5% to the Player's Union (FAA).

As a consequence of this new AFA's approach, we can conclude that Art 8 of the CBA 557/09[53] is not applicable to the execution of a termination clause, therefore the Player will not receive 15% of the amount of the termination clause, since it is not a definitive or temporary transfer.

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[50] AFA Bulletin N° 4335, 4 November 2009.

[51] AFA Bulletin N° 4337, 11 November 2009.

[52] AFA Bulletin N° 5576/2018, 12 December 2018.

[53] *Art. 8 CBA 557/09:* "*The contract of a footballer may be subject, being valid the term of its duration, of transfer to another club, with the express consent and in writing of that one. In this case, the player shall correspond, at least, fifteen percent (15%) gross of the total amount of the transfer, whether temporary or definitive, that the transferor club must deposit at the FAA headquarters*".

3.12 Third Party Ownership (TPO)

At the beginning of each player's sporting career, since they proceed to register as an amateur player before the AFA,[54] the Club acquires eventual, conditional and future economics rights, and they are regulated both at international[55] and at Argentinian level.[56]

Without prejudice to the recognition of the patrimonial content generated by the registration of the amateur player with regard to training compensation, the aspect of patrimonial content of greater relevance is found in the economic rights derived from the federative registration, these rights being sustained in the celebration and registration of a so-called "sports affiliation contract",[57] and/or by the eventual signature and registration of the Sports Employment Contract.

They are called "Economic Rights" and can be defined as the right by which someone participates in the economic proceeds derived from of a future transfer or loan of the rights of a Player.

These "economic rights" have acquired great importance and relevance, and for years have been one of the main sources of income generation of football clubs in Argentina, through contracts under which the clubs transferred these economic rights to third parties, in exchange for the payment of an amount of money.[58] These contracts were very usual in Argentina, having generated in consequence numerous jurisprudential precedents in which the validity and

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[54] *In Argentina the players are registered at AFA from the age of 12.*

[55] Art. 21 and 22 of the FIFA RSTP on training compensation and solidarity mechanisms.

[56] Ley 27.211. Ley de Derechos de Formación. Régimen General. Profesionalismo. Deportes Individuales. Jurisdicción y Competencia. Sancionada: Noviembre 04 de 2015, Promulgada: Noviembre 18 de 2015 Law 27.211. Economic rights law. General Regime. Professionalism. Sports. Individual. Jurisdiction and Venue. Passed on November, 4, 2015. Promulgated on November 18, 2015.

[57] *El Contrato de Afiliación Deportiva a la luz del derecho de retención***,** by Rafael Trevisal elDial.com – DCC73, Published 10 September 2017. *"…We have said it in previous publications and we continued to insist that the beginning of the athlete-club relationship starts at 12 years old, when the Sports Affiliation Contract is signed. This contract is concluded inside the orbit of the private sports legal system. Most of the time, this contract is signed by the parents of the underage football athlete and the respective Football Association (Club), which is a simple preprinted form designed by AFA called enrollment form players list*". – the translation is ours.

[58] El contrato de cesión de beneficios económicos provenientes de la transferencia de un jugador de fútbol. Por Rafael Trevisán elDial.com - DC7BB, Publicado el 13 December 2005. The transfer contract of the economic rights originated in the transfer of a football player. By Rafael Trevisan. elDial.com - DC7BB. Published 13 December 2005. "*Inside the orbit of civil law, we can define it as a fully valid contract, categorizing it as a "contract in which the club transfers to an investor the future, conditional and randomized economic rights derived from the sale or the loan of the federative rights of an athlete". The parties of this contract are the holder club that has the federative rights and the investor. Given the complexity on the ownership on behalf of the holder club, it is advisable to participate the athlete whose economic rights are being negotiated in the transfer contract, so he becomes acquainted with it." the translation is ours.*

enforceability of these contracts were recognized. These decisions have been based on the regulatory provisions of the AFA[59] and state regulations.[60]

This important source of funding for football clubs in Argentina was banned with the entry into force in 2015 of the new article 18ter of the FIFA RSTP, which established the prohibition of TPO.[61]

It should also be noted that AFA, in its meeting of the Executive Committee of February 10, 2015 resolved to fully implement the Circulars 1464 and 1468 of FIFA, complying with the obligation provided for in Article 1, para. 3, subsection a) of the Regulations FIFA on the Statute and Transfer of Players.[62] The Authors do not agree with the extreme position adopted by FIFA and they hope that the latter will regulate this instead of just banning the practice.

Within this context, FIFA itself changed its criteria regarding who shall be considered a "third party" in order to determine the subjects reached by the prohibition. Indeed, since the entry into force of this prohibition it has been said that the Player should be considered as a "third party", due to a literal interpretation of the rules.

This hindered a very common practice in Argentine football since in the framework of negotiations prior to the celebration and/or renewal of a contract, clubs and players agreed to the recognition in favor of the player of a certain percentage of the income derived from an eventual future transfer of the player to another institution.

In mid-2018, the FIFA Disciplinary Committee revised its initial position, stressing in a decision that players should not be considered "third parties" for the purposes and scope of Article 18ter of the FIFA RSTP, a revision that is in line with the initial criticism made to said interpretation[63] and with the regulatory

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[59] "Régimen de anotación y archivo de cesiones de beneficios económicos por transferencia de contratos" AFA Executive Committee Decision 11/22/2005, published in AFA Gazette on 24 November 2005. Under the number 3819.

[60] Resoluciones Generales AFIP N° 2182/2006, 3374/2012 y 3376/2012 that implemented the informative Regime about professional players, agents and/or representatives and the transfer or release of the federative and economic rights. General Resolutions N° 3740/2015 – Income Tax. Inability for "football business men" to own professional players economic rights. Regulations on the Status and Transfer of Player (FIFA). General Resolutions AFIP N° 3897/2016. Professional Footmall. Rights. Transfers. Information and Contracts. Registry.

[61] FIFA 1468 (23/1/2015).

[62] In line with art. 1, Sec. 3 a) of RSTP and as it's a mandatory disposition on the Intern Federatib Orbit, AFA included in its regulations this prohibition, since February 10, 2015, AFA Gazette, Executive Committee Decision published February 11, 2015. Gazette N° 5004. www.afa.org.ar/images/Futsal/Bolet%C3%ADn_5004_11-02-2015.pdf.

[63] R. Trevisán, *Análisis de la prohibición de FIFA para celebrar contratos de cesión de derechos económicos con terceros,* elDial DC1EDC. "*… I understand that the 'Player' can't be taken as a 'Third Party' according to an integral analysis of the regulatory provision that we have been doing. As a first argument we can interpret that the Player is not included in the definition of a 'Third Party', since it is not part of the two clubs between which a player is transferred but and essential part of this operation*" – the translation is ours.

disposition of the Argentine fiscal authority (AFIP) that in 2015 ruled that the Player should not be considered a Third Party.[64]

On 1 June 2019 a new wording on the Definitions of RSTP implies that player is no longer considered a third party regarding his own transfer. Therefore, the old practice shall be considered legal again and players shall be entitled to a percentage of their own transfer rights if they agree so in their contracts.

4. Transfer Agreements

4.1 Applicable regulations

Within this context we can highlight that AFA has a long-standing, detailed regulation of the internal transfer system, in articles 210-235 of the AFA General Regulations. In these regulations, it is established that to be able to perform a transfer in the domestic sphere, between two argentine clubs, whether the players are amateur or professional, it is necessary to obtain the express authorization of the federation. The latter will authorize the transfer as long as all the federative requirements specified in the regulatory standard that we will discuss below are met.

4.2 Types of Transfers

The transfer agreements at a domestic level do not differ from the agreements used in international transfers. There is no specific form/template prescribed by the AFA regulations for the transfer agreements.

As established in Articles 218 and 219 of the AFA Regulation, the transfers can be divided in: definitive transfer with fee, definitive transfer without fee, transfer on loan with fee, and with or without a purchase option, transfer on loan without fee, and with or without a purchase option.

4.3 The Consent of the player

In order to complete a transfer of a player at domestic level, the following conditions must be met:
a) the player needs to give his explicit consent;[65]

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[64] AFIP General Resolution N° 3740/2015. *Inability for "football business men" to own professional players economic rights. Article 1 – The contracts signed from May 1, 2015, can only grant economic rights to a football club or the professional football player involved. It can's grant third parties the right to participate, partially or totally, on the value of the future transfer of a player from one club to another or grant rights related with future signing or with the value of future signing* – the translation is ours.

[65] Art. 233 of the AFA Regulations: – El contrato de un jugador podrá ser objeto, estando vigente el término de duración del mismo, de cesión a otro club, con el consentimiento expreso de aquél. – Article 223. The contract of a footballer may be subject, being valid the term of its duration, of transfer to another club, with his express consent. Estatuto del Jugador de Fútbol Profesional,

b) such a consent must be in writing.[66]

4.4 Registration of a new Employment Contract

The AFA, will not accept the registration of a new transfer contract until the parties comply with the following points:

i. Submission of the Transfer Contract for its registration.
ii. Payment of the levies and burdens foreseen by the AFA regulations, highlighting that the main burden is found in article 214 of the AFA Regulation, which establishes as a prerequisite for the transfer to be approved the payment of 2% of the amount of the transfer in charge of each of the parties (transferor and transferee)
iii. Payment of the obligations specified in the CBA, which establishes the obligation that the clubs have to present proof in Futbolistas Argentinos Agremiados (FAA) headquarters of the payment of 15% of the transfer fee to the player. If AFA authorizes the transfer without first fulfilling this condition, it becomes solidary and liable to the payment, without any need for prior notification. In addition to the control of this 15%, FAA in the same act requires payment to the Union of 0.5% of the amount of the transfer fee.[67]
iv. Payment of the obligations specified in national state regulations, applicable to all transfers:[68] AFA acts as a withholding agent and seven percent (7%) of the total income received in terms of TV rights, ticketing and player transfer.
v. Payment of the obligations specified in Provincial Special Laws, applicable to the transfers that arise in the territory of certain provinces: as an example of these extremes we can mention the obligation to pay the stamp tax when the selling club has its address in Buenos Aires (1.2%), or the obligation to pay 2% when the selling club is affiliated to the Liga Cordobesa de Fútbol.

Nº 20.160, Bs. As. 15/2/73 Art. 14. – El contrato de un jugador, podrá ser objeto, estando vigentes los términos de duración del mismo, de transferencia a otro club con el consentimiento expreso del jugador. Professional Football Player Statue. N° 20.160. Bs.As. 15/02/1973. Article 14. The contract of a footballer may be subject, being valid the term of its duration, of transfer to another club, with his express consent.

[66] Collective Agreement 557/09: Article 8 of the Collective Agreement of Professional Footballer 557/09, following the line set by CBA 430/75, by art 14 of Law 20.160.

[67] In practice, the FAA required, in conjunction with the AFA, that the payment of the 15% corresponding to the player be made by check to the order of the player and delivered to him at the headquarters and in the presence of the staff of FAA. Without this proof of compliance, the AFA does not authorize transfers. From the year 2019, the payment of this 15% to the player shall be made by bank transfer to the player's account, and said transfer must be accredited before FAA who will issue a proof that the procedure has been fulfilled, being that proof a requirement for the AFA to authorize the corresponding transfer.

[68] Decree 1212/2013 19 may 2003.

Only once the requisites described here have been met, the AFA proceeds to register and approves the transfer.

4.5 Particular aspects of the Temporary Transfers

Regarding the loans or temporary transfers, there are some special provisions within Article 8 of CBA 557/09, having to do with the contract and the economic conditions of the player during and after the end of the loan period.

a) *The preservation of the economic conditions agreed with the transfer club:* The temporary transfer cannot mean a reduction in the remuneration established in the contract of the player with the transferor club. The transferor entity shall be jointly liable for the compliance with all the economic obligations of the transferee, under the penalty established in the provisions of article 13, section b) of CBA. That is to say, the player cannot receive during the loan less than what he was entitled to receive according to the contract with the club that lends him. Once the term of the temporary transfer has expired, the transferor club will automatically resume the obligations arising from the transfer, and shall continue to pay the player the same remuneration that he received from the transferee club – if this is an Argentine club[69] – for the last month of the loan, or the highest established in the assigned contract.
b) "*The Fear Clause*": In case of a temporary transfer, Article 8 of CBA 557/09, establishes that any clause that prevents the player, professional or amateur, to be part of the team of the transferee club in a match played against the transferor club has no effectiveness or validity.
c) *Purchase Option*: The AFA regulations have long accepted the possibility of signing loan contracts with the option of transforming it into a definitive transfer, demanding for such purposes that (i) the price of the "Option" be determined in advance, (ii) that the option be exercised by the Club at least 5 days before the end of the term of the Loan Agreement,[70] and (iii) that they have a labour contract signed for the seasons following the exercise of the option.

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[69] This last reference was agreed between the AFA and FAA on January 5, 2018, and implies that if the player is assigned to a club belonging to an association other than the Argentine Football Association, then the player should respect, at his return from the loan, the economic conditions that he has agreed with the Argentine club, even if there were less than what was agreed with the club in which he provided services during the period of temporary assignment.

[70] Art. 222 – The club which decides to opt for the definitive transfer of the player which it has incorporated on a trial period, shall duly inform the assignor club and the A.F.A. of such decision at least five days prior to the expiry of the transfer on trial period.- Should the acquiring club fail to serve notices within the prescribed terms, the player shall automatically consider himself reincorporated to the assignor club as from the day after the expiry of the transfer period.

5. Termination of Contracts

5.1 Termination of Playing Contracts

Contractual stability is a paramount importance in the employment relationship between a club and a player. This entails that if a contract is terminated without just cause, severe economic sanctions (compensations) are foreseen for the party who has terminated the contract.

Pursuant to the Professional Football Statute Law, CBA 557/09 and Labour Contract Law n. 20.744, a contract may be terminated:

1. by mutual agreement,
2. by expiration of the contractual term,
3. because of definitive transfer,
4. just cause due to the breach by one of the parties.

1. – Mutual Agreement: established in Art. 241 of the Labour Contract Law and Art. 20 of the Collective Labour Agreement.

In effect, in order for the sports employment relationship to be mutually terminated, the parties must seek to formalize it in writing, through public deed or before the judicial or administrative authority, that is, the Ministry of Labour and/or Judge of Labour.

The end of the employment relationship via mutual agreement does not grant a right to compensation of any kind for any of the parties.

It is also important to outline that, according to what is prescribed by Art. 241 of the Labour Contract Law, the termination by mutual agreement needs to be signed by the player himself and not by his representative otherwise the agreement is considered as null and void.

2. – Expiration of the contractual term: the second form existing is the one produced by the mere expiration of the term agreed by the parties in the contract registered in AFA, ending the relationship from that moment, with full legal rights, being the player totally free to sign a new contract with any club or institution.

Be reminded that, according Arts. 5 and 6 of the Collective Labour Agreement, the contract signed between the Club and the players shall have a fixed term and it has a definitive date for its beginning and its ending.

It is also important to note that, as in the case of termination by mutual agreement, the termination of the relationship upon its natural end does not generate the right to compensation for any of the parties.

3. – By Definitive Transfer: it is not expressly provided for in the specific regulations governing the activity of the professional football player of our country, as it happens in other countries (Chile, Brazil, Etc.), but it is a usual way of termination of the sports employment contract.

In effect when the relationship is still in force and a player is transferred to another club on a definitive basis , it is considered that the provisions of Art. 241 in fine of the Labour Contract Law are complied with, that is to say, that the relationship has been ended by the concurrent will of the parties, expressed through a conclusive, reciprocal and unequivocal behavior.

The termination by a definitive transfer is a subtype of the one defined as mutual agreement, but the distinction is that this one does not require the observation of the instrumentation requirements established in para. 1 of Art. 241 LCT. In the case of a termination by mutual agreement that does not imply that a transfer is necessary to formalize the ending of the relationship in writing, through public deed or before the judicial or administrative authority; and on the contrary in case of a transfer there is no need to formalize the termination through public deed or before any competent authority, just the player's concurrence in the Transfer contract will suffice.

While the modality established in Art. 241 LCT does not generate rights to compensation of any kind for any of the parties, a termination as a consequence of a definitive transfer generates a compensation in favor of the player, in accordance with provisions of article 8 CBA, being a 15% gross of the total sum of the transfer, that shall be paid by the transferor club to the player through a deposit in the football players' union headquarters.

4. – Just Cause: Either party is entitled to terminate the contract with just cause. The regulations do not define precisely the concept of just cause, and therefore it shall be decided by the competent courts on a case by case basis. However, there are some provisions referring to specific circumstances that would entail a party to unilaterally terminate the contact with just cause, such as:

4.a. Lack of registration of the labour contract in AFA,

4.b. Transfer of contracts to a natural or legal person that does not intervene in AFA or affiliated leagues,

4.c. Failure or lack of salary payments or premiums,

4.d. Failure or serious misconduct of the player,

4.e. Lack of effective occupation.

4.a. – According to the provisions of Article 3 of the CBA, the club has ten (10) days after signing the contract with the player to register it in the Argentine Football Association. Upon expiration of said term this same article establishes that the lack of registration of the contract, will result in the player being able to choose to: (i) termination of the contract, or (ii) demand compliance. In the event that the player decides to terminate the contract, he will be entitled to claim a compensation for the sums he would have been entitled to receive up to the date of termination of the non-registered contract.

b. – In accordance with what is established in clause 6) of Art. 8 of the CBA it is totally and absolutely prohibited to transfer football players contracts and their

"cards" to people outside of AFA, and failure to observe this could mean that AFA declares the automatic extinction of the bond between the club and the player. In this case, given that the resolution would occur due to the club's responsibility, the player would be entitled to claim compensation equivalent to the remuneration that remains to be received until the end of the contract that has been registered, plus compensation for seniority and advance notice established Arts. 232 and 245 of the Labour Contract Law.[71]

c. – Clause b) of Art. 13 of the CBA establishes that the non-payment of a monthly salary, or part of the premium and/or prizes, and/or of any remuneration item, grants the player the right to terminate the contract by exclusive fault of the club, also having the right to claim the retributions that remain to be received until the end of the term of the contract that has registered, plus compensation for seniority and advance notice established by Arts. 232 and 245 of the Labour Contract Law. It is important to clarify that prior to terminating the labour contract and requesting his freedom of contract, the player must and has the obligation to request the employer club to regularize the situation and pay the owed wages with precise indication of the amount owed, within a term of two (2) business days.

d. – In the first place, it is appropriate to point out that the classification as serious fault is certainly subjective and depends not only on the judge, but also on multiple factors and/or circumstances that must be assessed together so that a fault can be classified as serious. That is, a club cannot determine the seriousness of a fault, dispense with the player's disciplinary history, the importance of the fault, and the manner, time and place of its occurrence. For that reason Art. 267 the LCT establishes that there must be proportionality between the fault or the breach committed by the worker and the sanction, especially if this means the dismissal of the football player. In fact, in order for a breach or fault of a player to be considered serious, it is essential that it prevents the continuation of the link. On this point it is essential to note that the CBA provides and highlights as obligations of the player the following: Play football exclusively for the contracting entity, maintain and improve their skills and psychosomatic conditions, play with will and efficiency, to maximize their energies and skills, adjust their life regime to the demands of these obligations, comply with the training assigned, behave with correctness and discipline during matches, and follow the indications of the club, respect the public, colleagues and opponents. Consequently, in the event that the link is terminated due to the player's serious fault, this will generate in the club's favor a compensation identical to that provided for in the employment contract as a "termination clause", or in the absence of an express agreement to that respect, to the compensation that a Labour Judge determines.[72]

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[71] Article 15 CBA 557/09: In cases of termination of the employment contract due to the club's fault, the player will be entitled to a special compensation equal to the remuneration that remains to be received until the expiration of the contract term, plus compensation for seniority, compensation due to omission of notice, and where appropriate, for vacations not taken, established in the LCT.

[72] Article 21 of the CBA 557/09 Dismissal for Serious Breach of the Football Player: The dismissal based on serious contractual breach of the player, duly accredited in court, will not entitle any

e. – It is not a cause for termination expressly provided but an obligation arising from Art. 78 of the Labour Contract Law, hence its failure to comply may result in the termination of the link. In fact it is important to note that the club as an employer has the obligation to guarantee the player effective occupation according to their category. This obligation to give in practice implies allowing him to train with peers of the same or higher level, as well as the possibility of participating in official competitions. Failure to comply with this obligation may result in the termination of the link as a result of the club's fault, and the player is also entitled to claim the compensation that remains to be received until the end of the contract that has been registered, plus compensation for seniority and notice established by Arts. 232 and 245 of the Labour Contract Law. The causes mostly associated with this cause are: separating the player from the first team of the club, relegating him to play with the reserve or second team of the club, forcing the player to train in isolation, etc.

6. National Training Compensation and Solidarity Mechanisms / Levy on Transfers

6.1 National Training Compensation

In 2015 the National Congress sanctioned law 27.211 on sports training compensation, which is applicable, among other sports, to football.

The purpose of Law 27.211 is to institute and regulate the sports training compensation, which is recognized to non-profit civil associations and to simple associations, whose main activity is training, practice, development, support, organization and sporting representation in all its disciplines.

A compensation is established for those sports entities that provide sports training for athletes.

"Sports training" is defined as the training, development and improvement of the quality and skills of the athlete involved in the practice of an amateur or professional discipline.

a) Training period

The period of sports training is one that falls between the calendar year of the ninth birthday of the athlete and the calendar year of the eighteenth birthday, both included.

In collective sports, training rights become effective in the following cases:

a) When the athlete is amateur and signs the first professional contract;
b) When the athlete is a professional, whenever there is a transfer of federative rights to another sports club, retaining the same status, or each time he signs a new contract.

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compensation in favor of the player. In the absence of an express agreement in this regard, the Labour Court may agree, where appropriate, compensation in favor of the club, depending on the economic damages caused to it.

This last reference *"every time he signs a new contract*" seems to indicate that the clubs must compensate the training clubs after each renewal of the contract. However, an interpretation of the full text of the law could indicate that it refers only to when a new contract is signed with a new club (equated to the subsequent transfer of the FIFA Regulations), since in art. 18 establishes that, in these cases, the person liable to pay is "the new sport club".

The law itself, in Article 14, establishes the possibility that federations can incorporate in their regulations the right to training compensation, setting a period of 6 months from the entry into force of the law. Once that period expired, the law would come into force. Likewise, it clarifies that, in case of conflict between the provisions of this law and the federation regulations, the most favorable rule the training clubs applies.

Likewise, Article 16 states that the federal regulations cannot establish a compensatory amount for Sports Training Compensation lower than the parameters established in this law.

In the case of incorporation into professionalism, when the player signs the first professional contract, the contracting sports club must pay the training entities five percent (5%) of the gross value of the total payment for all concepts, including bonuses, prizes and other remuneration items, that the athlete receives for his / her professional activity during the entire period contemplated in the contract. For the sole purpose of the settlement of the compensation to be paid, a minimum term of three (3) years is taken, regardless of the actual term stipulated by the parties to the contract, even if the term is shorter.

When the player is already a professional, each time there is a transfer of federative rights to another sports club retaining the same status, or each time a new contract is signed, the new club must pay the training entities five percent (5%) of the gross value of the transfer fee, regardless of the denomination used. Again, and for the sole purpose of the settlement of the compensation to be paid, a contractual term of three (3) years is taken as a minimum.

If the transfer value or the athlete's contract is not known, a sum equal to thirty-six (36) Adjustable Minimum Living Wages is set as a compensatory value for Sports Training Compensation.

The amount of the training compensation according to the Sports Training Compensation Law is distributed pro rata according to the following scale:

Year of the 9th birthday 10%
Year of the 10th birthday 10%
Year of the 11th birthday 10%
Year of the 12th birthday 10%
Year of the 13th birthday 10%
Year of the 14th birthday 10%
Year of the 15th birthday 10%
Year of the 16th birthday 10%
Year of the 17th birthday 10%
Year of the 18th birthday 10%

On 18 October 2018, after the expiration of those six months, the Executive Committee of the AFA approved a special Regulation on Training Compensation for football establishing some special rules according to the specificity of football.[73]

The most important differences between the system of Law 27.211 and the AFA Regulation are:

a) the training period begins on the season in which the player turns 12 years old and ends at the end of the season in which the player turns 21 for training compensation (unless a player has finished his training process before the end of the season in which he turns 21) or at the end of the season in which the player turns 23 for solidarity mechanism,
b) training compensation is due only when the player becomes a professional player before the end of the season in which the player turns 23 years old,
c) training compensation shall be calculated according to the training costs of the club with which the player signs the first professional contract, taking into account that the clubs are divided into four categories, and there is a fixed amount per year for each category,[74]
d) solidarity contribution is calculated over the net amount of the transfer fee,
e) the percentage of the solidarity mechanism is distributed in a different way, corresponding to 0.50% for each of the first 8 years (12 to 19) and 0.25% for the last 4 years (20 to 2. 3),
f) only those clubs who, at the moment the player signs the first professional contract or at the moment that the player is transferred, are disputing official competitions in a category lower than the obligated club, may claim the training compensation and/or solidarity contribution,
g) claims shall be made through the AFA COMET system (electronic online system) and any controversy shall be decided by the AFA ORL ("Dispute Resolution Body") and, on appeal, by the AFA Appeals Tribunal.

As of today, there are discrepancies on the applicability of this regulation in light of the provisions of Article 14 of the law, with some recent relevant precedents.[75]

7. Conclusions

Argentina's football clubs are producers and exporters of talents to the largest world soccer markets. As a result, it is imperative that clubs, players, agents and

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[73] AFA Bulletin Nª 5551 18.10.2018.

[74] For example, for Category I (Clubs participating in the first division tournament – Superliga) corresponds an amount equivalent to 1.5 (one and a half) the value of a minimum contract of a professional player of First Division A or Superliga (first category) for each year of training.

[75] "Unión Futbol Club (Totoras) Asociación Civil c/ Club Atlético River Plate s/cobro de sumas de dinero" – CNCIV - 22/04/2019; and "Club Bochofilo Bochazo c/ Club Estudiantes de La Plata s/ cobro de pesos" - JUZGADO DE PRIMERA INSTANCIA EN LO CIVIL, COMERCIAL, LABOURAL Y DE FALTAS DEL CIRCUITO JUDICIAL N. 29 DE SAN VICENTE (SANTA FE) - 24/08/2018.

lawyers understand the applicable federative and state regulations relating to such transfers in Argentina.

There are specific rules regarding the transfer windows and the different options to register a player outside of the registration and transfer periods. The rules regarding the quota for foreign players in Argentina is constantly evolving and, therefore, it should be taken into consideration when dealing with Argentina.

Within this context, from a thorough analysis of the regulations, and considering the most relevant aspects that we have developed in the preceding points, we shall note that there are still federative regulations that give clubs the right to retain the registration of a player, even without a sports employment contract signed and/or registered. Such regulations which imply in some way a restriction for the players have been repeatedly declared void by the Argentine courts but they are still in force.

Regarding the players' contracts, there are standard playing contracts (in forms given by the AFA) for any football category in Argentina. Rights and obligations of the parties have been collectively bargained between the federation and the players' union and have been described throughout this chapter.

However, as these standard contracts are limited to the most important information (such as the name of the parties, length of the contract, salary, participation of an intermediary), it is very common that clubs and players sign an Annex to this standard form. This "Annex" or "private agreement" shall also be registered before the federation.

There are also specific rules in the civil and labour state legislation regarding the age required to sign a sports employment contract and how under-18 player shall be legally represented.

There are very specific regulations in Argentina regarding tax and social security issues regarding football players contracts, which have been developed in paras 3.5 and 3.7 of this chapter.

Regarding transfer agreements, there are no standard forms prescribed by the regulations. Maybe the most important issue regarding the transfer agreements in Argentina is the additional costs and levies for transferor clubs, as it was described in para. 4.4 of this Article. It is also worth highlighting certain special regulations related to temporary transfer, such as those described in para. 4.5 of this chapter.

Finally, there is a compensation system for the training of young players at the local level, recently regulated, both at the state and federative levels. The state courts and jurisdictional bodies of AFA have ahead of them the challenge of interpreting and defining the extent and scope of these rules.

NATIONAL TRANSFERS IN BRAZIL

by *Victor Eleuterio*[*] and *André Galdeano*[**]

1. Introduction: the national framework

In Brazil, almost every major football club was founded at the turn of the 19th and 20th centuries as associations under private law. At the outset, tournaments would only be played locally, in different States or regions of the country. The national championship, in this context, was held for the first time in 1959, taking more than a decade to actually become the most relevant competition.

Both the Brazilian National Olympic Committee and the Brazilian Football Association – first known as *Confederação Brasileira de Desportos* and nowadays *Confederação Brasileira de Futebol* (CBF) – were founded in 1914, gaining affiliation to the Olympic Movement and to FIFA in 1935 and 1923, respectively.

CBF is today probably the largest football association in the world, overseeing the activities of more than 1,000 (one thousand) active clubs (742 professionals and 385 amateurs) and over 54,000 (fifty-four thousand) registered players (7,048 professionals and 47,177 amateurs).[1] No wonder Brazil is one of the most active countries in the transfer market.

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[1] Numbers from 2018, available at: www.cbf.com.br/a-cbf/informes/index/raio-x-do-mercado-2019-numeros-gerais-de-registro.

Due to the continental dimensions of the country, the entity is – unlike most FIFA members – organised as an actual confederation, formed of 27 (twenty-seven) local federations, each one comprising a State in the country, plus the so-called federal district (which corresponds to the capital city). Clubs are, in this regard, mere indirect members of CBF.

Besides political power, this gives each State federation autonomy to organise its own competitions, to handle the registration of players and to govern its own affairs independently. However, when it comes to international affairs, this structure can be somewhat tricky, since it is not recognised by FIFA and CONMEBOL (*see* CAS 2014/A/3793).[2]

Historically, a significant part of Brazil's sports legislation was issued during periods of political authoritarianism, when sport was controlled by the State (under the umbrella of the Ministry of Education) and used as a tool to maintain power. The starting point for that was a federal law edited in 1941 by the dictator Getúlio Vargas, which created several bodies for the regulation and organisation of sports.[3]

This scenario has only changed as of 1988, with the enactment of a new Federal Constitution, which definitely reinstated democracy in the country and recognised the autonomy of sports entities and governing bodies (art. 217, I, of the Federal Constitution).[4]

Under the so-called "Zico Law",[5] which was afterwards replaced by the "Pelé Law",[6] in force until the present days, efforts then started being made to raise professional standards in Brazilian sports. To that effect, two changes were deemed pivotal in the Pelé Law: first, football clubs should be encouraged to convert from non-profit associations into companies and, second, the consequences of the European Court of Justice historical *Bosman* ruling,[7] which set the basis for free agency in Europe, ought to be implemented at a national level.

Regarding the first issue, the new rules introduced by the Pelé Law were quite ineffective, particularly because no specific corporate structure (such

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[2] Due to their position in the structure of Brazilian football, State federations serve, for instance, as middlemen for the issuance of player's passports and for the remittance of subpoenas from FIFA's and CONMEBOL's judicial bodies. However, without recognition from FIFA and CONMEBOL, only CBF and clubs can be held liable if a State federation fails to comply with its duties – similarly to the situation of Spanish *comunidades autónomas*.

[3] Decree law nr. 3.199, dated 14 April 1941, available at www.planalto.gov.br/ccivil_03/decreto-lei/1937-1946/del3199.htm.

[4] Available at www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm.

[5] Federal law nr. 8.672, dated 6 July 1993, available at www.planalto.gov.br/ccivil_03/leis/L8672.htm.

[6] Federal law nr. 9.615, dated 24 March 1998, available at www.planalto.gov.br/ccivil_03/leis/l9615consol.htm.

[7] Court of Justice, Case C-415/93 Union Royale Belge des Sociétés de Football Association ASBL *v.* Jean-Marc Bosman, Royal Club Liégeois SA *v.* Jean-Marc Bosman and others and Union des Associations Européennes de Football (UEFA) *v.* Jean-Marc Bosman [1995] ECR I-4921.

as a *Sociedad Anónima Deportiva*, which exists in Portugal and Spain) was conceived to embrace these entities' needs. In this regard, albeit a few clubs may have attempted to convert (the most relevant example being Esporte Clube Vitória), the idea was rapidly abandoned, either because of the higher tax burden that companies had in comparison to non-profit associations or due to internal hurdles faced for the approval of such changes.[8]

As to the second matter, similar to the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP"), the Pelé Law has not only revoked the pre-*Bosman* rule that used to bind players to clubs even after the expiry of their employment contracts (art. 11 of federal law nr. 6.354/76),[9] but created a variety of mechanisms to protect and remunerate training clubs.

Throughout the time, the Pelé Law was amended in several occasions – most relevantly in 2011, through federal law nr. 12.395/11[10] – with some new mechanisms being introduced and some other being refurbished, always with the aim of protecting or remunerating training clubs.

From a regulatory standpoint, CBF's and State federation's affairs were, for decades, governed by sparse resolutions and circulars, not rarely puzzling and contradictory. The situation has only improved from 2015 onwards, when CBF decided to compile, harmonise and update its rules, creating the so-called *Regulamento Nacional de Registro e Transferências de Atletas de Futebol* – RNRTAF ("CBF RSTP"),[11] which revoked over thirty of these resolutions and circulars and finally established unified regulations on the transfer and status of football players in Brazil.[12] By the same period, CBF also launched its first Intermediaries' Regulations ("RNI")[13] and deeply reformed its National Dispute Resolution Chamber (the so-called "*Câmara Nacional de Resolução de Disputas*" or "CNRD"),[14] which together signified a major step towards more legal certainty and better governance in Brazilian football. In addition, as from 2018, CBF started a 4-year-long implementation process of its Club Licensing Regulations,[15] with the aim of raising standards of governance and addressing the troublesome finances of Brazilian clubs.

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[8] As private associations, most football clubs in Brazil have many internal bodies – sometimes composed of tens or hundreds of its members – to supervise and inspect the activities of its board and directors, which makes decision-makings processes quite complex.

[9] Available at www.planalto.gov.br/ccivil_03/LEIS/L6354.htm.

[10] Available at www.planalto.gov.br/ccivil_03/_Ato2011-2014/2011/Lei/L12395.htm.

[11] Available at www.cbf.com.br/a-cbf/regulamento/de-registro-e-transferencia/regulamentos-de-registro-e-transferencia-e-de-intermediarios-1.

[12] Even so, State federations still enjoy certain autonomy to pass their own transfer and registration rules, in so far as they are in line with CBF's ones.

[13] Available at www.cbf.com.br/a-cbf/regulamento/de-intermediarios/regulamentos-de-intermediarios.

[14] *See* www.cbf.com.br/a-cbf/cnrd/index.

[15] Available at www.cbf.com.br/a-cbf/informes/index/cbf-divulga-regulamento-de-licenca-de-clubes.

It is safe to say nowadays that CBF has one of the most modern sets of regulations in the world of football, not only comprehensive but also quite dynamic to respond the needs of the market.[16]

This nevertheless, in spite of CBF's best intentions, harmonising the entire system is quite a challenging task, as not all the provisions of the Pelé Law – including ones that govern the transfer and/or the activity of football players – are entirely coherent or adequate to achieve their purported goals.

In 2017, after more than two decades under the same model, a new draft law was submitted to the Brazilian Senate and is currently been analysed.[17] Yet, if occurring, its approval may take a few more years.

Against this background, the present article aims to offer a practical approach towards the legislative and regulatory framework governing the status and the transfer of football players in Brazil, bearing in mind different experiences that each of the authors have had in a decade of work at a major Brazilian club and a boutique law firm specialising in sports law.

2. The status of players

According to the Pelé Law and the CBF RSTP, high performance athletes may be divided in two categories: professionals and non-professionals.

A player is considered a professional if he signs a fixed-term written employment contract with a club and is paid a remuneration for his services. Due to the specificities of the sports profession, this type of employment contract is called a "*contrato especial de trabalho desportivo*" (in English, "Special Sports Employment Contract").

A non-professional (or amateur), in turn, is a player who does not have an employment contract and can more loosely practice football. Although not required to, amateurs are free to sign written apprenticeship contracts with their clubs (the so-called "*contratos de formação desportiva*"), to receive "financial incentives" and to have sponsors.

Noteworthy, this categorisation reveals a significant difference between the status of professional and amateur players under Brazilian law in comparison to the FIFA RSTP. Whilst in Brazil the distinction is solely based on the existence or not of a special type of employment contract, at an international level what matters, above the existence of a written agreement, is whether the player earns more from his footballing activity than the expenses he effectively incurs.

Nevertheless, as shall be seen below, for a club to be entitled to certain rights under the Pelé Law, it is mandatory not only that it signs a written "*contrato*

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[16] Every year, a working group composed of jurists, in-house lawyers and external counsel gathers to review complaints and suggestions from stakeholders, possible flaws in the regulations etc. and proposes amendments.

[17] Senate's Draft Law nr. 68/2017, available at www25.senado.leg.br/web/atividade/materias/-/materia/128465.

de formação desportiva" with the player (hereinafter a "Training Contract"), but pays him a monthly "financial incentive" and covers all his costs and expenses with lodging, transportation, training, coaching and medical staffs, medical insurance and treatment, physiotherapy etc.

In this regard, in so far as a player under these conditions is still an amateur in Brazil, if one is able to prove that he earns more than he spends with his footballing activity, he can arguably be considered a professional in the international scene,[18] which can have significant impacts for the purposes of training compensation and contractual stability.

3. The registration of players

Pursuant to the CBF RSTP, the registration of both professional and amateur players in Brazil (including ones coming from abroad) is entirely conducted by electronic means, through a system developed and administered by CBF. To start the process, clubs have to submit copy of any contract to be registered, some personal and medical documents of the player concerned, as well as proof of payment of all applicable taxes and fees. The entire documentation is then reviewed by relevant State federation and eventually handed over to CBF, for final approval.

If approved, the registration is concluded upon the publication of the player's name and contractual details in the "*Boletim Informativo Diário*" (the so-called "BID"), which is a bulletin published on a daily basis in CBF's website, open for public consultation.[19]

As a general rule, unless a sanction has to be served or the specific rules of a competition stipulate otherwise, a player is eligible in Brazil if his name is published in the BID until the day before the match he is intended to play (art. 22 and 66 of the CBF RSTP).

Further to the initial registration of a player, all further acts including contractual renewals, extensions or terminations, definitive and temporary transfers etc., shall be conducted through CBF's electronic system and upon publication in the BID.

In accordance with art. 6 of the FIFA RSTP, the season in Brazil follows the calendar year, with the main international registration period usually lasting from January to April and the mid-season one taking place between June and July. At a domestic level, CBF being organised as an actual confederation, with multiple regional and national competitions overlapping throughout the entire year, time limits for the registration of players happen to be set only in the specific regulations of each competition.

In line with art. 5 of the FIFA RSTP, players may be registered with a maximum of three clubs and be eligible to play for a maximum of two clubs during

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[18] *See* CAS 2004/A/691, CAS 2006/A/1177 and TAS 2009/A/1895.

[19] *See* https://bid.cbf.com.br/.

a season in Brazil. However, as FIFA does not recognise State federations and their competitions – which are thus not part of CBF's official calendar – State championships and regional cups are not accounted for such purposes (art. 13, paragraph 3, of the CBF RSTP).[20]

4. Employment contracts

Pursuant to the Brazilian Constitution and the International Labour Organization (ILO) Convention nr. 138 concerning Minimum Age for Admission to Employment (1973), the minimum age for a player to enter into an employment contract in Brazil is 16 (sixteen) years old.[21] Between the ages of 14 (fourteen) and 19 (nineteen), a Training Contract may be signed.[22] And from a player's 20th (twentieth) birthday onwards, he may no longer participate in organised football if not on the basis of an employment contract.

Regardless of the player's age, these contracts must always be valid for a fixed term. The minimum duration of an employment contract is 3 (three) months and the maximum is 5 (five) years.

In this regard, it is not only a "mentality" that facilitates the early departure of talents from Brazil,[23] but the contradiction between the Brazilian 5-year rule and the maximum threshold of 3 (three) years stipulated in art. 18, par. 2, of the FIFA RSTP.[24]

To raise awareness among Brazilian clubs, and at least stimulate them to try to negotiate higher fees for such undesired transfers, CBF has introduced a provision in the CBF RSTP to alert Brazilian clubs that, in disputes of an international dimension, only the first three years of such contracts will be taken into account.

With respect to the length of contracts involving foreigners, no differentiation is explicitly made in the Pelé Law. However, according to immigration laws, work visas may only be valid for two years. Therefore, considering the increasing number of foreign players coming to Brazil in the past decade, especially from South America, clubs are frequently seen to "split" the total duration of the contract (up to five years) in two or more subsequent registrations (for up to two years).

In line with the FIFA RSTP, a player in Brazil is free to enter into a pre-contract with any club of his choice if his employment relationship has expired

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[20] According to art. 39, para. 1, of the CBF RSTP, also the return of a loan is not taken into account for such purposes.

[21] According to Brazilian law, minors under the age of 18 (eighteen) and above 16 (sixteen) must be assisted and thus sign any document of legal significance together with their parents or legal representatives. Below 16 (sixteen) years old, the minor must be represented by his parents or legal representatives, who sign the document alone and on his behalf.

[22] For further information regarding Training Contracts, *see* section 4 below.

[23] *See*, for instance, the cases of Philippe Coutinho, Vinicius Jr., David Neres and Éder Militão, among others.

[24] *See* TAS 2005/A/983 & 984.

or is due to expire within six months therefrom. According to the CBF RSTP, any club intending to sign a player under contract has to give notice to his current club, including within its final 6-months, otherwise it may be sanctioned by the CNRD. On a practical note though, to the extent that it is uncommon to see clubs respecting this rule, it is equally difficult that sanctions be applied, since the accusing club can hardly gather evidence to build a case on that basis.

In accordance with art. 11 of the CBF RSTP, which replicates art. 18, par. 4, of the FIFA RSTP at a national level, the validity of an employment contract cannot be made conditional upon medical examination or the grant of a working visa. Therefore, once the parties sign the contract, no right to retreat may be invoked.

Generally speaking, a player enjoys all labour rights that a regular employee has in Brazil, such as a 30-day annual leave, 1 (one) day of rest per week, a 13th salary per year etc. The maximum working time is of 44 (forty-four) hours per week, except if curfew is required prior to a match. Additional payments may be due to a player in connection with curfew time, trips, pre-season and matches played, unless the contract stipulates that these amounts are included in his salary (which is the case in 99.9% of situations).

In addition, clubs are obliged (since 2011) to provide amateur and professional players with a life and accident insurance. Notwithstanding, as this type of coverage was quite rare and expensive in the Brazilian insurance market, in 2016 CBF decided to entrust a major insurance company – at its own expenses – to develop a specific collective policy covering the entire market. Since then, upon registration before CBF every player is automatically covered.

Further to the conditions above, it is mandatory that every employment contract in Brazil contains two types of penalty clauses, one in favour of the player and one in favour of the club.

The so-called "*cláusula compensatória desportiva*" is due by the club to the player in the event of unfair dismissal (or dismissal without a motive) or termination with just cause by the player. Its minimum threshold is the time remaining of the employment contract, while the maximum corresponds to 400 (four hundred) times the player's monthly salary at the moment of the termination.[25]

The so-called "*cláusula indenizatória desportiva*", in turn, is a type of buy-out clause, due by the player to the club in the event he terminates his contract without just cause or if he resumes his professional activities with another club within 30 (thirty) months after, for instance, abandoning the club or retiring in the course of a contract. Depending on whether the player transfers to a Brazilian or to a foreign club after the termination of his contract, the amount of the "*cláusula indenizatória desportiva*" may vary. For domestic transfers, the maximum amount

[25] As before 2011 the rule was that the club should always pay half of the residual value of the player's contract, it is very uncommon, if not impossible, to see parties deviating from the minimum threshold currently stipulated.

shall not exceed 2,000 (two thousand) times the player's average monthly salary during the effective validity of the contract, while for international transfers no limit is established. In any case, be it in accordance with the Pelé Law or the FIFA RSTP (the latter, in case of international transfers), the new club is jointly and severally liable for the payment of the buy-out clause.

Leaving aside considerations about the reasonableness of the penalty clauses above, it has become somewhat common to see headlines about underage players worth – at least on paper – more than stars like Neymar or Cristiano Ronaldo. To that effect, although the limits of the Pelé Law (or the lack thereof) are yet to be tested in domestic disputes, the jurisprudence of both FIFA and CAS indicates that they will probably not resist scrutiny at an international level.[26]

Further to the above, according to the Pelé Law, if due to an act or fact of his own exclusive responsibility and not related to his professional activities, a player is prevented from performing his regular duties for over 90 (ninety) consecutive days, the club may suspend his employment contract as well as the payment of his remuneration. To that effect, every contract must contain a specific provision governing the automatic extension of the relationship between the parties in the event of a suspension due to the player's absence. Hence, for instance, if a player gets injured practicing extreme sports or playing a charity match without authorisation from his club, his employment contract may well be suspended and then automatically extended for the period he happens to stay out of the pitch.

Seeking protection from this type of misfortune, and with view to the less rigorous sense of discipline that Brazilian players sometimes have, employment contracts nowadays tend to be increasingly more detailed on the do's and don'ts for the parties.

Not only that, when entering into an employment contract, it is very common that Brazilian clubs also conclude an agreement providing for the use and exploitation of the player's image rights, with morality clauses and clear obligations for the player, especially to participate in commercial or institutional activities might required for advertising purposes.

Historically, in order to reduce taxes[27] and ancillary labour obligations, almost every club in Brazil would try to pay most of its players' remuneration (including the least popular players) as image rights, reserving just a small part for salaries. Albeit image rights agreements have always been permitted in the law, the use of such rights by Brazilian clubs was somewhat limited, making it easy for labour judges and the Federal Tax Service to spot frauds. In this regard, after decades of legal battles, in 2015 an amendment to the Pelé Law finally established

[26] *See* CAS 2004/A/780 and CAS 2014/A/3489 & 3490, among others.

[27] As most agreements involved – and still tend to involve – a company holding the license to use an exploit the player's image rights, clubs would have to pay corporate income tax, instead of personal income tax, which is significantly higher in Brazil, over the amounts due.

that the maximum ratio between a player's image rights payment in relation to his global remuneration is 40% (forty percent).[28]

An image rights agreement is, in this sense, independent from the employment contract of a player in Brazil, having to be explicit in relation to the rights and obligations of the parties and, even if concluded through a licensing company, shall be registered before CBF.[29] However, it is worth noting that mandatory registration is not a condition for the validity of the agreement, but a duty recently introduced in the CBF RSTP to enhance transparency and facilitate the resolution of disputes – as matters involving image rights agreements can also be submitted to the CNRD.

5. The training of youth players

As highlighted above, according to the Pelé Law, the training and education of a young player takes place from the age of 14 (fourteen) to 20 (twenty). During this entire period, parties are allowed to sign Training Contracts and, from the 16th (sixteenth) birthday onwards, also employment contracts.

When it comes to players below 14 (fourteen) years old, however, the Pelé Law is silent. Consequently, based on an interpretation of general rules of labour law which forbid any form of work below the foregoing threshold (even as an apprentice), these youngsters in theory would not be allowed to participate in organised football.

So far, this limitation – which is obviously contrary to international standards, particularly in Europe and in the FIFA RSTP[30] – has not been enough to oust Brazil from top ranks of youth development (and exportation), but it surely discourages investments.

Being Brazil a developing nation with dramatic levels of social inequality, football is not rarely the only source of hope for poor families, which may end up devoting considerable efforts in their most gifted kids. As sad as this reality may be, delaying the preparation of a child to try to break into the world of competitive sports may offer no turning back.

For clubs, this prohibition meant several years of a considerable loss of money from solidarity mechanism and training compensation, a situation that has

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[28] This provision shall not be confused with the so-called "*direito de arena*" stipulated in the Pelé Law, according to which 5% (five percent) of all broadcasting revenue obtained by clubs shall be distributed to the players taking part in the relevant match.

[29] Image rights agreements shall also be registered through CBF's electronic system, but differently from employment contracts and Training Contracts are not published in the BID.

[30] As is known, under the FIFA RSTP, the training and education of a player go from 12 (twelve) to 23 (twenty-three) years old, but attention is also paid to players below this age (*see* art. 9, 20 and 21 of the FIFA RSTP). Pursuant to UEFA regulations, clubs for instance participating in the Champions League Regulations must start training their players prior to the age of ten (*see* art. 18 of the UEFA Club Licensing and Financial Fair Play Regulations).

just recently started to change, as CBF began to preliminary register 12 (twelve) and 13 (thirteen) year old players in the BID to eliminate incorrect gaps in their passports (art. 4 of the CBF RSTP).

The competitive disadvantage, however, persists. To reverse that, and to make it possible for CBF to organise competitions for these youngsters, scholars have pointed out that a quick solution would be to request Specialised Courts for the Protection of Children and Adolescents to issue judicial orders specifically permitting the participation of each such minors in football matches.[31] Although not ideal, this type of judicial authorisation – which is already used in Brazil, for instance, to enable the participation of youth actors in movies or advertising pieces – at least would not require changes in the legislation.

For players above 14 (fourteen) years old, although football entities enjoy a significant degree of autonomy and independence to organise their activities, art. 29 of the Pelé Law is very specific in defining minimum standards of training. In order to benefit from all means of protection stipulated in the law, clubs must prove to offer cutting-edge conditions in their grassroots, which are inspected and certified every year (or every two years, depending on the quality of the facilities) by CBF (via State federations).

In this regard, clubs that are certified by CBF as "training clubs" for the purposes of the Pelé Law acquire (i) priority to sign an employment contract with every player formed in their academies; and (ii) a right of first refusal to renew such first contracts.

The first of these rights, alike training compensation, aims at safeguarding investments made by Brazilian clubs in youth development. To that effect, any club that, according to CBF, complies with the minimum requirements stipulated in the Pelé Law shall be entitled to compensation if a player under a Training Contract and registered in its academies for more than one year refuses to continue defending its colours as a professional.

In this respect, although the payment of compensation seems adequate to stimulate the training of players and thus to attain the goal behind this rule, a closer scrutiny reveals that the legislator exaggerated when fixing minimum parameters for both addressees of the norm (clubs and players).

On the side of the club, the number and range of requirements necessary to obtain CBF's certification is deemed extremely high, even for top division clubs. Besides the existence of a Training Contract, a club must demonstrate that it provides the player with significant benefits, including a monthly "financial incentive", as well as free lodging, transportation, food, school education,

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[31] R. G. Affonso Miguel, *A Possibilidade de Contratação do Atleta Menor de Futebol*. In: Curso de Direito Desportivo Sistêmico – vol. II. São Paulo: Quartier Latin, 2010, 637-645; M. F. Corrêa Da Veiga, *Temas Atuais de Direito Desportivo*. São Paulo, LTr, 2015, 67-79; G. A. Caputo Bastos, *Direito Desportivo*. Brasília: Alummus, 2014; F. COSTA, *Questões sobre o atleta em formação e o conflito da proibição do trabalho infantil*. In: Direito do trabalho e desporto. Coord: L. Andreotti, São Paulo: Quartier Latin, 2014, 76.

physiotherapy, medical expenses (including dentists, psychologists, nutritionists etc.) and medical insurance.

In this regard, without contesting that Brazilian clubs indeed needed to improve the training conditions of young players, the fact that from 2011 – when these new requirements were introduced in the Pelé Law – to 2019, less than 40 (forty) out of 1,000 (one thousand) clubs affiliated to CBF were able to obtain the certification is quite alarming.

On the side of the players, the amount of compensation stipulated in case one decides not to become a professional for the club that trained him seems absolutely disproportionate. It corresponds, at maximum, to 200 (two hundred) times all costs and expenses incurred by the latter with the training and education of the former.[32]

Just to illustrate the situation, taking into account, for instance, only the "financial incentive" that a player is entitled to receive under a Training Contract (excluding all other costs and expenses), multiplying this amount by 200 (two hundred), and then multiplying the result by 12 (twelve) months – which is the minimum length a player has to be registered for the training club to be entitled to compensation – , the total amount payable in connection with the transfer of this youngster to new club ends up being higher than if he earned the exact same figures as salaries – with the difference that under an employment relationship he would enjoy broader labour and social security rights.[33]

If that was not enough, not only the amount of compensation tends to be huge, but in theory has to be paid by the player's new club prior to registration, within 15 (fifteen) days from the execution of the employment contract between them.

The problem is that, according to the Pelé Law, a Training Contract only needs to list – and not quantify – which kinds of expenses and costs shall be taken into account in the calculation of the compensation. Thus, when it comes to calculating these costs and expenses, parties inevitably depend on the production of lengthy evidence, which is usually under the sole control of the former club and can hardly be gathered, let alone analysed, within a 15 (fifteen) day timeframe. In practice, therefore, players are often left not much of a choice: either they find an agreement to leave their training clubs for free or a way to circumvent the rule.

In this context, considering that Training Contract do not confer many assurances to the parties in terms of contractual stability, under-18 players have been frequently seen to abandon their training clubs soon after being offered an

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[32] Although this is the highest threshold stipulated in the Pelé Law, parties rarely, if ever, deviate therefrom.

[33] If the youngster earns BRL1,000 (one thousand Brazilian Reais) per month as "financial inventive", which is almost the minimum wage applicable in the country, the amount of compensation – excluding other costs and expenses – will be of BRL2,400,000 (two million four hundred thousand Brazilian Reais), i.e. BRL1,000 x 12 months x 200. If, however, he earns the same amount as a salary, his buy-out clause for a domestic transfer will be of BRL2,000,000 (two million Brazilian Reais), i.e. BRL1,000 x 2,000.

employment contract, pretending to stop playing football for a certain period of time (often extending for several months or years), to then resume their careers abroad (normally in Portugal).

In an attempt to counter such manoeuvre, a few Brazilian clubs have been claiming before FIFA – for the reasons put forward in Section 2 above – that Training Contracts should be treated as actual employment agreements in disputes of an international dimension and thus, if breached, lead to the payment of compensation and imposition of sporting sanctions. Yet, a decision on these cases is still pending.[34]

In addition to the foregoing right, any Brazilian club that manages to keep a youth player in this transition from amateurship to professionalism will also be granted a right of first refusal to renew this player's first employment contract for a period of up to 3 (three) years (unless a third-party proposal exceeds this length).

To secure this right, the club has not only to be certified by CBF, but offer the player a contractual extension at least 45 (forty-five) days prior to the expiry of the existing relationship between the parties. According to the plain language of the Pelé Law on this specific topic – the constitutionality of which is highly questionable[35] – the player then has 15 (fifteen) days to respond the offer, otherwise it shall be presumed as tacitly accepted.

Having the club fulfilled the formality above and expressed its interest to keep the player, the latter will then be obliged to notify the former of any employment proposal might received from another club and grant it a 15 (fifteen) day time limit to exercise its right of first refusal.[36]

In any case, if the training club pursues the right of first refusal but the player still prefers to move, his new club shall be liable to a compensation corresponding, at maximum, to 200 (two hundred) times the amount of the salary it has offered the player.

Complementary to the rights above, since 2011 the Pelé Law also establishes a type solidarity mechanism, applicable to domestic transfers in Brazil and very similar to the one foreseen in art. 21 of the FIFA RSTP.

Pursuant to art. 29-A of the Pelé Law, if a non-amateur player moves between Brazilian clubs in the course of an employment contract, 5% (five percent) of any payment made to his former club shall be distributed on a *pro rata* basis to all clubs involved in his training, development and education over the years. Unlike the "training compensation" system under art. 29 of the Pelé Law, a club receiving

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[34] *See* www.uol.com.br/esporte/futebol/ultimas-noticias/2018/08/31/briga-de-r-150-milhoes-joia-que-fugiu-do-atletico-pr-brilha-no-benfica.htm.

[35] As in most legal systems around the globe, the validity of a provision stipulating the tacit acceptance of an employment contract is very likely to violate the Brazilian Federal Constitution. *Mutatis mutandis*, *see* 4A_558/2011, decision of 27 March 2012.

[36] For publicity purposes, particularly in relation to third-parties, all communications, from one side to another, shall be sent with copy to the relevant State federation, which then has to publish them via its official channels.

this domestic solidarity contribution do not need to be certified by CBF as a training club (CAS 2015/A/4061).

In general terms, the main difference between this domestic solidarity mechanism and the FIFA solidarity mechanism is the period of training and education of the player concerned, which in Brazil is significantly shorter, as well as the applicable percentages. Accordingly, the amounts in Brazil are calculated with consideration to the period during which player was registered with each club between his 14th (fourteenth) and 19th (nineteenth) birthdays, being 1% (one percent) of the transfer fee distributed for every year of training between the ages of 14 (fourteen) and 17 (seventeen) and 0,5% (half percent) per year, from 18 (eighteen) to 19 (nineteen) years old.

6. Other transfer rules

In 2015, following the ban imposed by FIFA against third-party ownership ("TPO"), and although Brazilian clubs were frequently using this type of arrangements, CBF was one of the first associations in the world to implement art. 18ter of the FIFA RSTP at a national level.[37] Now, after decisions of the FIFA Disciplinary Committee[38] and the implementation of a new definition in the FIFA RSTP allowing players to hold their own economic rights, expectations have grown high that the Senate's draft may, at some point in the future, reopen the door for TPO in Brazil.[39]

In 2015, CBF has also incorporated art. 18bis of the FIFA RSTP into the CBF RSTP, to tackle third-party influence on clubs.[40] The latter provision was complementary to art. 27-B of the Pelé, which since 2011 established that:

> "*Any provisions of contracts concluded between sports practice entities and third-parties, or between the latter and athletes, that may intervene or influence in the transfer of athletes or, yet, that interfere in the performance of the player or of the sports practice entity are null and void*".

Without prejudice, when dealing with the temporary transfer of players, CBF has changed its regulatory approach in the course of the years.

In 2015, in the aftermath of a controversy involving the participation of Thibaut Courtois in a Champions League semi-final between Chelsea to Atlético de Madrid, when UEFA issued a media statement threatening to impose sanctions if the Belgian goalkeeper – who was on loan between the two clubs – was kept

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[37] *See* art. 10, sole paragraph, and art. 66 of the 2015 edition of the CBF RSTP, which now correspond to art. 9 and art. 61, paragraphs 1 and 2, of its 2019 edition.

[38] *See* www.fifa.com/governance/news/y=2018/m=6/news=latest-decisions-of-the-fifa-disciplinary-committee-in-relation-to-third-party-r.html.

[39] M. Motta / S. Malvestio, *Third Party Ownership*. In: *Transfer of Players*, O. Bellia / M. Colucci (eds), SLPC, 2019.

[40] *See* art. 10, *caput*, of the 2015 edition of the CBF RSTP, which now corresponds to art. 61 of its 2019 edition.

out of the match, CBF decided to introduce an explicit provision in the first edition of the CBF RSTP, stipulating that any clause might inserted in a loan agreement to limit, punish or prohibit the participation of a player in a match between the two clubs loaning him would be deemed null and void in Brazil (art. 33 of the 2015 CBF RSTP).

That same year, though, when faced with this type of arrangement during the Brazilian national championship, the STJD understood that it could only impose a fine against the clubs concerned, stating the specific cases it had analysed either derived from a "gentlemen's agreement" or had been agreed prior to enter in force of the CBF RSTP.[41]

In this regard, as of 2017, CBF decided to amend the CBF RSTP, so to adopt a non-interventionist approach, according to which clubs agreeing on the loan of a player shall be free to establish the conditions for his participation or not in matches between them (art. 35 of the 2019 CBF RSTP).

Prima facie, thus, this appears to open room for clubs loaning their players not to be considered third-parties in the sense of art. 18bis of the FIFA RSTP and art. 27-B of the Pelé Law. However, the interpretation of the provision by decision-making bodies is yet to be seen.

Still regarding the loan agreements, art. 39 of the Pelé Law stipulates that if a club receiving a player on loan fails to pay his salaries for over two months, the latter shall notify his club of origin to cure such default. If the situation is not resolved within 15 (fifteen) days from notification, the player shall then be entitled to terminate the loan agreement and immediately return to this club of origin. In any event, the loanee club shall be held liable for any harm caused against the other parties.

7. Bridge transfers

Between 2015 and 2016, while reviewing its existing regulations, CBF decided to address a practice that, for decades, had been freely used in the football market: the so-called *bridge transfers*.

The idea was based on the finding that, after the ban implemented by FIFA against third-party ownership, it had become increasingly more attractive for investors to acquire clubs with the exclusive aim of hosting the economic rights of players.[42] In this context, although the format of such transfers did not *de* violate Brazilian law, the objectives behind them were deemed potentially detrimental for the integrity of competitions and the relationship between players and clubs. On top of that, the literature[43] and the jurisprudence of CAS also indicated

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[41] M. Jucá, *Justiça Desportiva e suas decisões.* São Paulo: Quartier Latin, 2017, 51.

[42] Regarding the use of *cocoon* or *host* clubs in bridge transfers, see CAS 2008/A/1482 and CAS 2012/A/2902.

[43] *See* A. Reck, *What is a "bridge transfer" in football*. In: www.lawinsport.com. Published on 30/04/2014. Access on 27/03/2016.

other instances in which bridge transfers might be used for illegitimate purposes, such as circumventing contractual clauses or FIFA regulations.[44]

According to a media statement issued in 2014, FIFA has defined *bridge transfers* as ones involving "*clubs collaborating to transfer players through a 'bridge' club to a destination club where the player was never fielded by the bridge club*".[45]

In practice, however, regulating the issue proved to be quite a challenging task, as, within the dynamics of football, CBF could also observe a very large grey area of transfers that were objectively the same as the bridge transfers it wished to tackle, but motivated by legitimate interests.[46]

In this regard, albeit acknowledging the objective layout of a *bridge transfer* as a triangular move of a player "*not from the club of origin to the destination club, but upon a third intermediary club (the 'bridge')*", what matters the most to distinguish legitimate arrangements from those considered detrimental to football is that the latter usually deviate from usual or expected "market patterns".[47]

This conclusion was guided by the analysis of two interesting rulings, the only ones in which sanctions had been applied against the use of bridge transfers. The first, rendered by the Court of Arbitration for Sport (CAS), involved the Argentine giants *Racing de Avellaneda* (CAS 2014/A/3536), while the second, from the *Superior Tribunal de Justiça Desportiva* ("STJD"),[48] was a disciplinary case pertaining to the 3-times *Libertadores*' champions *São Paulo FC*, from Brazil.

Starting with the Brazilian case, CBF observed that in 2015 a third-party had managed to gain full control over the federative and economic rights of *Iago Maidana*,[49] as the defender was bought-out of his club, the mid-sized *Criciúma*

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[44] *See*, for instance, CAS 2008/A/1715, CAS 2009/A/1757, CAS 2011/A/2477 and CAS 2013/A/3365 & 3366.

[45] *See* www.fifa.com/governance/news/y=2014/m=3/news=argentinian-and-uruguayan-clubs-sanctioned-for-bridge-transfers-2292724.html.

[46] *See*, for instance, comment number 4 of the Commentary on art. 5, para. 3, of the FIFA RSTP: "*young player signs for a new club in July. Before the expiry of the same registration period and before the player has played in any offi cial matches for the new club, both the club and the player agree to transfer the player on a loan basis to a third club since the position of this young player is already occupied by an older and more established player. The loan will last until the beginning of the next registration period. So far, the player has been registered with the fi rst club, for which he has not played, and for the second club, where he is on loan and for which he has regularly played. Once the registration period opens again, the player transfers again on a loan basis to a third club. This is the third club for which the player has been registered but only the second one for which he has been playing in official matches, and this is therefore in accordance with the provisions of the Regulations*".

[47] V. Eleuterio / M. Motta, *The Bridge Transfers Regulations and Brazilian Football*, in *Football Legal #6*. Cenon: Droit du Sport, 2016, 21 *et. seq.*; A. Reck, *What is a "bridge transfer" in football,* in www.lawinsport.com. Published on 30/04/2014. Access on 27/03/2016.

[48] About the STJD, *see* Section 9 below.

[49] The case is frequently referred to in Brazil as the "Iago Maidana case".

Esporte Clube, and hosted at the mysterious *Monte Cristo Esporte Clube*, which at that time was not even taking part in professional competitions. The problem was that only two days after his registration for *Monte Cristo EC*, the player was surprisingly transferred again, this time to *São Paulo FC*, for almost 5 (five) times the amount paid by the investor to *Criciúma EC*.

Nevertheless, in the absence of any provisions outlawing the conduct of the parties, the STJD was only able to impose fines on the clubs and the player concerned, based on the Brazilian Code of Sports Justice (CBJD). The third-party, though, which appeared to be the mastermind behind the transaction, walked away harmless, pockets full.

The Argentine case, in turn, dates back to 2012 and concerns the move of the Argentinian player Fernando Ortiz from *Vélez Sarsfield* to *Racing*, which was conducted through an Uruguayan bridge club named *Institución Atlética Sud Americana* (IASA).[50] FIFA understood that the registration of the player for IASA had the sole aim of evading taxes and decided to sanction *Racing* for a violation of Transfer Matching System (TMS) rules.

When reviewing the case, though, CAS understood that in the absence of specific provisions tackling bridge transfers, FIFA was not in a position to sanction the relevant clubs concerned.[51]

Based on critical analysis of these premises, CBF came to the conclusion that the concept of bridge transfer should be simple enough to identify the objective elements of this type of transaction, but at the same time broad, affording the CNRD flexibility to examine, on a case-by-case basis, the lawfulness of each arrangement coming to its hands.

The first part of the provision thus reads as follows (art. 34 of the CBF RSTP):[52]

> "*A 'bridge transfer' is understood as every transfer that involves the registration of the athlete with a club, without sporting purpose and with the aim of obtaining a direct or indirect advantage by any of the clubs concerned (assignor, intermediary or assignee), by the player and/or by third parties.*"

According to its second paragraph, it is further established that, unless otherwise demonstrated, the registration of a player is *presumed* to have *no* sporting purpose in the following cases:

> "*I. two definitive registrations of the athlete within a time lapse equal or inferior to 3 (three) months;*

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[50] In fact, three other Argentinian clubs were sanctioned, together with *Racing*, for *bridge transfers* conducted through IASA: *Independiente*, *Rosário Central* and *Central Córdoba*. The harshest sanction was, however, imposed on IASA itself (www.fifa.com/governance/news/y=2014/m=3/news=argentinian-and-uruguayan-clubs-sanctioned-for-bridge-transfers-2292724.html).

[51] *See* also CAS 2018/A/5637, regarding the conduct of IASA.

[52] Between 2016 and 2019, the wording of the provision was twice amended. The present article will refer exclusively to the most recent version of its text (2019 CBF RSTP).

II. a definitive registration followed by a temporary transfer, without the athlete participating in official competitions for assignor club;
III. fraud against or violation of financial, labour and/or sport norms;
IV. fraud against or violation of the regulations of national or international sport governing bodies;
V. concealment of the real amount of a transaction".

To rebut those presumptions, the provision finally contains a non-exhaustive list of objective criteria that *may* be taken into account by the CNRD when evaluating if a certain registration had sporting purposes or not. These criteria are:

a) the age of the player concerned;
b) the number of matches played by the player for each of the clubs concerned;
c) the length of time elapsed between each transfer;
d) the remuneration agreed for the player in each of the clubs concerned;
e) the amounts involved in the transfers;
f) the estimated market value of the player in the moment of each transfer;
g) the proportion between the amounts involved in each transfer of the "chain";
h) the category of the clubs concerned for the purposes of training compensation; and
i) the occurrence of fraud against or violation of the regulations of national and/or international governing bodies.

To illustrate the application of the rule, we revert to an incident that shocked the world of football in February 2019, when a fire killed 10 (ten) adolescents between 14 (fourteen) and 17 (seventeen) years old in *Clube de Regatas do Flamengo*'s main training ground, the so-called *Ninho do Urubu*.[53]

In this respect, leaving aside the humanitarian issue, which in this case was obviously the club's priority, it is to be noted that the death of those kids also represented, from a sporting perspective, the loss of 10 (ten) players from its under-16 and under-18 squads, which inevitably forced *Flamengo* to look into the transfer market for replacement.

To that effect, one of the prospective signings scouted by the club was a 17 (seventeen) year old player who had – a week prior to the fire incident – been released by another major club from Rio de Janeiro and moved to another State to sign for a smaller club. Faced however with the opportunity of joining *Flamengo*, the player did not hesitate to ask his new club for release.

At first sight, objectively speaking, the registration of this player for *Flamengo* would constitute a bridge in the sense of art. 34, par. 2, I or II, of the CBF RSTP. Nevertheless, based on the humanitarian and force majeure reasons above, which all parties concerned made a point in explaining to CBF, no doubt existed as to the sporting interests involving the transfer.

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[53] In English, the "Black Vulture's Nest", in a reference to Flamengo's historical mascot.

For all the above, as well as other examples that may be easily envisaged,[54] it is understood that CBF has been very fortunate when designing such an approach to tackle the issue of bridge transfers in Brazil. So far, the provision appears to have struck a fair and adequate balance between legal certainty and the flexibility necessary for decision-making bodies to fight practices that are considered detrimental to football. Should FIFA eventually decide to prohibit this type practice in the upcoming reform of its transfer system, a deep look into Brazil's experience seems warranted.

8. Termination of contracts

According to paragraph 5 of art. 28 of the Pelé Law, an employment contract may come to an end upon (i) the expiry of its term, (ii) mutual termination, (iii) the payment of the "*cláusula indenizatória desportiva*", (iv) the payment of the "*cláusula compensatória desportiva*", (v) unilateral termination by the player due to the club's default in paying salaries, (vi) unilateral termination by the player in other cases stipulated in the labour legislation, or (vii) dismissal of the player without just cause. This being said, a few considerations shall be made below regarding the unilateral termination of employment contracts in Brazilian football.

As a threshold matter, it is to be noted that, whenever referring to the instances in which an employer is considered to have a "good cause" to terminate a contract, the Brazilian legislation uses the term "just cause". Conversely, whenever referring to the reasons that an employee may invoke to that effect, it refers to "*rescisão indireta*" (in a literal translation, "indirect termination").

In this regard, in the event a player terminates his contract without just cause or resumes his professional activities with another club within 30 (thirty) months from retirement, his former club shall be entitled to the "*cláusula indenizatória desportiva*", which amount will vary depending on the player's new club (if from Brazil or abroad).

To that effect, despite the limits stipulated in the Pelé Law (or in the absence thereof), it seems advisable for parties to follow the principle of proportionality – and, if possible, the parameters of the FIFA RSTP – when fixing the amount of a "*cláusula indenizatória desportiva*". Not doing so may lead to situations such as the one of *Ronaldinho*, whose penalty clause was dramatically reduced from 85 million US Dollars to 5 million US Dollars when he was transferred from *Grêmio FPA* to Paris Saint-Germain FC, in the early 2000's.[55]

In general terms, a "*cláusula indenizatória desportiva*" is considered to be a buy-out clause, and thus a right of the player, which exercise shall not make him subject to sporting sanctions in the sense of art. 17, para. 3, of the FIFA RSTP.

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[54] *See*, for instance, comment number 4 of the Commentary on art. 5, para. 3, of the FIFA RSTP.

[55] A. Melo Filho, *Nova lei Pelé: avanços e impactos.* Rio de Janeiro: Maquinária, 2011, 119.

Concerning the possible dismissal of a player with just cause, art. 48 of the Pelé Law explicitly grants clubs disciplinary powers to sanction its players in case of misbehaviour and art. 482 stipulates several cases in which just cause may be invoked. This nevertheless, clubs are generally very reluctant to do that, even if the fault committed is very serious.[56]

The reason for that is, first, because labour law is generally very protective towards employees in Brazil. Second, and most importantly, because the Pelé Law does not establish (at least not explicitly) any right for compensation in case of unilateral termination by the club with just cause. In this regard, dismissing a player may not only be risky from a legal point of view, but also economically unwise, actually depriving the club from an asset and rewarding the undisciplined player with a free pass to move elsewhere.

On the side of the player, although the Pelé Law contains a breakdown of different instances in which *indirect termination* may be requested, it is to be noted that whenever such motives exist or the player is dismissed without just cause, the payment of the "*cláusula compensatória desportiva*" is triggered.

In Brazil, the most common reason for a player to request the *indirect termination* of his contract is the failure by the club to comply with financial duties. In this respect, although art. 28 above explicitly refers to salaries, other provisions of the Pelé Law make it clear that in the event a club defaults the payment (either in full or in part) of any portion of the player's remuneration (including salaries, image rights, the so-called "FGTS",[57] social security and other ancillary payments[58]) for three months or more,[59] *indirect termination* may in theory be pronounced (art. 31).

Furthermore, *indirect termination* may also be requested under any of the general situations described in art. 483 of decree nr. 5.452/43 (the so-called "CLT", Brazil's main piece of labour legislation, which is generally applicable to all employment relationships in the country). In football, however, the main cause for a player to invoke this provision – although not easy to prove – is moral harassment.[60]

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[56] For instance, even where criminal offenses take place, clubs usually prefer not to the terminate employment contracts for just cause.

[57] According to the general Brazilian labour legislation, every employer must deposit an amount equivalent to 8% (eight per cent) of the employee's salary every month in a type of governmental savings account, the so-called "FGTS", which is only accessible to such employee under certain circumstances (if he is fired, acquires a disability etc). Under the Pelé Law, the FGTS is considered as part of the player's remuneration. Therefore, if a club defaults the payment of a player's salary (either in full or in part), FGTS and/or social security payments for three months or more, the latter is likely considered to have just cause to terminate his employment contract.

[58] For instance, a failure to pay a player's 13th annual salary may be considered for the purposes of ascertaining whether he may request the *indirect termination* of his contract.

[59] Due to the explicit wording of art. 31 of the Pelé Law, CBF could not implement art. 14bis of the FIFA RSTP at a national level.

[60] Worth highlighting, as of 2019 CBF has implemented art. 14, para. 2, of the FIFA RSTP at a national level (art. 27, sole paragraph, of the CBF RSTP).

Another possible reason – which however has never been invoked – for players to request the *indirect termination* of their contracts is sporting just cause in the sense of art. 15 of the FIFA RSTP, which art. 27 of the CBF RSTP has implemented without any modification in Brazil.

Differently from FIFA standards, according to which the service of notice suffices for a player to terminate an employment contract, *indirect termination* in Brazil must be pronounced by a competent court (usually a labour court or, if mutually agreed by the parties, the CNRD). Even so, the player must act with extreme caution, as it is not rare to see provisional measures to that effect being reversed in appeal.

For instance, according to a recent jurisprudence involving the player Gustavo Scarpa and *Fluminense FC*, reasonable proximity in time must exist between the breach allegedly committed by the club and the claim presented by the player, otherwise the latter may be considered not to be in a position to request the *indirect termination* of his contract.[61] In this specific case, a significant part of the club's alleged default had taken place a year prior to the request for *indirect termination* being filed, which dragged the parties into a year-long intricate legal battle. Prevented from playing football for almost the entire 2018 season and facing the risk of having to bear an exorbitant "*cláusula indenizatória desportiva*", the player was eventually reported to have waived part of the signing-on fee agreed with his new club, *Sociedade Esportiva Palmeiras*, in favour of *Fluminense FC*, so the case could be definitely settled.

In this regard, be it under art. 31 of the Pelé Law, art. 27 of the CBF RSTP or art. 483 of the CLT, the player must always act in good-faith when requesting the *indirect termination* of a contract, particularly on the basis of provisional measures, so to avoid potential damages to his own career.[62]

9. Intermediaries

In late April 2015, just a few weeks after the enter into force of the FIFA Regulations on Working with Intermediaries ("FIFA RWI"), which replaced the existing agents' system at an international level, CBF published the first edition of its RNI. Reviewed and updated every year since then, the CBF RNI is currently in its sixth edition, in force as of 6 January 2020.[63]

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[61] For example, in a case involving the midfielder Gustavo Scarpa and *Fluminense FC*, the fact that the amounts allegedly in arrears had been unpaid for over a year prior to the request for *indirect termination* being filed, among other reasons, led Brazilian labour courts to render several inconsistent decisions in the course of 2018. This legal battle prevented the player from playing football for practically an entire season.

[62] Similarly to the case of Gustavo Scarpa, in 2017, Brazil's Olympic national team full-back Zeca requested the *indirect termination* of his employment contract with *Santos FC*. After a complex dispute, which kept the player away from football for approximately six months, the case was only settled when *SC Internacional* stepped in and agreed to trade Zeca for another player.

[63] Previous editions of the RNI entered into force on 24 April 2015, 1 March 2016, 1 February 2017, 1 January 2018 and 3 January 2019.

In line with the minimum standards established in the FIFA RWI, the CBF RNI opened doors for both natural as well as legal persons to be registered in Brazil as intermediaries.

To that effect, applicants shall present a list of documents, prove to have an impeccable reputation and hire a civil liability insurance worth circa USD100,000 (one hundred thousand US Dollars). For foreigners, the activity may either be conducted (i) in cooperation with a Brazilian intermediary, or (ii) upon registration before CBF, in the latter case provided that the person or entity is also registered before another association.

In addition to this personal registration, every transaction negotiated by an intermediary and any commission related thereto must be communicated to CBF.

In this respect, it is worth noting that the scope of the CBF RNI is slightly broader than the FIFA RWI's, encompassing not only the negotiation of transfer agreements and employment contracts between players and clubs, but also services rendered to coaches, as well as in connection with image rights agreements.

Regarding commissions, no cap or suggestion currently exists as to the amounts payable to an intermediary. Instead, similarly to art. 20, par. 4, of the FIFA Players' Agents Regulations, a dispute resolution mechanism has been established, stipulating that a 3% (three percent) commission over the player's or coach's remuneration shall apply if the parties cannot reach an agreement on the amount due to the intermediary.

Conversely, if the player concerned is a minor, no commission may be paid. Furthermore, if the minor is also not a professional, any representation agreement might concluded is null and void *ab initio*, pursuant to art. 27-C of the Pelé Law.

Since January 2020, the maximum length of representation contracts has been increased from two to three years, with no automatic extension being allowed. These contracts shall always be registered with CBF and no reward may be offered or given, either directly or indirectly, to stimulate a party to hire a specific intermediary.

In the event an intermediary signs an agreement or renders services to a player or coach under a previous exclusive representation contract, he shall be presumed to have induced the termination or breach of such representation contract and shall be held jointly and severally liable to the payment of any penalty clause or compensation might due to the other intermediary.

In relation to dual or multiple representation, the only requirement established in the CBF RNI is transparency. All parties must be aware and consent in writing with any conflict of interest, stipulating which of them (if not all) will pay the intermediary.

Any and all disputes arising out of or in connection with the activity of intermediaries or violations of the CBF RNI shall be exclusively submitted to the CNRD.

10. Dispute resolution

As said above, the Brazilian Constitution is one of the few in world to deal with sport-related issues.

According to its art. 217, matters relating to sports competitions and discipline shall be resolved by a special type of body called the "Sports Justice". Only after all internal legal remedies have been exhausted before the Sports Justice that a case may be submitted to ordinary courts of law. Even so, scholars understand that the scope of this review shall be limited, similarly to the type of assessment made, for instance, over arbitral awards under the New York Convention.

The organisation, functioning, procedures, applicable sanctions and appeals before the Sports Justice are defined under the CBJD. In general lines, the Sports Justice is composed of two-instance State *Tribunais de Justiça Desportiva* ("TJDs") – one for each State federation – , as well as the STJD, which serves as an appellate body for TJD's decisions and oversees all matters of an national dimension as a two-instance court.

Except for doping-related issues, which are nowadays submitted to one single authority, the Anti-Doping Sports Justice, each sport has its own TJDs and STJD, which deal with a wide variety of disciplinary issues, from match-fixing to player eligibility, from spectators' disturbances to red cards.

In turn, for commercial and employment-related matters, ordinary courts of law and labour courts, respectively, generally have jurisdiction. As an alternative thereto, stakeholders may also refer disputes to the CNRD.

Between 2015 and 2016, in context of several improvements being made in its corporate structure and internal regulations, CBF decided to reform its then existing national dispute resolution chamber, then called *Comitê de Resolução de Litígios* (CRL).

From a relatively modest committee with simple procedural rules, restricted powers and narrow jurisdiction – limited to disputes concerning the activity of players' agents and the Brazilian domestic solidarity mechanism – , the idea was to transform the CRL into a much more vigorous body, able to repeat the success of FIFA's 20-year-old dispute resolution system at a national level.

This new body was named *Câmara Nacional de Resolução de Disputas* (CNRD) and opened doors in October 2016.

Indeed, in a little more than two years since then, the functioning of the Chamber's proceedings and the quality of its decisions have been praiseworthy. On account of that, every year the number of cases submitted to its jurisdiction increases. From its inception until September 2017, there were 57 (fifty-seven) proceedings; in the following year, an additional 131 (one hundred and thirty-one) were presented, totalling 188 (one hundred and eighty-eight) proceedings; and by July 2019, when the last statistics were released, it had reached 353 (three hundred and fifty-three) proceedings.[64]

[64] Source: CNRD.

Without prejudice, what impresses the most is the speed and effectiveness of proceedings. During this entire period of activities, 86 (eighty-six) disputes were closed due to an agreement between the parties (and subsequently approved by the Chamber in the form of a Consent Award) and 62 (sixty-two) led to a final decision (seven of which currently pending an appeal), with the average length of proceedings varying between 4 (four) and 10 (ten) months, depending on the complexity of the case.

According to art. 111 of the CBF Statutes, the CNRD is an independent body within its organisational structure, commissioned with the task of resolving disputes involving a variety of stakeholders, notably (i) State federations, (ii) leagues recognised by CBF, (iii) clubs, (iv) amateur and professional players, (v) intermediaries, as well as (vi) coaches and other members of a coaching staff.

Its jurisdiction, organisation, mission, functioning, procedures and applicable sanctions are defined in specific regulations (hereinafter the "CNRD Regulations"), approved by CBF's Board and currently in its third edition, in force since 1 January 2018.[65] The Chamber has also enacted regulations on costs and a regiment, the latter governing its internal functioning and practices, and providing for specific rules with respect to the conduct and adjudication of proceedings.

In its application and adjudication of the law, the CNRD shall apply the Statutes and regulations of CBF, in line with the Brazilian legislation and the principle of specificity of sport.

Based on parameters stipulated in FIFA Circular 1010, dated 20 December 2005, the composition of CNRD follows the principles of parity, independence and impartiality of members. It is composed by five members (five substitutes), each one appointed by one main stakeholder: one to represent the players, one for the coaches, one for the clubs, one for the intermediaries, as well as a President, who is chosen by CBF. Their mandates are valid for a 2-year term and may be extended only once. Members are required to have legal training, as well as recognised competence, knowledge and/or practice in sports law, either in Brazil and/or abroad.

Members must be impartial and independent from the parties. Following general standards applicable to judges in Brazil,[66] if any circumstances give rise to legitimate doubts over one's independence and/or impartiality, the member shall resign or be removed from the case or, if not, may be challenged by any of the parties within 5 (five) days after the grounds for the challenge have become known. Decisions on challenges are taken by the CNRD President or, if the challenge is against the CNRD President, the remaining members of the CNRD.

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[65] The first edition of the CNRD Regulations entered into force on 1 March 2016 and the second on 20 September 2016.

[66] According to the CNRD Regulations, a member is considered to lack impartiality or independence if (i) he has a direct or indirect interest personal or corporate interest in the dispute; (ii) he is a spouse, companion, ancestor, descendant or relative, up to the third-degree, by affinity or consanguinity, to any of the parties; (iii) he anyhow depends on, has a close friendship with or animosity towards, any of the parties; (iv) any other causes stipulated in the Brazilian legislation.

Each proceeding before the CNRD is conducted under the responsibility of one of its members, who is assigned by the CNRD President as the *magistrate rapporteur*. All deliberations and decisions, however, must be jointly taken by at least three members, by simple majority. Each member has one vote and, in the event of a draw, the CNRD President has a casting vote.

In terms of evidence, any type of proof that is legally admissible under Brazilian law may be used. In addition, the Chamber may, following a request from a party or *ex officio*, order the parties or anyone bound by the statutes and regulations of CBF to submit information or any type of evidence, including oral statements.

In urgent matters, and provided that the parties' right to be heard is respected, the CNRD may also make orders for provisional or conservatory measures. Requirements to that effect are the same applicable under Brazilian law and in most legal systems around the world (i.e. the *prima facie* jurisdiction of CNRD, *periculum in mora* and *fumus boni iuris*).

All communications made by and to the CNRD, including subpoenas, notifications and the filing of submissions shall be made, as a general rule, by e-mail.[67] Acts that depend on the personal attendance of the parties, such as hearings and meetings, may also be conduced by electronic means, by tele- or video-conference.

Time limits are computed in calendar days, beginning on the first working day following a notification and expiring on working days, provided that CBF is opened. Under exceptional circumstances, time limits may be extended if a justified request is filed by the party prior to its expiry.

Regarding jurisdiction, it is worth noting that, differently from the CRL, the CNRD is competent to hear both horizontal as well as vertically-oriented disputes. Besides matters involving the activity of intermediaries[68] and the domestic solidarity mechanism, and without prejudice to the competence of labour courts to hear employment-related disputes, its jurisdiction spreads around disputes:

a) Between players and clubs in relation to the maintenance of contractual stability, where there has been a request for a domestic transfer and a claim from an interested party in relation to the registration of the player, sporting sanctions or compensation for breach of contract;
b) Between players and clubs of an employment-related nature, provided that both parties waive the jurisdiction of labour courts;
c) Between players and clubs, or between clubs, in relation to art. 64 of the CBF RSTP (which implemented art. 12bis of the FIFA RSTP in Brazil);
d) Between clubs, involving a claim for compensation under art. 29 of the Pelé Law or for domestic solidarity contribution under art. 29-A of the Pelé Law;

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[67] In the absence of the party's or its representative's e-mail, communications may be made through the State federation to which it is affiliated or sent to a physical address.

[68] On a subsidiary basis, the CNRD has absorbed the jurisdiction of the CRL, so it can hear disputes involving players' agents (not only intermediaries), including cases that were pending when the previous body was replaced.

e) Between Brazilian clubs, involving the FIFA training compensation or solidarity mechanism;
f) Between members of a coaching staff and clubs of an employment-related nature, provided that both parties waive the jurisdiction of labour courts;
g) Resulting from violations of the CBF RSTP or RNI;
h) Deriving from decisions passed by State federations or leagues affiliated to CBF, provided that the statutes of such entities do not explicitly prohibit this possibility;
i) Originally under the jurisdiction of the CRL; and
j) For which the parties have concluded a specific arbitration agreement in favour of the CNRD.

Moreover, the CNRD is competent to enforce its own decisions, which it does upon the application of several types of sanctions. However, instead of deducting points and relegating clubs, which according to Brazilian law may only be done by the STJD, the Chamber has powers *inter alia* to block monetary prizes that may be due by CBF or a federation to the debtor, establish fines in favour of the creditor, order a third-party to pay amounts it may owe a debtor directly to the creditor[69] etc, all in addition to the ordinary means by which FIFA enforces its decisions (such as, transfer bans, suspensions etc).

From the decisions of the CNRD, an appeal may be filed before a Brazilian arbitral institution named *Centro Brasileiro de Mediação e Arbitragem* (CBMA), with seat in Rio de Janeiro. In this respect, it is worth noting that the organisation, which specialises in commercial arbitration and is financed by different associations of companies (especially, insurance and industrial companies), has developed specific rules to govern sports-related arbitration.

In general lines, these CBMA Regulations can be described as the adaptation of the CAS Code of Sports-related Arbitration to Brazilian arbitration law and improved by certain lessons from historical CAS cases, such as *Lazutina/ Danilova* and *Pechstein*. In this regard, among other things, the CBMA has a merely suggestive and non-binding list of arbitrators, the Chairman of every Panel is chosen by the party-appointed arbitrators and provisional measures are decided by emergency arbitrators.

In comparison to the CRL system, when CAS had a final word on every dispute, the option for the CBMA also seems to represent great evolution. This obviously does not mean that CAS did not render quality awards, but considering that very few of its arbitrators were familiar with Brazilian law or even spoke Portuguese, it seems much more reasonable – both from a legal as well as from financial point of view – to have an arbitral institution seated in Brazil dealing with such cases.

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[69] For instance, if a decision of the CNRD orders a player or an intermediary to pay certain amounts to another party, the enforcement thereof may involve part of the salaries or commissions might due to him by a club, respectively. In any case, the third-party must also be subject to the statutes and regulations of CBF; and the deduction made against the player's salaries or the intermediary's commissions must be partial and reasonable.

11. Conclusion

As seen above, as one of the main footballing nations in the world, Brazil has developed a complex set of rules to govern the status, registration and transfer of players, as well as their relationship with clubs.

Originating from State laws, this system has not always been entirely harmonic or adequate to achieve its purported goals. Despite good intentions of the legislator, several provisions of the Pelé Law, in particular the ones designed to protect training clubs, have proved either to be disbalanced from an economical point of view or inconsistent with international legal standards, frequently leaving Brazilian stakeholders unprotected.

In the past few years, CBF has been making significant efforts to raise professional standards, tackle inconsistencies and malpractices, and increase legal certainty, with regulations tailored to quickly respond the needs of the market.

Within South American, Brazilian clubs remain strong, but as football evolves in the 21st century their obsolete structure as associations, which perpetuated amateur officials in power and brought their finances to the lowest levels, no longer seems viable.

In this context, the next big step to protect Brazil's ever-flourishing talent may be to open the market for foreign investors willing, for instance, to buy a club, to patronize the rescue of a forgotten brand and simply to find the next *Ronaldinho*.

CBF, as it can be imagined, is already ahead of this process, studying different examples around the world and possible ways to implement rules that attract these investments but at the same time do not overlook the integrity of competitions. It may be that the draft law currently pending before the Senate or other projects yet to come help creating new tax and/or corporate regimes for clubs in Brazil.

So far, however, what is clear is that the initiative cannot be a one-man show. If it is good for the game, and if it is good for the country, every stakeholder must also get involved.

NATIONAL TRANSFERS IN CHINA

by *David Wu*, *Giandonato Marino*, *Tomas Pereda Rueda* and *Roy Chu*[*]

1. The National Framework

1.1 The Structure of Chinese football

i. Background

The national governing body of football in Mainland China as we know it today – the Chinese Football Association ("CFA") – was founded in 1955.

The first official competition held under the auspices of the CFA was the National Football Conference of 1951. At that time, only regional representatives from institutions such as sports academies, schools or the army were allowed to participate.

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After several modifications and interruptions to this competition throughout the 60s and 70s, in the 80s the CFA allowed private companies to sponsor and invest in football teams.

It was then in 1994 that the Chinese C League became the country's first professional football league and the concept of "clubs" was introduced. After this reform, regional institutions were not allowed to participate in any official competitions anymore.

The professional first division in China – the Chinese Super League ("CSL") – was introduced by the CFA in 2002 and held for the first time in 2004. Nowadays, the CSL has become one of the most important football leagues in Asia, from both a sporting and commercial point of view, attracting top players and an audience from around the world.

As of today, the Chinese football system consists of three tiers of professional leagues, linked by promotions and relegations. These leagues are the CSL, China League One ("CL1") and China League Two ("CL2"), which between them have a total of 64 professional clubs. Below CL2, there are several amateur competitions, both at national and regional level.

The first tier amateur competition is the CFA Member Association Champions League ("CCL"). However, the CFA is expected to complete the development of the amateur system, consisting of 5 levels of leagues, by the end of 2030.

ii. The Chinese Football Association

The Chinese Football Association ("CFA") is the governing body of football in the People's Republic of China.

The CFA was established on 3 January 1955, after approval by the Central Government of the People's Republic of China ("PRC") and the State Council. Until 2004, it was one of the departments of the General Administration of Sports of the PRC (hereinafter "the General Administration"), being therefore directly administered by the Chinese government.

In 2015, after several attempts to minimize the administrative functions of the Football Administration Centre (department of the General Administration) and improve the autonomy of the CFA, the "General Plan of Reform and Development of Chinese Football" was introduced, which led to the CFA officially separating from the General Administration at the beginning of 2017.[1] As of today, it is formally regarded as a non-profit organization affiliated to the Chinese Olympic Committee and is the sole representative of Mainland China as a member association of FIFA and AFC.

[1] Among the reforms we should mention that: (i) the powers of the General Administration were drastically reduced to suggestions to the CFA on behalf of the government; (ii) the office-bearers of CFA cannot be government officials; (iii) CFA budget was allocated and audited independently from the government; (iv) CFA decisions are approved by its associated members rather than the government.

The CFA not only serves the general purpose of promoting the development of football in China, but also acts as the governing body responsible for managing the work of member associations, administrating football games at the national level, reviewing the registration of professional clubs, and promoting the establishment of a youth training system, etc.

One of the most relevant roles of the CFA is to manage the leagues and cup competitions for male and female football, including the CFA Super Cup, the CFA Cup[2] and Chinese Women's Football Association Cup.

The CFA has its own jurisdiction over on-field and off-field disciplinary matters in official competitions in China and is responsible for the implementation of regulations, policies and/or decisions from international entities, like FIFA and AFC.

The commercial functions of the CFA are largely limited. An independent company was created to ensure the best commercial interests of the clubs participating to the CSL (see *infra*).

The governing bodies of the CFA include the General Assembly, Special Committee, Disciplinary Committee and the Secretariat.

iii. The Chinese Super League

The Chinese Super League is the top tier competition of professional Chinese football. It consists of 16 teams participating in a double round-robin tournament, at the end of the season two teams are relegated to CL1.

The prototype of the CSL, previously called the "C League", was developed during the 80s and launched for the first time in 1987. The CFA then split the competition into two tiers, Tier A and Tier B.

After 1994, with the introduction of "football clubs" as participants to the competitions, "Tier A" and "Tier B" became the two leagues of Chinese professional football. Tier A was then given the official name of "C League". Both leagues were comprised of 12 clubs with 2 teams being promoted and relegated.

In 2004, the CFA renamed "Tier A" into the "Chinese Super League"[3] and "Tier B" into "China League One" ("CL1"). In 2006, a separate company for the management of the league was established, namely the CSL Co., Ltd. ("CSL Company"). Until October 2019, the company's shareholders were the CFA and the football clubs competing in the CSL.[4] Until then, the CSL Company has been responsible for some of the commercial and marketing activities of the CSL.

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[2] Whereby the participants are clubs from CSL, CL1 and CL2.

[3] In 2008 the number of participants to the CSL was expanded to 16 teams.

[4] The CFA was holding 36% of shares, and the 16 clubs in the CSL owned the remaining 64%. Therefore, with the share over 1/3 but less than 2/3, the CFA was given veto power over significant issues such as amendments of company articles, changes to the nature of the company and its dismissal etc., while had no veto or decisive power over elections or normal company decisions.

Then, in October 2019, the CFA announced that, in a near future, they will no longer hold shares of the CSL Company. The CFA intend to transfer its shares to the clubs, with a view to make the CSL independent from the CFA, while the CFA would only reserve its veto power over some "major issues".

During the 2018 season, the CSL reached an annual total income of RMB 1.59 billion (a huge amount considering that in 2006 the total income was approximately RMB 60 million). The average club dividend was over RMB 60 million, and it had the highest audience rating (0.33%) among all broadcasted sport events in China.

iv. China League One

It is the second tier in professional football in Mainland China. As mentioned above, after the CFA split the top-level group of the National Games into two tiers, Tier A and Tier B, the latter was then renamed "China League One" in 2004. During these years the CL1 had 16 teams participating to the competition (i.e. until the season 2019 included).

However, the CFA announced on 20 December 2018 that for the season 2020 onwards there will be 18 teams participating in the CL1. Moreover, although it has not been officially confirmed yet, it is expected that the CL1 will amend its format again and expand to 20 teams by the season 2021.

With regards to the promotion and relegation system, at the end of the season the first two teams are directly promoted to the CSL and the last two teams are directly relegated to CL2.[5]

Nevertheless, the CFA has amended the promotion/relegation format between the CL1 and the CL2 for the season 2019, in order to expand the CL1 to 18 teams as from the season 2020 onwards. As a result, at the end of the season 2019 only one club from CL1 has been directly relegated, and three clubs from the CL2 have been directly promoted.[6-7]

Unlike the CSL, the CFA retains the commercial rights of the competition, such as its broadcasting and licensing rights.

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[5] Since 2018, there is also a knock-out phase, where the 14th ranked club in CL1 compete against a club of CL2 (the club of CL2 that plays the knock-out phase is the winner of a play-offs tournament which is played between the second and third ranked clubs of each group of the CL2). The knock out phase is a home-away game, where the CL1 club is not permitted to field foreign players and the winner is qualified to participate in the CL1 for the subsequent season.

[6] It has not been yet confirmed whether this format will remain the same for the season 2020 in order to achieve the goal of having 20 clubs participating in the CL1 for the season 2021.

[7] With regards to the knock-out phase mentioned in footnote 5 above, the format of this particular phase has been also slightly amended for the season 2019.

v. China League Two

At the bottom of the professional football system in China, CL2 represents the juncture between professional and amateur leagues. It is comprised of two different groups, North and South, with 16 clubs participating in each group.

The winners of the two groups are automatically promoted to CL1.[8] Likewise, the clubs who ranked last from each area are relegated to the CCL.[9]

vi. Amateur leagues and youth leagues

According to the long-term development plan of Chinese football,[10] it is expected that four more levels of leagues shall be fully established by 2030. Therefore, beneath the CCL, there will be the CCL Regional, CFA's Member Associations Champions Leagues, City Leagues, and County Leagues.

Starting from 2017, the CFA introduced the National Youth Super League ("NYSL"), which is intended to be the national competition for young players. During the 2019 season, the NYSL was divided into 5 categories (U13, U14, U15, U17 and U19), with 402 teams in total. All the CSL and CL1 clubs must have a team playing in each category, while only the U19 level is not compulsory for CL2 clubs. At least 18 players shall be registered for each team. The CFA further specifies that competitions for these clubs will not just be limited to the NYSL, but there will be other official competitions held by the CFA and its member associations in the near future.

2. Registration and transfer rules

2.1 General framework

At the end of 2015, the CFA issued new regulations on the status and transfer of players ("CFA RSTP"),[11] which were largely inspired by the FIFA RSTP. However, these regulations are frequently integrated and/or amended by policies of the CFA, including *inter alia* the recent policies introduced at the end of 2019 (see *infra*).

According to Article 9 of the CFA RSTP, in Mainland China, all professional players must be registered during the season's two transfer periods. The main transfer window shall not exceed 12 weeks, while the mid-term transfer window shall not be longer than 4 weeks.

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[8] Accordingly with the expansion of CL1 to 18 teams by 2020, the rules for promotion from CL2 have been adjusted for the season 2019, as mentioned above.

[9] As in CL1, clubs will have to play a knock-out phase against clubs of the CCL.

[10] "*Medium and Long-term Development Plan for Chinese Football (2016-2050)*", "*Develop Reform Social [2016]No.780*", issued by the National Development and Reform Commission, the State Council, the General Administration of Sport and the Ministry of Education, available at www.ndrc.gov.cn/zcfb/zcfbtz/201604/t20160411_797782.html.

[11] CFA Ref Nr: *[2015] No. 649* issued on 30 December 2015.

Considering that the football season in China follows the calendar year (1 January to 31 December) and that the CSL usually starts in February-March[12] and ends in November-December, the main transfer window in China normally takes place from the beginning of January until the start of the season. The mid-term transfer window takes place in the middle of the season, usually during the month of July.

For example, for the 2019 season, the main transfer window was from 1 January until 28 February, while the mid-term window was from 1 July to 31 July.[13]

With regards to the domestic transfer of players in China, Article 17 of the CFA RSTP states that players may transfer to a different club affiliated to the CFA in the following cases:

– the previous employment contract expired;
– the previous employment contract is terminated upon mutual consent or unilaterally by one party with just cause;
– in the case of a loan, the loaning club and the player agree in writing to the temporary transfer.

Despite many analogies with the FIFA RSTP, Article 18 of the CFA RSTP adds some special circumstances when the transfer of a player at national level is prohibited. In particular, the CFA will not grant the registration of a player with a new club affiliated to the CFA in the following cases:

– the player refuses to comply with a decision rendered by the CFA Arbitration Committee or refuses to comply with sanctions imposed by the Disciplinary Committee;
– the player has a pending contractual dispute with their previous club and the dispute is related to the transfer of the player;
– if the potential transfer will cause the club to exceed the limit for transfers;
– other circumstances which the CFA deems to be prohibitive.[14]

2.2 Transfer quota and foreign quota

In order to limit the high expenditure on transfers by professional clubs in China, to incentivize the training of young players and to guarantee a fair level of competition among professional clubs, the CFA has set a limit to the number of foreign players that can be registered with professional clubs, as well as a limit for the transfer of domestic players during the entire season.

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[12] After the Chinese New Year.

[13] It is interesting to see that, generally, the summer transfer window in China used to run from mid-June to mid-July approximately. However, as from the season 2019, the CFA established its period through the whole month of July so as to adapt the summer transfer window to the majority of these transfer windows in Europe.

[14] Included to give the CFA some discretion for refusal of a registration.

According to the new policies issued by the CFA at the very end of 2019,[15] all professional Chinese clubs can register a maximum of 5 new Chinese players per season, being the registration of Chinese players under the age of 21 excluded from this quota.[16]

A further quota is then provided for the registration of foreign players within each professional club and within the same sporting season.

According to such policies, as from 1st January 2020 CSL clubs can register a total of seven foreign players during one season. However, a maximum of six foreign players can be registered simultaneously with a club. Then, only five of these players can be included in the list for any official match organized by the CFA and a maximum of four foreign players can be fielded together during an official game.

On the other hand, CL1 clubs can register a total of four foreign players during one season and the same number of foreign players can be registered simultaneously with a club. Then only three of these players can be included in the list for any official match organized by the CFA and a maximum of two foreign players can be fielded together during an official game.

Furthermore, no foreign players can be registered with CL2 clubs.

2.3 Naturalized players

At the beginning of 2019, China witnessed the first registration of a naturalized foreign football player in the CFA. This first registration was then followed by subsequent registration of players who had also recently acquired the Chinese nationality, through heritage or residence mainly, thus being registered as domestic players within the leagues.

As a matter of fact, some of those naturalized players satisfied the criteria set out by FIFA in order to be eligible to participate with a representative team, thus representing the Chinese national team in official competitions.[17]

As a result of that, the CFA has decided to regulate this matter and issued some policies to be effective as from 1st January 2020.[18] According to these new rules, the CFA has determined that players who (i) are born in Mainland China, or that (ii) have their biological parents or grandparents born in Mainland China, will be deemed as domestic players in the CFA competitions. Therefore, they will not occupy any spot of the foreign quota established in their respective leagues.

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[15] Through the above-mentioned "*Notice of the Chinese Football Association on the policy adjustment of the 2020 professional league*", issued by the CFA on 31 December 2019.

[16] In addition, there are some exceptions related to Chinese players previously registered with the relevant club. For instance, Chinese players being transferred inbound from a club affiliated to a different association are excluded from this quota.

[17] Nicolas Yennaris (who acquired the Chinese nationality through heritage), and Elkesson (who acquired the Chinese nationality through residence in China), have represented the Chinese national team in the 2022 FIFA World Cup Qualifiers played in 2019.

[18] Through the above-mentioned "*Notice of the Chinese Football Association on the policy adjustment of the 2020 professional league*", issued by the CFA on 31 December 2019.

On the other hand, the CFA has set out an exception only for CSL clubs, allowing those clubs to register one naturalized player out of the foreign quota, when complying with one of the following conditions:

i. the player has acquired the Chinese nationality through the five years rule; or

ii. the player is eligible to play for the Chinese national team.

It is therefore clear that the CFA has decided to differentiate between players who acquired the Chinese nationality through heritage and those who acquired it through residence, limiting the possibility for CSL clubs to register only one of the latter category out of the foreign quota.

The essence of this measure is to avoid clubs registering several naturalized players without Chinese heritage, thus circumventing the foreign quotas established within the leagues.

2.4 Registration of players (general framework and procedure)

The procedure for the registration of professional players in China does not differ substantially from the procedure internationally. In this respect, the draft of the relevant rules under the CFA RSTP was evidently inspired by the FIFA RSTP on the matter.

For the transfer and registration of professional players between clubs in China, the guidelines provided in Article 22 of the CFA RSTP are very similar to those prescribed in Annex 3 of the FIFA RSTP. The basic procedure in China can be summarized as follows:

– the registering club shall file the transfer application to the local association it belongs to (the new association);
– the new association shall send a written request for the domestic transfer certificate to the previous association where the player was registered;[19]
– the previous association shall, within 7 days upon receipt, decide on the issuance of the domestic transfer certificate to new association.

Besides the regular procedure, Article 22 of the CFA RSTP states that if the previous association fails to reply within 15 days after receiving a written request for the domestic transfer certificate, the CFA may issue interim registration for the player upon request of the new association.

In case the previous association alleges just cause for its refusal/failure to reply, the CFA may withdraw the interim registration. Otherwise, this interim registration is automatically converted into a definitive registration 1 year after the issuance of the request letter.

The CFA has not yet implemented an online transfer matching system like the FIFA TMS. However, since 2016, the local associations in China have been

[19] In the case of a transfer of a player between two clubs affiliated with the same local association, the process will be managed entirely by that association.

collecting information and data on the transfer of players to comply with the first stage of the CFA project[20] to establish such a system in China.

Finally, it is stated in Article 21 of the CFA RSTP that the CFA does not charge any procedural fees to clubs during the transfer of players.

In addition to that, professional clubs are subject to some limitations for the registration of players during the season:

i. CSL clubs can register from a minimum of 18 to a maximum of 30 players. At least 3 players shall be U-21 Chinese players and maximum 5 foreign players. Then, each club can cumulatively register a maximum of 40 players per season;
ii. CL1 clubs can register from a minimum of 18 to a maximum of 30 players. At least 2 players shall be U-21 Chinese players and maximum 3 foreign players. Then, each club can cumulatively register a maximum of 40 players per season; and
iii. CL2 clubs, they can register from a minimum of 18 to a maximum of 27 players. At least 5 players shall be U-21 Chinese players. Then, each club can cumulatively register a maximum of 32 players per season.[21]

2.5 Transfer of minors

In principle, the CFA RSTP allows the domestic transfer of professional players starting from the day of their 16th birthday.[22] As per Article 50 of the CFA RSTP, players between the age of 16 and 18 may enter into an employment contract with a professional club, but they must be properly remunerated in order to reach economic independence.[23]

However, Article 59 of the CFA RSTP includes the following exceptions, for situations when the transfer of a minor under the age of 16 is permitted:

– the player officially moves his registered permanent residence to the city where the new club is located;[24]
– the player's legal guardian moves to the city where the new club is located, due to reasons not related to football;[25]

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[20] The first stage of this process is the so called "*CFA Information Plan*" which was launched in 2018.

[21] Besides that, CSL, CL1 and CL2 clubs can include in the 18 player's roaster of each game two U-21 players with whom they have signed professional contracts, even if those U-21 players are not formally registered for the league.

[22] In accordance with Article 15 of the Labour Law of PRC, which states that employers can only sign employment contracts with individuals starting from the day of their 16th birthday.

[23] The remuneration shall be above the average standard in the city/region where the player is going to be employed.

[24] An official change of residence involves complicated procedure involving the local Police offices.

[25] The player shall provide evidence in this respect, including as a minimum the student records of the player in the new city and a proof that his legal guardian worked for a minimum of six months in the new city.

– the new club provides high-level accommodation, high-level football education or training,[26] as well as other education, with the aim to support the player in the pursuit of other non-football related work after his sporting career.

Over the last two years, the CFA has further strengthened its monitoring activities on transfers of minors, introducing new provisions in the CFA RSTP on the matter.[27] For instance, as from 2019 the "social security records or individual income tax records" of the minor's legal guardian is necessary as proof that the latter is working in the new city.

2.6 Other peculiarities

There are further prohibitions for the registration of domestic players, relating to training contracts in China and the protection of the training club's interests.

Training clubs in China have the right to sign the first professional contract with a player,[28] for a maximum duration of three years, under the following conditions:

– the player was registered with the training club for a consecutive period of 4 years and is still registered with the training club at the date of signing;
– the training club is registered with the CFA and participates in any of these competitions: CSL, CL1, CL2 or CCL.

If the player refuses to enter into a first professional contract with their training club, the CFA will impose a 24-month suspension from official matches.

As a consequence, according to Article 6 of the "Circular on Transfer and Training Compensation for Minors",[29] the CFA will not register a player as a professional with a new club if he is not free agent or otherwise he has not reached an agreement on the termination of the training contract with his previous training club.

To prevent the circumvention of this rule, the CFA further established Article 7 of the abovementioned Circular, stating that those players who left China during the term of the training contract in order to be registered with a foreign association, will not be allowed to register with a different club affiliated to the CFA upon returning to China. In such case, registration will be granted only in the event the player and his former training club had previously agreed on the termination of the training contract or the training club agrees to the player's registration with a different club.

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[26] Under the discretion of the CFA upon registration of the minor.

[27] On 31 January 2018, it was implemented the "*Implementation Opinions on the Adjustment of Administration Measures of Transfer and Training Compensation of Minors*" and, on 16 January 2019, the "*Circular of Amendment to 'Implementation Opinions on the Adjustment of Administration Measures of Transfer and Training Compensation of Minors*".

[28] When entering into the first professional contract with the player, the training club shall grant the player a minimum salary equal to the previous year's local average salary multiplied by three.

[29] Full literal name in Chinese "*Circular of Amendment to "Implementation Opinion on the Adjustment of Administration Measures of Transfer and Training Compensation of Minors*".

Besides that, with the aim of promoting the participation of young Chinese players in professional competitions, the CFA require CLS and CL1 clubs to field at least one U-23 player during the whole duration of each game, and CL2 clubs to field at least one U-21 player during the same period.[30]

Finally, for the transfer of players from Hong Kong, Macao and Taiwan to clubs in Mainland China, the transfer procedures do not fall within the scope of the CFA RSTP.

2.7 Intermediaries and TPO

In previous decades, the domestic transfer market in Chinese football was very limited. However, after the commercialization of the leagues, the high amounts spent in the last years on both foreign and national players, as well as the rise of Chinese youth players' value in the market, the agency business in China has become a very attractive market. For that reason, this continuously changing situation means it is an important issue which needs to be further regulated by the CFA.

In order to regulate and monitor the activities of intermediaries involved in transfers and employment contracts of players in China, in 2017 the CFA issued the "CFA Administrative Regulation on Intermediaries of Players" ("CFA Intermediaries Regulation").[31]

According to Article 44 of the CFA Intermediaries Regulation, the CFA has jurisdiction exclusively on intermediaries involved in transfers (either in incoming and outbound transfers) or employment contracts of players.[32] Intermediaries involved with coaches or other staff are not included in the jurisdiction of the CFA.

As a basic requirement, all Chinese individuals who intend to act as intermediaries in China, as well as foreign individuals who do not have a license issued by a member association of FIFA,[33] must obtain the "CFA Intermediary Certificate" by going through training and exams organized by the CFA. In order to ensure the intermediaries run their businesses properly, they are also required

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[30] However, there is the so-called "U-23 exception", which means that in the event U-23 players are called up by any category of the Chinese national team, CSL and CL1 are released from compliance with this rule during the time the player is absent. There is no exception for CL2 clubs as regards the U-21 rule.

[31] "CFA Administrative Regulation on Intermediaries of Players", available in Chinese at www.hunanfa.com/zcfg/2018-01-08/123.html.

[32] For this reason, the CFA RSTP expressly provides that intermediaries involved in the execution of a contract, whether it is a transfer or an employment agreement, shall be mentioned therein and sign the contract.

[33] To act regularly as registered intermediaries in China, individuals having a license from a member association of FIFA shall go through a procedure of recognition of the license by the CFA. The intermediary shall submit the relevant documents to the CFA and, upon approval of the association, sign a commitment statement and pay the deposit as provided in this paragraph.

to sign a template statement of commitment to the CFA rules, as well as to deposit an amount of RMB 200,000 for enforcement of disciplinary measures.[34]

With regard to taking commissions for the transfer of players and/or renewal of employment contracts, Article 31 of the CFA Intermediaries Regulation sets the following limits:

– if the intermediary represents a player, his commission shall not exceed 10% of all incomes of the player during his new employment contract;
– if the intermediary represents a club for the signature of an employment contract with a player, his commission shall not exceed 10% of all incomes of the player during his new employment contract;
– if the intermediary represents a club for the transfer of a player, his commission shall not exceed 10% of the total transfer fee.

Besides that, Article 31.4 of the CFA Intermediaries Regulation states that "*Clubs shall ensure that all fees related to transfers shall be paid by one club to another, i.e. transfer fee, training compensation or solidarity, and shall definitely not be paid to or through the agent. Such fees include any share of the transfer compensation, or any fees derived from sell-on clauses*".

In other words, this article prohibits the parties involved in a transfer of a player from paying any part of fees to the intermediary involved. It can also be interpreted as a prohibition for intermediaries to receive any income as a result of Third-party ownership ("TPO").

The prohibition of TPO is clearly stated at Article 56 of the CFA RSTP, in which the CFA prohibits any club or player from entering into contracts with any third parties, this is because a third party may seek to profit from any transfers of the player or seek to obtain any such rights relating to the player. However, to date, there has not been any case reported involving TPO in domestic transfers in China.

Regarding the conduct of intermediaries, the CFA provides comprehensive regulations, included at Article 39 of the CFA Intermediaries Regulations, which prohibits intermediaries from *inter alia*:

– being involved in any football-related business outside of the authorization issued by the CFA;
– promoting their own businesses by defaming other intermediaries or paying "introduction fees";
– soliciting players to violate any clause of their ongoing employment contracts;
– receiving fees from clubs or players other than those stated in the representation contracts;
– making requests to clubs, on behalf of their players, for additional fees or additional contractual schemes for the purpose of tax avoidance;
– forging or altering documents such as the transfer certificate or transfer agreements;

[34] Such deposit shall be refunded upon cancellation of the registration before the CFA.

– promoting transfers by coercion, fraud, bribing or collusion;[35]
– causing disputes between players and the clubs on purpose;
– other conduct prohibited by law.

Lastly, from a financial perspective, the CFA Intermediaries Regulations reflects the strict attitude of the CFA towards the activities of intermediaries. Not only are intermediaries required to file their contracts before the CFA under Article 15, but they also have the obligation to disclose the registration information and amount of commissions earned in each transfer or each signing (as per Article 34).

The CFA has jurisdiction to sanction intermediaries who do not comply with the relevant regulations, as per Article 47 of the CFA Intermediaries Regulations. Decisions on violations committed by intermediaries shall be issued by the CFA Disciplinary Committee.

Sanctions could include warnings, fines, and/or a suspension of the license for one year. More serious violations could result in a permanent cancellation of the license and/or a ban from football-related activities.

Players and clubs involved could also face sanctions for improper conduct when dealing with intermediaries. Players can receive warnings, fines and/or suspensions. Their registration or transfer could be cancelled, or they could even face prohibition from football-related activities. Clubs may also be warned, fined and/or receive a transfer ban or limitation. Clubs could also face point deductions, relegation, or even a revocation of the club's affiliation.

3. Employment contracts

3.1 General remarks

In general, the provisions of the CFA Regulations mentioned in this section will only apply to contracts of domestic players. However, in some occasions some provisions must be observed by foreign players as well in order to comply with Chinese law. The CFA provides, as an attachment to the "Fundamental Requirement for Employment Contract of Professional Clubs of CFA" ("CFA Employment Contract Requirements"), a template of an employment contract for Chinese professional clubs and players ("Template").[36]

The Template is provided only for clubs' reference and holds no binding value. However, in practice the majority of Chinese professional clubs use the Template as a reference for employment agreements with domestic and foreign players. Therefore, we will often refer in these paragraphs to the clauses included therein.

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[35] Reference to corruption or bribery is repeated in the CFA regulations, showing the concern of the Chinese association towards this matter.

[36] For both domestic and foreign players. Available at: www.thecfa.cn/lstz/20160302/8348.html.

The Template and the contracts of domestic players in China are drafted in accordance with the CFA regulations, which incorporates principles from other aspects of Chinese national law such as Contract law and Labour Contract law etc. As a result, they are mainly inspired by the principles of the PRC law but at the same time they have some peculiarities which differs them from normal employment contracts in China.[37]

Pursuant to the Requirements, a player's contract will be valid and binding upon registration with the CFA. In case of failure to do so, the contract is still valid under Chinese law but it cannot be recognized and/or enforced within the CFA jurisdiction.

3.2 Length of Contracts and first employment

In accordance with the relevant provisions of the FIFA RSTP, Article 16 of the CFA Employment Contract Requirements states that the term of a player contract in China shall not exceed 5 years. Article 49 of the CFA RSTP further states that the contract's minimum duration must be from the date of signature until the end of that current season.[38]

The maximum duration of an employment contract for players under the age of 18 is 3 years. However, in the majority of the cases, Chinese clubs choose to sign the first employment contract with players when they reach 18 years old. Although Chinese labour law prescribes that individuals may enter into an employment contract upon reaching 16 years old, there are many difficult administrative procedures which are compulsory for the employer, as well as the complicated process for a minor to apply for social security.[39]

3.3 Contractual obligations of the player and the club

i. Contractual obligations of the player

Article 9 of the CFA Employment Contract Requirements provides the obligations of professional players in an employment relationship with a club.[40]

Upon entering into an employment relationship with a professional club, players must abide by the rules of FIFA, AFC, CFA, as well as the rules of the professional league and the club's internal regulations.

There are no substantial differences between the obligations of a player under the Template and the international standard.

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[37] Apart from some specificities related to football contracts, it has some further peculiarities such as the fact that, unlike other employment contracts in China, players must put their fingerprints on each page to ensure its validity.

[38] However, this provision does not apply to the transfer on loan of professional players.

[39] The club could be sanctioned in case of failure to do so.

[40] However, the club can include further obligations for the player in line with the Requirements and the CFA Regulations.

ii. Club's contractual obligations

Article 7 of the CFA Employment Contract Requirements states that the club should guarantee a "good and safe" working and living environment for the players. This principle is further explained in the Template, which states the club shall provide:

– training facilities and coaches in accordance with the CFA's requirements;
– accommodation and food;[41]
– training and official match equipment, as well as any other supplies necessary for trainings and matches.

In addition to that, the club shall provide the players with courses not related to football, to further develop their education and skills, with the aim to create opportunities for future employment after their careers in football.

With regards to the financial obligations of clubs, the CFA implemented very strict policies to ensure clubs' compliance when it comes to the payment of a player's remuneration.

As per Article 57 of the CFA RSTP, the CFA has the right to impose sanctions on clubs in the case they have overdue salaries for more than 30 days. This rule reflects an extremely tough attitude of the CFA on this matter. In particular, clubs may face warnings, fines and a registration ban of up to two registration periods.[42]

Many football stakeholders in China thought that the CFA, by this rule, expressly included a case of just cause for termination of the employment contract by the player. However, as of today there is no case law supporting this assumption.[43]

3.4 Remuneration and Bonuses

With regards to the basic salary, the Template provides that if the player's participation in official matches fails to meet the requirements set in writing by the club,[44] the latter has the right to reduce the salary.

Then, apart from the basic salary, the club may expressly provide in the employment contract further conditional remunerations for the player. For example, bonuses can be calculated based on an incentive mechanism agreed by both parties. The nature of the match, the result of the match, the performance of the player in the competition, the player's playing time and other factors should be taken into consideration when deciding the amount of bonuses.

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[41] Defined as "*clean, safe, comfortable, convenient accommodations and healthy food*".

[42] Which may be suspended under a probationary period of 6 months to 2 years. In the case of further violation during that period, the registration ban will continue and be combined with any new sanctions for the second violation.

[43] We should recall, in this respect, that the CFA does not publish decisions issued by the CFA Arbitration Committee.

[44] Intended as amount of appearances in official matches or minutes played in official matches.

The player is also entitled to receive revenue generated from advertising or other commercial marketing activities.

3.5 Salary Caps

The CFA introduced salary caps for its professional clubs, establishing different caps between domestic and foreign players.[45]

As regards foreign players, the CFA set out that contracts entered between CSL/CL1 clubs and foreign players on or after 1 January 2020 shall not include remunerations exceeding 3 Million EUR net per year.

In relation to Chinese players, the CFA has established that contracts entered between CSL clubs and domestic players on or after 20 November 2019 shall not include remunerations exceeding 10 Million RMB gross (1.3 Million Euro gross approx.) per year.[46]

However, players who are called up to represent the Chinese national team in the AFC Asian Cup and/or FIFA World Cup (including qualifiers), are allowed to receive a remuneration increased by 20% per year (i.e. 12 Million RMB gross, or 1.5 Million Euro gross per year).[47]

Then, U-21 domestic players who entered into their contracts on or after 20 November 2019 shall not include remunerations exceeding 300,000 RMB gross per year (40,000 EUR gross approximately).[48]

It shall be clarified that such caps will also include other remuneration as image rights fees, signing-on fees, house allowance, transportation, remuneration in kind, stocks, bonds, etc. However, collective bonuses established by the CFA for the period 2019-2021 for the whole team are not included in the salary cap.[49]

3.6 Disciplinary

Clubs have the autonomy to impose disciplinary measures on players if they are in violation of the club's internal rules.

In practice, clubs have a large discretion on disciplinary issues with players. For instance, it is common practice for Chinese professional clubs to sanction domestic players with demotion to the club's reserve team for disciplinary reasons. However, according to our knowledge of disputes that have come before

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[45] These caps have been introduced for the first time with the "*Notice of the Chinese Football Association on the policy adjustment of the 2020 professional league*", issued by the CFA on 31 December 2019.

[46] CL1 and CL2 clubs are not affected by the salary caps to domestic players.

[47] However, we understand this raise shall be applied on an annual basis and conditionally, depending whether the player at stake has been called up or not to represent the National team in such competitions during the relevant season.

[48] The U-21 players who participate above certain number of minutes in official competitions are exempted from those caps.

[49] These bonuses basically correspond to the collective win-draw bonuses provided by the clubs to their employees.

the CFA, clubs are suggested to prove that the players are well aware of these internal regulations through extra signed documents or proofs of delivery.

3.7 Image rights

Under Chinese civil law, players have the right to prevent unauthorized use of their image for economic reasons.

With regards to employment contracts in football, the player and the club may agree terms for the exploitation of the image rights of the player during their employment relationship.

However, recently this has become a very sensitive topic in China. In June 2018 the CFA issued a circular letter[50] stating that:

– all the contracts signed between clubs, coaches and players shall be submitted to the CFA (including image rights agreements);
– clubs are not allowed to enter into contracts without any substantial commercial value (so called "fake contracts"), such as image rights agreements without any exploitation of the player's image but for the mere purpose of paying additional remuneration to the player with a lower tax rate.

In addition to that, the CFA issued an additional circular letter[51] at the end of 2018, aimed to tackle the use of "yin and yang"[52] contracts by Chinese professional clubs. For this purpose, the CFA imposed that the clubs must make payments exclusively from bank accounts registered before the CFA and prohibited clubs from entering into the following contracts:[53]

– commercial contracts with players or coaches without any commercial consideration, or with commercial value unreasonably higher than the market value of such player or coach;
– contracts establishing payments in cash or value in kind to players or coaches or establishing payments via third parties; Contracts not sealed by the CFA;[54]
– contracts deemed as "yin and yang" contracts by the CFA inspection group.

Sanctions for such violations may vary from the deduction of points to disqualification from the league for clubs and suspension from 1 to 3 years for players and coaches.

According to the Template, if it is not specifically stated, it is assumed the player cannot use his image for commercial purposes without the club's consent.

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[50] Circular Letter "*FA [2018] No. 404*" dated 25 June 2018.
[51] Circular Letter "*FA [2018] No. 891*".
[52] Chinese expression referring to contractual schemes in which one contract is drafted for submission to authorities – mainly tax authorities – and the other contract includes the real financial terms.
[53] The CFA, through the notice issued on 31 December 2019, has emphasized these issues informing its stakeholders that the CFA – or a third authorized entity – will deeply control these sort of contracts entered between the clubs, the players and/or other third parties.
[54] All contracts entered between clubs, coaches and players must be sealed by the CFA prior their filing.

However, the club or the league may use the likeness of the player for promotional or advertising purposes to the public or the sponsors according to the Template provided by the CFA.[55] In this case, the player must give prior written consent and shall be compensated for such activities.

4. Transfer agreements

As mentioned above, under Article 17 of the CFA RSTP, a player can be transferred domestically to a different club affiliated to the CFA in the following cases:
- the previous employment contract expired;
- the previous employment contract is terminated upon mutual consent or unilaterally by one party with just cause;
- in case of loan, the loaning club and the player agree in writing to the temporary transfer.

Article 19 of the CFA RSTP provides the minimum requirements for the validity of a transfer agreement, such as the date of the transfer, the transfer fee to be paid, rights and obligations of the parties involved, liability for breach of the agreement, termination clause as well as other essential clauses. However, beside these minimum requirements, the CFA does not prescribe any particular model or template for transfer agreements.

5. Termination of contracts

5.1 General framework

Pursuant to Article 43 of the CFA RSTP, employment contracts between professional players and clubs can be terminated at the date of their expiration or upon agreement between the parties.

However, it is common that an employment contract is terminated prematurely by either party, with or without just cause. Such situations are regulated in the CFA RSTP, under Articles 44 to 48.

5.2 Termination with just cause

In accordance with Article 44 of the CFA RSTP – likewise Article 14 of the FIFA RSTP – either party to an employment contract has the right to terminate the contract with just cause without any further liability.

The concept of just cause is further explained at Article 19 of the CFA Employment Contract Requirements. This includes a list of circumstances which

[55] In particular, the club is granted the right to use the player's image for commercial activities related to its sponsors. Whereas the CSL is granted the use of the player's image together with other players of the club, up to a maximum of 5 players collectively.

may entitle the club or the player to terminate the employment contract with just cause.

While on one hand, such regulations hold no binding value for the clubs, on the other hand, the regulations are mainly inspired by Chinese Contract Law and Labour Contract Law and must be taken into consideration when analysing contracts of players in China.

In accordance with Article 19, the club has the right to terminate the employment contract with just cause in case the player:

– suffered injuries or illnesses for reasons not attributed to work and is unable to participate or it seriously affects trainings and matches after the Medical Period[56] expires;
– seriously violates the rules of the club, the discipline of matches or player's obligations;
– has simultaneous employment relationships with other entities, affecting the player's contractual obligations;
– is prosecuted for criminal liability;
– other just causes.

On the other hand, the player has the right to terminate the employment contract with just cause in the following cases:

– the club fails to provide working conditions as agreed;
– the club delays the payment of the player's salary or bonuses for more than 30 days, as per Article 57 of the CFA RSTP;[57]
– he appeared in less than 10% of the club's official matches during one season.
– the club fails to purchase insurance for players as agreed;
– any club official insults, physically punishes, assaults the player or forces the player to engage in activities in violation of the law;
– the club's internal rules are in violation of the law and may damage the players' interests;
– other just causes which the article in question does not specify.

Article 57 of the CFA RSTP provides the procedure for the CFA to sanction the club in the event that it delays the payment of the player's salary or

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[56] The term "Medical Period" comes from a regulation drafted by the Ministry of Labour, protecting the employee in the event that he/she is suffering from injury or illness not related to work. According to that regulation, the employer cannot terminate the employment contract before the expiration of a certain period of time, which may vary depending on the industry and the years that the employee has been employed (See Measures regarding the Medical Period for Employees during Non-work-related Illness or Injury, dated 1 January 1995). For football players, the Medical Period could vary between 3, 6 or 9 months (which shall be considered as a unique period during the employment relationship) depending on the years of career and the duration of the employment with the club. After expiry of this period, in case the player is not fit to return to football activity, the club would be able to terminate the employment contract with just cause, upon payment of a compensation.

[57] In this case, the player has to notify the club in writing and grant a deadline for the club to comply of 10 days as a minimum.

bonuses. In that case, the player shall notify the club in writing and grant a deadline of at least 10 days to fulfil its obligations.

Besides the above, in the Template of the CFA, the employment contract can be terminated in case of the following circumstances:

– if the club is declared bankrupt;[58]
– if the club's business license is revoked, the club is ordered by the government to cease its activity or the club dissolves;
– if the affiliation before the CFA is cancelled.

5.3 Termination without just cause

It has been mentioned above that the CFA RSTP is mainly inspired by the provisions of the FIFA Regulations. In the case of termination without just cause, the CFA RSTP includes similar rules concerning the inducement of breach of contract, calculation of the compensation[59] and sporting sanctions.

With particular regards to injuries or illnesses, clubs cannot unilaterally terminate the contract during the Diagnosing period – or the Medical observation period – in case the player suffers an injury or illness due to his professional activity with the club.[60]

6. National training compensation and solidarity mechanisms / Levy on transfers

The CFA established a solidarity contribution and training compensation system for domestic transfers, which is explained in Annex I and II of the CFA RSTP.[61]

Such provisions are in great part inspired by those included in the FIFA Regulations, so in this paragraph we will only analyse the provisions which differ from the international regulations.

6.1 Training compensation

With regards to the training compensation system for domestic transfers, the basic rules on the payment of training compensation – set at Annex 1 of the CFA RSTP – are identical to those included at Annex 3 of the FIFA Regulations. In particular,

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[58] For instance, in February 2019 the club Yanbian Fude FC filed an application for bankruptcy before the local people's court. After that, the players were considered free agents having the right to sign with other clubs.

[59] However, under Chinese law, the general rule for calculation of compensation in case of termination of an employment contract without just cause is to multiply the number of years the employee has been working for the company per 2 + 1 times (the company must notify the employee with a month advance). However, such criteria are applied with wide discretion by the CFA.

[60] Both Diagnosing period and Medical observation are medical terms referring to discretional evaluation of medical experts.

[61] Further integrated by additional policies, such as those mentioned at footnote 23 above.

we look at the entitlement of training academies,[62] the procedure and liability for payment, the calculation of the training compensation, the cases where payment is excluded and the entitlement of the football association to receive the payment.

However, we should clarify that the term "training academy" used in the CFA RSTP includes but is not limited to football clubs, football schools, football training institutions, as well as local football associations as defined by the abovementioned CFA "*Circular on Transfer and Training Compensation for Minors*". These entities are entitled to receive the training compensation based on their training agreements with players, which are duly registered with CFA or its affiliated local associations.

Whereas the FIFA Regulations sets a player's training and education period between the ages of 12 and 23, the CFA considers that period to be from the age of 8 until 21. Training compensation should be paid to the training academies for the training and development of domestic players during this period of time.[63]

Article 2 is another interesting provision in Annex I of the CFA RSTP – it states that the training academy, upon receiving training compensation, must reimburse the player[64] in the case he previously bore the training costs by himself. In such cases, the training academy should refund the player on a pro rata basis according to the amount of training costs the player has paid per year.
To understand why this clause exists one has to understand Chinese culture and traditional attitude to football.

There are not many academies in China, the grassroots level and youth development system is still at a very early stage in comparison to Europe.

Therefore, the opportunity to access the best academies is very limited.[65] People must pay considerable amounts of money to send a child to the best academies. Until the recent commercialisation of Chinese football, football as a career choice would not commonly be supported, with parents often pushing their child into more academic studies.

This clause helps to incentivise the development of young Chinese footballers from a financial aspect, and encourages more support when previously people were hesitant to spend a lot of money on training academies.

With regards to the training costs in China, Article 3 – Annex I of the CFA RSTP provides the following information:

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[62] Article I of Annex I states as follows: "*Training compensation must be paid to every club and/or training academy with which a player has been registered:*
(1) when a player signs his first contract as a professional, and
(2) each time a professional is transferred until the end of the season of his 23rd birthday (whether the transfer takes place during or at the end of the player's contract)".

[63] Unless it is evident that a player has already terminated his training period before the age of 21.

[64] Hence this reimbursement only applies to players who become professionals.

[65] Unofficial reports from 2017 stated that there are around 6,000 football academies in Mainland China. The total number of players registered with the CFA is 84,422.

Categories
- Category I: CSL clubs;
- Category II: CL1 clubs;
- Category III: CL2 clubs;
- Category IV: Other clubs.

Training costs
- Category I: 500,000 RMB/Year;
- Category II: 250,000 RMB/Year;
- Category III: 100,000 RMB/Year;
- Category IV: 20,000 RMB/Year.

To ensure that the training compensation for young players is not set at unreasonably high levels, the yearly training costs for players between their 8th and 11th birthday shall be under Category IV training costs and the years between their 12th and 15th birthday shall be based on the training costs of Category III.

Finally, we should mention another provision included in the CFA "*Circular on Transfer and Training Compensation for Minors*", aimed to tackle the practice of "bridge transfers" at a national level, which attempt to circumvent the obligation to pay training compensation to the training academies.

The CFA established that in the case a player signs his first employment contract with a club and then is transferred to a club of a higher category within 24 months, the new club has to pay training compensation to all the training academies in accordance with its category.

6.2 Solidarity contribution

The mechanism for the payment of solidarity contribution introduced by the CFA for domestic transfers is substantially a copy of the provisions included at Annex 5 of the FIFA RSTP.

6.3 Luxury tax

The Chinese transfer market has grown significantly during the last 5 years, with the CSL becoming the world's highest-spending league in 2017, above top leagues such as Premier League. As a result of such a trend, high-profile players such as Paulinho, Oscar, Carlos Tevez, Hulk, Axel Witsel and Ramires have joined the CSL in recent years for large transfer fees.

To tackle the high expenditure of Chinese clubs, in 2017, the CFA implemented regulations on the so called "adjustment fee", which is known to the public as the "luxury tax".[66]

Until today, this rule has been part of the CFA policies to ensure a stable development of professional football in China, together with the rules on the ratio

[66] CFA Implementation opinion no. 254 of 24 May 2017.

of foreign players to domestic players under the age of 23 (U23) in official matches[67] and the abovementioned "foreign quota".

The luxury tax is an additional amount that clubs should pay to the China Football Development Foundation[68] in the case of an incoming transfer of a player. The luxury tax applies to transfers of foreign players with a transfer fee above 45,000,000 RMB (approximately 6,000,000 Euro) and transfers of Chinese players with a transfer fee above 20,000,000 RMB (approximately 2,500,000 Euro).

As from 2017 to 2019, the amount to be paid was an amount equal to the transfer fee paid for the acquisition of the player (i.e. if the transfer fee amounted to EUR 10,000,000, the luxury tax was equal to an additional amount of EUR 10,000,000). However, the CFA has amended this particular tax as from 1st January 2020, establishing that now the amount to be paid as "luxury tax" would be equal to the portion of the transfer fee on top of the aforementioned limits (i.e. if the transfer fee is equal to 10,000,000 Euro, the luxury tax will be equal to 4,000,000 Euro).[69]

The clubs shall set up a special account for youth training activities and, in the case of a transfer being above the mentioned values, the budget for such youth training activities shall be increased by the amount of the relevant transfer fee paid.

At the end of the 2018 winter transfer window,[70] there had been eight transfers with a fee above the cap.[71] However, it was common knowledge that many Chinese clubs attempt to use various tactics to avoid paying this fee. In light of this, on 12 February 2018 the CFA introduced some amendments to this policy which may be resumed as follows:

– payment of buy-out clauses entails the payment of the luxury tax;
– in the case of a loan and subsequent permanent transfer of a player, the overall amount of both transactions shall be considered;
– transfer of players between clubs owned by the same shareholders will be investigated.[72]

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[67] CFA Implementation opinion no. 253 of 2017. In summary, the CFA established that clubs must field an equal number of U23 domestic players and foreign players in official matches (during the entire match).

[68] Foundation set in 2016 by the Chinese Olympic Committee and the CFA for youth training development purposes.

[69] In addition, clubs reporting losses in their annual financial reports to the CFA shall correspond as "luxury tax" an amount equal to the loss reported.

[70] The CFA published on their website a chart on 2018 winter transfer window, including all the relevant transfer concluded and information concerning luxury tax.
www.fa.org.cn/bulletin/cla/2018-03-02/531689.html

[71] The transfers of Bakambu and Viera to Beijing Guoan, Modeste to Tianjin Quanjian, Hamsik and Carrasco to Dalian Yifang, Paulinho and Talisca to Guangzhou Evergrande, as well as Fellaini to Shandong Luneng.

[72] In fact, according to Article 2.3 of "*Practice Opinions regarding the Transfer Adjustment Fees for 2017 Summer Window*" (applied equally during the subsequent transfer windows to date), if a player is transferred from a foreign club to a Chinese club without paying any compensation or for

The CFA has the power to investigate and impose sanctions, pursuant to the "substance over form" principle.[73] The sanction for an infringing club shall be a point deduction ranging from 1 to 15 points depending on the amount of the transfer fee hidden.

After implementation of this policy, the trend has changed and nowadays clubs are adopting alternative ways to sign players such as free agents, loans, and swapping players. However, it seems that some clubs are willing to cooperate with the CFA for the payment of the luxury tax.

The lack of official data and/or information available online concerning the expenditure on transfers of Chinese players by clubs makes it difficult to address specifically the effects of this policy on the transfer of local players.

7. Judicial bodies

7.1 The CFA Arbitration Committee

Article 81 of the CFA RSTP establishes the jurisdiction of the CFA over domestic transfer-related disputes as follows: "*In the event of a dispute arising from the transfer of a player, the parties may submit this dispute to the CFA Arbitration Committee. Regarding domestic disputes involving domestic players, the decisions of the Arbitration Committee shall be final and binding*".

The CFA Arbitration Committee is the only internal dispute resolution body[74] dealing with any domestic transfer-related dispute.

The Procedural Code of the CFA Arbitration Committee ("Procedural Code") provides a comprehensive framework of rules on proceedings before this judiciary body.

As per Article 5 of the Procedural Code, the scope of jurisdiction comprehensively covers – in addition to transfer-related disputes – any other controversy arising among member associations, football clubs, football players, coaches and intermediaries, in connection with matters of registration, eligibility, employment agreements and intermediaries' agreements. The CFA Arbitration Committee is also competent both as the second instance body within the disciplinary system[75] and in any other dispute it deems to fall under its competence.

In the case a claimant chooses to seek remedies before the Arbitration Committee, according to Article 6 of the Procedural Code, the claim shall be

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a compensation lower than the one spent by the foreign club to acquire the services of that player, the original compensation paid by the foreign club for the player will be the amount taken into consideration by the CFA when calculating the "luxury tax", if any.

[73] Including the power to "suspend" the registration of a player in the case of failure to pay the luxury tax.

[74] Single instance with no further appeal.

[75] According to articles 97 and 103 of the CFA Disciplinary Code, the CFA Disciplinary Committee is the main judiciary body of the disciplinary system. On the other hand, appeal before the CFA Arbitration Committee is then possible in some limited cases.

submitted within one year of the date on which he became aware of, or should have become aware of, the violation which had taken place. In the application for arbitration, the claimant must submit his basic information, his arguments, evidence and requests for remedies.

The Arbitration Committee then decides on its jurisdiction and on the admissibility of the arbitration within seven days from the application. In case of admissibility, it appoints three members for the panel within ten days of acceptance and notifies the respondent about the opening of the arbitration proceedings.

It is interesting to mention that the mediation procedure also occurs within the CFA Arbitration system. Pursuant to Article 16 of the Procedural Code, the Arbitration Committee may first propose a mediation procedure between the parties before delivering an award. If the parties manage to settle through mediation, the Arbitration Committee would prepare a settlement agreement corresponding to each parties' will, which would have the same binding force as an arbitral award.

Alternatively, the parties may choose to reach a settlement of the dispute and file it before the CFA. In that case, the CFA will ask the parties to withdraw their request for arbitration and file the settlement agreement on record in case of any further dispute.

If the mediation turns out to be unsuccessful, the Arbitration Committee shall deliver a decision within six months from the beginning of the proceedings. However, according to Article 17.2 of the Procedural Code, the Arbitration Committee may postpone the delivery of the arbitral award upon its discretion and inform the parties accordingly.

Upon issuance of the award, the parties shall comply with the ruling within the time limit provided therein. In case the time limit is not specified, a standard deadline of ten days from the issuance of the decision applies.

In other words, considering that the time used for authentication, public notice, notarization, delivery, notification and mediation is not included in the time limit of six months, and that, at the same time, the rules allow the panel to extend the time limit upon discretional reasons, it usually takes 6 to 12 months for a case involving complicated disputes to be resolved.

A peculiarity of the proceedings before the CFA Arbitration Committee is the possibility for experts to participate and assist the arbitrators with relevant technical comments and opinions. However, as per our experience, we've never encountered any case involving experts as part of the proceedings.[76]

According to Article 28 of the Procedural Code, in disputes between football players and clubs, the Arbitration Committee may, considering the specific circumstances of the case, select one or two representatives from football clubs and/or football players (other than the parties) and instruct them to participate in the proceedings to have their view on the case.

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[76] We assume the experts may include TMS managers, local football association staff or other experts from technical area that could integrate the knowledge of the tribunal.

These representatives may express to the panel their professional comments and opinions on the case before the arbitrators take the final decision. This is considered an effective channel for the Arbitration Committee to get technical knowledge from experts in the sports industry when needed, in order to deliver the best judgment possible through a complete comprehension of the case.

7.2 The CFA Disciplinary Committee

With regards to the enforcement of the decisions rendered by the CFA Arbitration Committee, the CFA Disciplinary Committee ("CFA DC") is the competent body for sanctioning those clubs, players, coaches and other entities or individuals within the jurisdiction of the CFA (e.g. the member associations, licensed agents and registered club officers) which failed to comply with the obligations deriving from any decision.

In practice, in line with Article 21 of the Procedural Code, the CFA DC sanctions the parties that failed to perform their obligations within the given period, after receiving a complaint from the victorious party before the Arbitration Committee. According to Article 75 of the CFA Disciplinary Code, the sanction could be a fine, suspension, reduction of the transfer quota (domestic and/or foreign), point deduction or disqualification.

When it comes to international transfers, the CFA DC is the body competent for ensuring the enforcement of FIFA and AFC decisions.

8. Conclusion

Football in China has experienced significant changes since its professionalization in 1994. During the last five years it has undergone major development, as a result of the plan launched in 2015 by the Chinese government[77] – through the CFA – with the aim of building a powerful football industry in China.

Among different measures, football stakeholders have witnessed how the number of transfers in and out (on a permanent and temporary basis) – both domestic and international – have dramatically increased, which has resulted in Chinese clubs spending huge amounts of money in order to attract foreign players and build competitive squads.[78]

The CFA reacted accordingly, enacting a specific set of rules – implemented into the existing policies and regulations – in order to adapt its regulatory

[77] The so-called 50-point reform plan consists of a three-step plan focused on, *inter alia*, improving the ranking of the national team by means of grassroots youth development, with the eventual goal of hosting the World Cup in China in 2026 or 2030. Unofficial translation into English available at: https://wildeastfootball.net. See also the subsequent amendment to the plan, quoted at footnote 13 above.

[78] This shall be understood together with the large investments carried out by the Chinese government and private football academies as well, in order to promote the development of youth talents, both in China and abroad.

framework to this new tendency and control certain important issues in respect of the transfer of players. For that reason, those involved in the transfer of players (e.g. players, clubs, intermediaries, lawyers, etc.), are required to be aware of certain peculiarities that might arise from these operations in China.

This chapter addresses some particular aspects (e.g. the foreign quota, salary caps, registration of naturalized players, the luxury tax, limitations on the provisional registration of players, caps on intermediaries' commissions or training contracts of young players), which shall be taken in account when dealing with a transfer in China. We believe that this chapter could be of great help for legal practitioners or football stakeholders to understand the peculiarities of this market and the importance of the national policies over clubs' activities.

NATIONAL TRANSFERS IN ENGLAND

by *Carol Couse*[*] and *Tiran Gunawardena*[**]

1. The National Framework

1.1 The Structure of the English Football Pyramid

1.1.1 Background

Founded in 1888, the English Football League is the oldest football competition in the world.

The league originally comprised of just 12 clubs from the Midlands and the North of England but since its inception, the English football pyramid has grown to include a total of 11 different tiers, 96 leagues and approximately 1,741 teams.

1.1.2 The Football Association

The Football Association ("The FA") is the national governing body of football in England. As a representative of a European country, The FA is a member of UEFA and therefore by virtue, member of FIFA.

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The FA is the governing body responsible for regulating the English game and implementing the Laws of the Game, as directed by International Football Association Board (the "IFAB"). Consequently, The FA gives domestic effect to international rules and has jurisdiction over on-field and off-field disciplinary matters.

The FA also regulates 'Intermediary Activity' at a domestic level, with delegated authority from FIFA.

Supplementary to its regulatory role, The FA manages the Men's and Women's senior and under age English national teams, various domestic cup competitions, including the FA Cup and the Charity Shield, as well as developing the amateur game. The FA also run the FA Women's Super League and the FA Women's Championship, the top two divisions of women's football.

1.1.3 The Premier League

The Premier League, commonly known as the English Premier League or "EPL", is the top flight of English football.

The Premier League was formed as the FA Premier League on 20 February 1992 following the decision of clubs, in the then First Division of the EFL, to break away and take advantage of a lucrative television rights deal. The Premier League has since gone on to become the most-watched sports league in the world and is watched by 4.7 billion people.[1] It is also the richest, with Premier League clubs generating a combined revenue of more than £4.5 billion in the 2016-2017 season.[2]

The Premier League is a private company, in which shares are held by the 20 clubs who comprise the league at any one time and The FA, who has a preference share to vote on specific matters. The composition of the league changes each season, with the bottom three teams being relegated and replaced by the three clubs promoted from the Championship at the end of every campaign.

The Premier League is responsible for regulating the league competition and its commercial deal. For example, the Premier League exploits the league's broadcasting rights on a collective selling basis and the value of its domestic television deal which runs for 3 years from 2019/20 season is in excess of UK£4.464 billion.[3]

1.1.4 The English Football League

The English Football League (the "EFL") is comprised of the three fully-professional divisions below the Premier League which are made up of a

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[1] Available at www.britishcouncil.org/organisation/policy-insight-research/insight/playing-game-soft-power-sport (last visited on 16 January 2019)

[2] Available at www.theguardian.com/football/2018/jun/06/premier-league-clubs-profit-record-revenues-tv-deal (last visited on 16 January 2019).

[3] The value of the Amazon Prime deal is undisclosed.

total of 72 clubs with 24 in each division. They are referred to as: the Championship, League One and League Two. Prior to the formation of the Premier League it was the top-level League in England.

The EFL is the largest single body of professional clubs in European football and is responsible for administering and regulating the EFL, the EFL Cup and the EFL Trophy.

The EFL Cup is an annual knockout competition open to each club in the top four divisions. The EFL Trophy, is also an annual knockout competition open to only to League One and League Two teams.

Similar to the Premier League, the EFL regulates its own competition and is responsible for the commercial aspects such as selling its broadcast and commercial rights and is subject to the FA's rules and regulations.

1.1.5 The National League and below

Beneath the top four completely professional leagues sits the National League, making the National League the lowest ranking league of the five nationwide football divisions in England.

The league mainly consists of fully professional teams, however, is the juncture as to where there are occasional semi-professional sides/players.

Underneath this the football pyramid becomes more and more local, as below this sits the sixth tier of English football and the first two regional divisions, the National League North and the National League South. By tier 11 they eventually become county based leagues.

2. Registration and transfer rules

There are various rules in English football regarding the registration and transfer of players which may vary from FIFA rules or the standard practice internationally. In this section, the authors will address the following issues regarding registration and transfer rules:

a) Transfer windows;
b) Registering new players;
c) Work permits;
d) Third Party Ownership;
e) Loans;
f) Approaching players; and
g) Inducement / 'tapping up'.

2.1 Transfer windows

England has two transfer periods / windows in the year – in summer and winter. Historically, the Premier League's summer transfer windows were in line with

other major European leagues, open from 1 June to 31 August. However, as explained below, in 2018 this was changed to 17 May to 8 August. The winter transfer window is from midnight on 31 December to 31 January.

Given the frenzy of deadline day, sometimes clubs struggle to get all the relevant paperwork completed and sent across to the Premier League before the deadline. In that scenario, clubs can submit what is referred to as a 'deal sheet'.[4] The deal sheet allows a club to confirm to the Premier League that a deal had been reached and to allow for additional time to submit the remaining documentation. The deal sheet cannot be used until two hours before the deadline, and needs to be submitted fully completed before the transfer window closes. Once the sheet has been validly submitted, clubs are granted an additional two hours after the window closes to submit the full paperwork. So, to use the example cited on the Premier League's website, if the deadline is at 17:00, clubs can submit completed deal sheets between 15:00 and 17:00, and once the deal sheet is submitted, that club then has until 19:00 to submit the relevant paperwork for that particular transfer. It is important to note here however, that if a club is looking to complete an international transfer, they still need to comply with the FIFA TMS deadline of midnight.[5]

Although the summer window is open for 3 months, historically, clubs inevitably signed (or attempted to sign) players all the way up to the deadline of 31 August. By then, players and clubs would already have been 3 or 4 weeks into the new Premier League season. The flurry of late transfer activity up to the 31 August deadline meant that there was a significant amount of upheaval and uncertainty as players were linked to transfers around the country and overseas. As such, with the aim of avoiding the disruption of players moving clubs after the season began, in 2018 Premier League clubs voted to close the transfer window before the new season began, at 5pm on 8 August 2018 instead of 31 August 2018.

As transfer windows need to be open for 12 weeks under FIFA rules,[6] this meant that the summer window was open on 16 May 2018, just a few days after the final games of the 2017/18 season. Although Premier League clubs could not bring in any new players after 8 August, they were able to transfer players to other countries in which transfer windows were still open (which was the case for the other major European leagues in Spain, Germany, Italy and France).

Whilst bringing forward the deadline has its benefits (in minimising upheaval from players changing clubs), it is also arguably a competitive disadvantage for Premier League clubs, as players can leave England to go elsewhere in Europe after the 8 August 2018 deadline, without those clubs being able to replace them. Whilst the Premier League clubs have voted to retain the earlier close of the

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[4] See the Premier League website for more information on the 'deal sheet', available at www.premierleague.com/news/597652 (last visited on 16 January 2019).

[5] Ibid.

[6] See Article 6(2) of the FIFA Regulations on the Status and Transfer of Players.

summer transfer window for the 2019/20 season, it remains to be seen whether the Premier League clubs decide to continue to close its summer transfer window early, or change back to the 31 August deadline in the future.

2.2 Registering new Players

A player cannot play in a match for a club until he is registered for that club and included in their squad list. Amending a squad list can only occur during the transfer windows, or otherwise with the express permission of the Board. A player can play in a league match so long as he is registered with the club at least 75 minutes before kick-off and he is included in the squad list.[7]

To register a player, clubs have to send the Premier League all the documents relating to the transfer, including but not limited to the player's contract,[8] the transfer agreement, permission to work in the UK (if required), Form 19,[9] and international clearance if transferring from abroad (International Transfer Certificate).[10]

Out of contract players need approval of the Premier League Board to be registered with a new club. Compensation could be payable to the out of contract player's former club if certain circumstances were met. For more information regarding compensation for out of contract players, see section 6 in this chapter.

2.3 Work permits

In order for a foreign player to be registered, he needs to have eligibility to work in the UK and proof of such needs to be included as evidence in the player's application to be registered. At present, subject to any amendments which may result from the outcome of Brexit (see below), EU nationals do not need a work permit, whilst non-EU nationals do need a work permit. The Premier League (or indeed the EFL), will not confirm that the player is eligible to play for a club until the league has received evidence confirming the right to work in the UK.[11] For more information on how work permits are obtained from Home Office, see section 4 of this chapter.

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[7] Rule U.1 of the Premier League Rules.

[8] Completed contracts must be submitted to the Premier League within 5 days of the contract being signed. See Rule T.25 of the Premier League Rules.

[9] Pursuant to Rule T.24 of the Premier League Rules, a copy of Form 19 (a Player Ethnicity Monitoring Questionnaire) also needs to be submitted along with the Player's contract. A copy of Form 19 can be found in the Premier League Handbook.

[10] For a Player transferring from abroad, providing that the relevant papers have been submitted in time, an ITC can be received up to 75 minutes before kick-off for a Player to be eligible to participate in that game. See the Premier League website, at www.premierleague.com/news/60177 (last visited on 16 January 2019).

[11] Rule U.13 of the Premier League rules.

The United Kingdom's potential exit from the European Union ("Brexit") has dominated headlines, at least in the UK, for the last three years. At the time of writing, the exact terms (and date) on which the UK would leave the EU are still entirely unclear. As such, it is difficult to say with any certainty what impact Brexit will have on the football transfer market in England.

The authors note that the current work permit system is based on the premise that EU nationals do not need work permits, so is aimed at granting work permits only for exceptional non-EU nationals. If the same criteria applied to EU nationals, this could have a material impact on the amount of EU nationals that would play for mid-lower tier Premier League clubs.

It is unlikely that the highest calibre players signing for the top clubs will be materially affected by any such change to the work permit rules. However, depending on the outcome of Brexit, we may see a significant adjustment in the entire work permit system.

2.4 Third Party Ownership

Third Party Ownership ("TPO") has been outlawed by FIFA, but England was one of the first countries in the world to prohibit the practice.

In light of the detailed analysis of TPO rules and its practice by Mr Motta and Mr Malvestio in this book, the authors won't go into too much detail regarding TPO, save as to say that TPO first came into prominence in the UK in 2006, famously due to the transfers of Carlos Tevez and Javier Mascherano from Brazil to West Ham United.[12] The fallout from the Tevez and Mascherano sagas caused the Premier League to question whether TPO affected the integrity of its competition and the development of young players. Shortly thereafter, the FA banned TPO at the beginning of the 2008-09 season.[13] England was one of the first countries in the world to ban TPO. FIFA subsequently banned TPO worldwide in 2014.

The Premier League thus introduced a rule which essentially states that any player who is subject to TPO has to be bought out of that relationship before he can be registered with a Premier League club. Rule U.39 states:

"In respect of a Player whom it applies to register as a Contract Player, a Club is permitted to make a payment to buy out the interest of a Person who, not being a Club or Club, nevertheless has an agreement either with the Club with which the Player is registered, or with the Player, granting it the right to receive money from a new Club or Club for which that Player becomes

[12] The economic rights of the two Players were part-owned by a London fund, in a set up that was not uncommon in South America and some European countries at the time. At that time, TPO was not prohibited in the UK (or indeed by FIFA), but there were Premier League rules stating that investors could not attempt to influence club playing and selection decisions, or transfers, or indeed any other major club policy. As it turns out, the Tevez deal broke those Premier League rules. West Ham were subsequently fined £5.5m.

[13] See B. Wilson, '*Football's third-party ownership rule explained*', BBC, 27 September 2016, available at www.bbc.co.uk/news/business-37483203 (last visited on 16 January 2019).

registered. Any such payment which is not dependent on the happening of a contingent event may be made either in one lump sum or in instalments provided that all such instalments are paid on or before the expiry date of the initial contract between the Club and the Player. Any such payment which is payable upon the happening of a contingent event shall be payable within seven days of the happening of that event".

2.5 Loans

Under the Premier League rules, loans are formally referred to as "temporary transfers". In this sub-section, the authors will address the following issues regarding loans:

a) Registration and levy;
b) Restrictions on loans;
c) Loanees playing against parent clubs;
d) Emergency loans;
e) Recalls from loans.

2.5.1 Registration and levy

Loans can be registered during the transfer windows and a loan is completed by submitting completed and signed copies of FA Form H.2 or Form H.3 to the Premier League Board.[14]

A transfer levy is not payable on a loan fee, unless the loaned player is ultimately signed on a permanent basis within 4 months of the expiry of the loan, in which case a levy, as per section 6.2 will be payable on the combined loan and transfer fee.[15]

By way of example, if a Premier League club brought in a player on loan (with a loan fee of £1m paid to his parent club) and at the end of that loan, signed the player permanently for £9m, the combined loan and transfer fee would be £10m. The Premier League transfer levy payable by the buying club upon the permanent transfer of the player would therefore be 4% of £10m, being £400,000.[16]

2.5.2 Restrictions on loans

The Premier League Rules have some restrictions on loans from other Premier League/ English clubs, including the following:

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[14] These are standard template forms setting out the terms of the loan agreement. Copies of these forms can be obtained from The FA registrations department.
[15] Rule V.39 of the Premier League Rules, and Rule 54.7.4 of the EFL Regulations.
[16] For more information on transfer levies, see section 6.2 of this chapter.

– clubs cannot loan to another Premier League club a player they have acquired in the same transfer window (Rule V.7.1);
– during the period of the loan, the player cannot play against his parent club in the Premier League (Rule V.7.2);
– the minimum period of the loan is the period between two transfer windows, and cannot extend past 30 June in the year after it was entered into (Rule V.7.4);
– the maximum number of loans registrable in the same season by a club is four, and, under no circumstances can more than one player be from the same club at any one time (Rule V.7.5);
– clubs may not register more than two players on loan at any one time, but that does not include any loans which become permanent, or emergency loans (Rule V.7.6). Emergency loans are referred to as "exceptional temporary transfers", which means that clubs can loan a goalkeeper in "exceptional circumstances", subject to the Board's permission and this can take place outside the transfer window; and
– a club cannot loan out any more than one of its goalkeepers to other Premier League clubs in a season (excluding emergency loans) (Rule V.7.7).

The EFL also has some restrictions on loans, including the following:

– a maximum of 5 players on loan (or 4 if one of those players is on an emergency goalkeeper loan) can be named in a team sheet in any match under the auspices of the EFL (Rule 54.4.1); and
– no club can sign more than 4 players on loan from another club in a single season, of which no more than 2 players can be over the age of 23. Loans which subsequently become permanent transfers do not count in a club's quota for that season (Rule 54.4.2).

The authors wish to note that in September 2018, as part of its landmark reforms to the transfer system[17] FIFA announced that changes would be made to the loan rules to ensure that loans are made "*for the purpose of youth development as opposed to commercial exploitation*." In October 2019, FIFA announced that the number of loans per season and between each club shall be limited and bridge transfers and sub-loans shall be prohibited.[18] The new rules on loans are expected to be brought in before the 2020/21 season. While these new provisions will apply to the international loan of players, the authors understand that FIFA will give national associations a period of 3 years to implement rules on a domestic loan system which are in line with the above principles.

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[17] FIFA, 'Football stakeholders endorse landmark reforms of the transfer system', 25 September 2018, available at www.fifa.com/governance/news/y=2018/m=9/news=football-stakeholders-endorse-landmark-reforms-of-the-transfer-system.html (last visited on 16 January 2019).

[18] T. Gunawardena & R. Sethna, '*An overview of FIFA's 'Phase 2' reforms – agents, loans and clearing house*', 8 October 2019, Law in Sport, available at www.lawinsport.com/content/articles/item/an-overview-of-fifa-s-phase-2-reforms-agents-loans-and-clearing-house (last visited on 22 October 2019).

This is in all likelihood going to have a significant impact on many of the elite football clubs in England who have numerous players out on loan. Notably, Chelsea are reported to have almost 40 players out on loan.[19] Given the future restrictions that will be placed on the amount of loans any one club can have, we will likely see numerous young players being sold from these big clubs over the next few years.

2.5.3 Loanees playing against parent clubs

The rule stating that a player on loan cannot play against his parent club in a Premier League match (Rule V.7.2) is widely known and relatively uncontroversial. There are often clauses in loan agreements stating as such, and this occurs even in international loans. However, an interesting scenario arose in 2014 involving Thibaut Courtois, who was contracted to Chelsea at the time but was on loan at Spanish club Atlético de Madrid. When Chelsea drew Atlético de Madrid in the UEFA Champions League semi-finals, it was alleged that there was a contractual clause in the loan agreement preventing Courtois from playing against Chelsea unless Atlético de Madrid paid a £5m fee to Chelsea.

Whilst it was unclear whether there was such a clause which Chelsea was seeking to enforce, if there was such a clause UEFA made it clear that it would not be permissible under UEFA's rules. In a statement issued at the time, UEFA stated:[20]

"The integrity of sporting competition is a fundamental principle for UEFA. Both the UEFA Champions League and the UEFA Disciplinary Regulations contain clear provisions which strictly forbid any Club to exert, or attempt to exert, any influence whatsoever over the Players that another Club may (or may not) field in a match. It follows that any provision in a private contract between Clubs which might function in such a way as to influence who a Club fields in a match is null, void and unenforceable so far as UEFA is concerned. Furthermore, any attempt to enforce such a provision would be a clear violation of both the UEFA Champions League and the UEFA Disciplinary Regulations and would therefore be sanctioned accordingly".

Ultimately, there was no controversy as Courtois did play in the semi-finals (which Atlético de Madrid eventually won). Whilst a prohibition on playing against a parent club exists in the Premier League rules, this demonstrated that similar restrictions would not apply at UEFA level as UEFA do not have a similar rule.

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[19] G Willacy, '*How FIFA's clampdown on loan deals may affect Premier League clubs*', The Guardian, 13 December 2018, available at www.theguardian.com/sport/2018/dec/13/fifa-rules-loan-premier-league-clubs-chelsea-manchester-city (last visited on 16 January 2019).

[20] UEFA, 'UEFA statement on integrity of competitions', 11 April 2014, available at www.uefa.com/insideuefa/about-uefa/administration/news/newsid=2088774.html?redirectFromOrg=true (last visited on 16 January 2019).

For completeness, the authors note that unlike in the Premier League, EFL Cup rules allow for clubs in the competition to make agreements for loanees to play against their parent club, with the exception that a player cannot play for more than one club in the Cup competition in any one season.[21] We saw this occur in the EFL Cup in the 2018/19 season, when Chelsea permitted Derby County to field loanees Mason Mount and Fikayo Tomori when Derby visited Stamford Bridge in the fourth round of the EFL Cup.[22]

2.5.4 Emergency loans

As noted above, emergency loans for goalkeepers can take place in 'exceptional circumstances' subject to the Premier League Board's permission, and this can take place outside the transfer window.[23]

There are similar provisions in the EFL regulations, where clubs who are suffering from a shortage of professional goalkeepers due to independently verifiable injuries can register a goalkeeper for rolling 7 day periods subject to its continued confirmation of the unavailability of its regular goalkeepers.[24]

Given the resources available to Premier League clubs, it is rare that emergency loans for goalkeepers occur at the highest level. However, an example of when this nearly occurred was in August 2018, when Manchester City lost its back up goalkeeper Claudio Bravo to a long term Achilles tendon injury shortly after the summer transfer window had closed. As Manchester City had sold Joe Hart and Angus Gunn before the window closed, the club was left with no senior backups to its first choice keeper, Ederson. The club had to consider whether to apply for an emergency goalkeeper loan or find a free agent in the market, however they were unsure whether a free agent would be permitted to register outside the transfer window as that would have required approval from the Premier League. The club ultimately decided to recall Aro Muric from his season's loan at Dutch side NAC Breda to act as second choice, with academy product Daniel Grimshaw acting as third choice keeper.

Manchester City avoided having to register an emergency loan for a keeper in that instance, however as a result of that experience club manager Pep Guardiola called on the Premier League to loosen its rules on emergency signings outside the transfer window.[25] The Premier League has not since made any changes

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[21] Rules 6.3 and 6.4 of the EFL Carabao Cup Regulations, available at www.efl.com/carabao-cup/about-the-carabao-cup/carabao-cup-rules—regulations/ (last visited on 16 January 2019).

[22] L. Twomey, '*Chelsea allow loanees Mason Mount, Fikayo Tomori to face them in Carabao Cup*', ESPN, 22 October 2018, available at www.espn.co.uk/soccer/chelsea/story/3675607/chelsea-allow-loanees-mason-mount-fikayo-tomori-to-face-them-in-carabao-cup (last visited on 16 January 2019).

[23] Rule V.7.6 of the Premier League Rules.

[24] Rule 57 of the EFL Regulations, available at www.efl.com/-more/governance/efl-rules—regulations/section-6—Players/ (last visited on 16 January 2019).

[25] M. Whalley, '*Pep Guardiola calls for looser rules on emergency signings as Manchester City search for a goalkeeper*', The Telegraph, 24 August 2018, available at

to these rules. However, it is worth noting that in November 2018, the EFL wrote to FIFA to ask if the rules could be changed to allow its clubs to sign players on loan outside the transfer windows.[26] The EFL also wrote to the Football Stakeholders Committee (tasked with formulating the proposals to reform the worldwide transfer system), so it remains to be seen whether this leads to any changes in this regard in the future.

2.5.5 Recalls from loan

Under the EFL rules, any recall clause requiring the early termination of a loan agreement can only be included in a full season loan, and can only be activated in the winter (i.e. January) transfer window. There is an exception to this for goalkeepers, who can be subject to a recall clause exercisable at any time. However, the recall can only be exercised in extenuating circumstances with the consent and approval of the EFL or where the club seeking to exercise the recall has only one professional goalkeeper available.[27] Any goalkeeper who is recalled cannot return to his original loan after being recalled.

Any other early termination of a loan must be by mutual agreement in writing between the two clubs and the player, but can only be completed after 28 days and during a transfer window unless otherwise agreed with the EFL Board.[28]

Premier League clubs need to obtain approval from the Premier League in order to recall a goalkeeper on loan, and it can be granted in exceptional circumstances. A good example of when this occurred was noted in section 2.5.4 above, when Manchester City recalled its goalkeeper Aro Muric from his loan at NAC Breda after the transfer window had closed in August 2018 as a result on an injury crisis.[29] The Premier League permitted the loan recall outside the transfer window given the exceptional circumstances.

2.6 Approaching Players

There are specific rules in England regarding approaching players who are about to be out of contract (i.e. free agents). The various scenarios are set out below.

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www.telegraph.co.uk/football/2018/08/24/pep-guardiola-calls-looser-rules-emergency-signings-manchester/ (last visited on 28 January 2019).

[26] Sky Sports News, '*EFL asks FIFA to allow loan deals outside of transfer windows'*, Sky Sports, 9 November 2018, available at www.skysports.com/football/news/11095/11549019/efl-asks-fifa-to-allow-loan-deals-outside-of-transfer-windows (last visited on 28 January 2019).

[27] Rule 55.1 of the EFL Regulations, available at www.efl.com/-more/governance/efl-rules—regulations/section-6—Players/ (last visited on 16 January 2019).

[28] Ibid, Rule 55.

[29] BBC Sport, '*Aro Muric: Man City recall goalkeeper from loan after Claudio Bravo injury*', BBC, 22 August 2018, available at www.bbc.co.uk/sport/football/45278143 (last viewed on 28 January 2019).

2.6.1 Out of contract Players

Out of contract players (and their agents) can negotiate with clubs, and can be approached by clubs at any time with a view to signing a contract. Whilst the analysis below mainly refers to Premier League regulations, the EFL has similar rules to the Premier League regarding the approaching of players.[30]

2.6.2 Players with expiring contracts – moving domestically

If a player's contract is about to expire at the end of the season, the player's club has until the third Saturday in May in the year which the contract is expiring to offer the player a new contract on terms at least as favourable as the expiring contract. The player then has one month to accept or decline the offer. If a valid offer is made, the club is entitled to compensation under domestic regulations if the player declines and registers with another club in England.

If the player on an expiring contract declines the offer of a new contract (or was not offered a new contract by his club), then other clubs are permitted to approach that player after the third Saturday in May and before 1 July, to try to sign that player.[31] If any club (either directly or indirectly through agents or officials etc.) attempt to approach contracted players at any other time to try to sign that player, the club can be subject to disciplinary sanctions by the Premier League.[32]

Players on expiring contracts who directly or indirectly approach other clubs outside of the window stated above (i.e. between the third Saturday in May and 1 July) can also be subject to disciplinary sanctions.[33]

2.6.3 Players with expiring contracts – moving internationally

As noted above, players on expiring contracts who intend to move domestically cannot approach other English clubs (or be approached by other English clubs) until the third Saturday in May in the year of his expiring contract. However, the rules are different if the player is moving overseas, as international transfers are governed by the FIFA Regulations on the Status and Transfer of Players ("RSTP").

Pursuant to Article 18(3) of the FIFA RSTP, a player whose contract is expiring within 6 months is free to conclude a contract with another overseas club. As such, players whose contracts expire in June often agree international moves for the summer during the January transfer window. They do not have to wait until May to do so, which they would have had to if they were moving

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[30] Rule 75 of the EFL Regulations, available at www.efl.com/-more/governance/efl-rules—regulations/section-6—Players/ (last visited on 16 January 2019). Any Players violating the EFL rules can be found guilty of misconduct.

[31] Rule T.2 of the Premier League Rules.

[32] Rule T.3 of the Premier League Rules.

[33] Rules T.5 to T.7 of the Premier League Rules.

domestically. For example, during the January 2019 transfer window we saw Aaron Ramsey (Arsenal FC) agree a five year contract with Juventus FC reportedly worth £36m. Ramsey moved to Juventus on a free transfer at the end of the 2018/19 Premier League season.

Ramsey's deal with Juventus highlights the potential competitive disadvantage that domestic clubs have compared to its foreign counterparts when trying to sign players on expiring contracts. Juventus did not have to wait until May 2019 to approach Ramsey, unlike Manchester United or Chelsea (for example). This competitive disadvantage is due to the discrepancy between the domestic regulations and the FIFA RSTP, so it remains to be seen whether this is something that will be addressed by the Premier League in the future.

2.7 Inducement / 'tapping up'

Subject to the rules on approaching players noted above, there are rules against inducement (colloquially referred to in England as 'tapping up'). Pursuant to Rule T.9 of the Premier League rules, unless specifically provided for in the contract, no club can induce or attempt to induce a player to sign a contract by directly or indirectly offering him (or anyone connected to him) a benefit or payment, and no player can accept such an offer. Clubs also cannot make any public statements expressing interest in a contracted player, as this can be treated as an indirect approach for the player which can be subject to disciplinary sanctions.[34] There is also a rule (B.16) which states that "in all matters and transactions relating to the League each Club shall behave towards each other Club and the League with the utmost good faith". Players and clubs can be subject to disciplinary sanctions for violating these rules.

The EFL has similar rules, namely Rule 75,[35] under which parties guilty of misconduct can be subject to disciplinary sanctions including a refusal to register the player who had been found to have been induced. The potential sanctions and the enforcement procedure is similar for clubs in the Premier League and the EFL. If the club(s) involved are in the EFL, the complaint(s) are simply made to the EFL instead of the Premier League.

Despite rules explicitly prohibiting the practice of 'tapping up', there have not been many publicly disclosed cases where parties have been found guilty of the practice. In fact, you would need to go as far back as 2005 to the Ashley Cole case to find a high profile 'tapping up' matter that led to sanctions for the parties involved. Cole, who was an Arsenal FC player at the time, was found guilty of meeting with Chelsea FC representatives (including former manager José Mourinho and former Chief Executive Peter Kenyon) to discuss a potential transfer

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[34] Rule T.8 of the Premier League Rules.

[35] See Rule 75 of the EFL Regulations, available at www.efl.com/-more/governance/efl-rules—regulations/section-6—Players/ (last visited on 16 January 2019): "Any Players violating the EFL rules can be found guilty of misconduct".

without Arsenal's permission. Cole was fined £100,000 for his offence, Chelsea was fined £300,000 for 'tapping up' the defender, and Jose Mourinho was fined £200,000 for his role in the affair. On appeal the Premier League Appeals Committee reduced Cole's fine by 25% to £75,000, and Mourinho's fine was also reduced to £75,000. Cole appealed the decision to the CAS, but the appeal was unsuccessful on jurisdiction grounds.[36]

There have been more recent examples of alleged 'tapping up' where clubs have threatened to take action, like for example when Southampton FC reported Liverpool FC to the Premier League in 2017 for allegedly 'tapping up' Virgil van Dijk. However, Southampton ultimately did not pursue their complaint further. Liverpool issued an apology and escaped punishment from the Premier League. Further, Liverpool eventually went on to sign the player in January 2018.

This is perhaps a reflection of the reality that despite the rules prohibiting it, the practice of 'tapping up' is common place in football. It is unlikely that many transfers (at least at Premier League level) have not had some level of direct or indirect approaches of players by agents beforehand. Clubs might complain about it when their players are being the ones being approached, but they themselves are often likely to be guilty of doing the same thing with their targets.

Lastly, with regards to 'tapping up', it is interesting to note once again the discrepancy between domestic and international rules. Whilst English football attempts to prevent the behaviour through the abovementioned rules, the FIFA RSTP does not specifically address the issue of 'tapping up'. Article 18(3) of the FIFA RSTP merely states that clubs must "inform" the player's current club in writing before negotiating with the player (i.e. it does not actually need the current club's consent), and it is free to conclude a contract within 6 months of the current contract expiring. So whilst we often hear cases of clubs threatening to report other clubs to FIFA for alleged 'tapping up', we have not actually seen (at least no cases have been publicly disclosed) any formal disciplinary sanctions imposed on those clubs.

2.8 Payment of transfer fees

All transfer fees, loan fees and contingent payments payable to a Premier League or EFL club must be paid by a buying club into a Compensation Fee Account of the Premier League or EFL Board.[37] Once the payments are received in that account, the relevant Board pays the amounts due to the selling club. If the buying club is an international club, the amounts are paid into a clearing house run by the FA.[38]

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[36] CAS 2005/A/952 *Ashley Cole v. FAPL*, award of 24 January 2006.
[37] Rule V.29 of the Premier League Rules.
[38] Rule V.35 of the Premier League Rules.

If a player is sold on to another club before the full transfer fee is paid by his former club, the former club must pay the full balance of the transfer fee into the Compensation Fee Account unless expressly agreed otherwise by the Board.[39]

3. Employment contracts (standard contract and main clauses)

The sports industry is difficult to compare to other industries and is therefore unique from an employment law context. Football, in turn, is difficult to compare to other sports and is therefore highly unique from an employment law context. Whilst footballers are employees for the purposes of English employment law and therefore enjoy a wide variety of theoretical rights and protections, employment matters in football are usually played out in a world of their own.

3.1 Players' contracts

In England, a standard playing contract exists, with regard to all professional players in Premier League (the "Playing Contract").[40] The central terms of the Playing Contract have been agreed by the Professional Footballers' Association, the body representing the interests of footballers in England ("the PFA").

There is also a standard EFL Professional Playing Contract, which contains many similar terms, but for the purpose of this chapter, we propose to summarise some of the key terms of the Playing Contract and highlight cases which illustrate the practical operation of these terms.

3.2 Players' contractual obligations

There are a vast number of player obligations contained within the Playing Contract, such as the duty to comply with the "Rules" (defined as the statutes and regulations of FIFA, UEFA, The FA Rules, the PL or FL Rules (as applicable as clubs may be relegated during the term of the Playing Contract), the Code of Practice (agreed by the Premier League, FA and PFA) and the 'Club Rules'. This ensures that any breach by the player of such rules may be sanctioned by the club (as well as the football authorities), enabling a club to send a clear public message that it does not condone the misconduct of any of its players (e.g. Luis Suarez was fined by Liverpool FC in April 2013 for biting Branislav Ivanoviæ in advance of any disciplinary action taken by The FA/ e.g. Hugo Lloris was fined £250,000 by Tottenham in September 2018 after admitting to and being convicted of a drink driving offence which took place on 24 August 2018).

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[39] Rule V.34 of the Premier League Rules.

[40] A copy of the standard playing contract can be found in the Premier League Handbook every year. For example, in the 2018/19 Premier League Handbook (available at www.premierleague.com/publications), a copy of the Premier League standard contract can be found as 'Form 18' on page 301 of the Handbook. Similarly, a copy of the EFL standard contract can be found as 'Form 17' on page 273.

One duty of the player contained within the Playing Contract which has come under scrutiny is the duty "*to participate in any match for which he is selected to play for the Club*" (clause 3.1.1.2). This, together with the far reaching obligation to "*comply with and act in accordance with the lawful instruction of any authorised official of the Club*" were the subject of much publicity when Carlos Tevez, whilst registered with Manchester City, allegedly refused to warm up as a substitute in a Champions League match against Bayern Munich in October 2011. Shortly after this Tevez flew home to Argentina without the permission of the club, again breaching his contractual obligations to attend training and match preparation and generally failing to act in accordance with the lawful instructions of his club (these are further express obligations under clause 3 of the Playing Contract).

Clause 3.1.3 states that "*except to the extent prevented by injury or illness to maintain a high standard of physical fitness at all times and not to indulge in any activity sport or practice which might endanger such fitness or inhibit his mental or physical ability to play practise or train*". Such a restriction is wide ranging and will prevent players from engaging in 'adrenaline activities' (e.g. bungee jumping/ sky diving/ skiing etc.). It is to be noted that this clause provides a catch all for those players who may also indulge in a 'partying lifestyle'. Understandably the clubs will want to protect their assets.

This is also supported by clause 3.2.1 which provides that a player will not "*undertake or be involved in any activity or practice which will knowingly cause to be void or voidable or which will invoke any exclusion of the Player's cover pursuant to any policy of insurance maintained for the benefit of the Club on the life of the Player or covering his physical well-being (including injury and incapacity and treatment thereof)*".

Clause 3.2.5 provides that a player shall not "*knowingly or recklessly do write or say anything or omit to do anything which is likely to bring the Club or the game of football into disrepute cause the Player or the Club to be in breach of the Rules or case damage to the Club or its officers or employees or any match official*". Such a provision is of increasing importance in an age when players are social media 'influencers' in their own right (on all manner of topics not limited to football), with millions of followers each. A reckless tweet can clearly impact detrimentally not only on their own reputation but that of their club (and sponsors).

Examples of such tweets include, when Rio Ferdinand was found guilty of improper conduct in August 2014 and fined £45,000 by the FA. This came as the FA viewed Ferdinand's endorsement of a tweet which referred to, his then England teammate, Ashley Cole as a "choc ice" had brought the game into disrepute.

Ferdinand was subject to further disciplinary action in 2014, whilst playing for Queens Park Rangers. The centre back was banned for three games and fined £25,000 for referring to a female twitter user as a "sket", a term defined as "a promiscuous girl or woman".

Following an Independent Regulatory Commission hearing in September 2016, Andre Gray was banned for four games, fined £25,000, warned as to his future conduct and ordered to attend an FA education course. This came after a series of historic homophobic tweets from 2012 resurfaced some of which stated that gay people should die.

3.3 Club's contractual obligations

Like the players, clubs are obliged to comply with the "Rules" and Club Rules.

Clause 6.1.3 provides that the club shall "*promptly arrange appropriate medical and dental examinations and treatment for the Player at the Club's expense in respect of any injury to or illness (including mental illness or disorder) of the Player save where such injury or illness is caused by an activity or practice on the part of the Player which breaches clause 3.2.1 hereof in which case the Club shall only be obliged to arrange and pay for treatment to the extent that the cost thereof remains covered by the Club's policy of medical insurance…*".

Clause 6.1.6 states that a club *"shall at all times maintain and observe a proper health and safety policy for the security safety and physical well being of the Player when carrying out his duties under this contract.*"

Whilst rarely used, Clause 6.1.8 envisages the club supporting the player to plan for a career after football and to "*give the Player every opportunity compatible with his obligations under this contract to follow any course of further education or vocational training which he wishes to undertake and give positive support to the Player in undertaking such education and training*".

Clause 6.19 states that club shall "*release the Player as required for the purposes of fulfilling the obligations in respect of representative matches to his national association pursuant to the statutes and regulations of FIFA*".

3.4 Remuneration and bonuses

The employment contracts of players include provisions confirming their annual basic salary. The Playing Contract may provide for the salary figure to remain constant for the duration of the contract, or to increase each football season, provided the club remain within the same football league, and/or to increase in the event of promotion to a higher league or decrease in the event of relegation to a lower league. A player, may receive a signing on fee, which is to be paid in equal instalments over the term of his playing contract. He may also receive loyalty bonuses dependent on remaining with the club for specified periods.

Bonus provisions in players' employment contracts typically include positional bonuses (referable to the club's final league position at the end of the season), promotional bonuses (if the club is promoted to a higher league at the end

of a season) and bonuses referable to the club's achievements in both domestic and European cup competitions, in terms of qualification and reaching certain stages of the competition. Match bonuses referable to games played (in the starting XI or as a substitute) and bonuses for a win/draw/goals scored are also applicable to players (often as part of the standard club bonus scheme).

Once the bonus figures have been agreed, the contentious issues with regard to bonus entitlements which tend to be the focus of negotiations, relate to the criteria applied by the clubs in order for the player to qualify for the bonuses. Such criteria may include the player having to be employed on a certain date in the future and the player being employed for the duration of the relevant season or the competition. By way of a compromise, the parties, on occasions, agree to a pro rata bonus payment in the event that the player is not employed for the duration of the relevant season or competition or at a date specified in the contract. In this case, a set formula for calculating the pro rata entitlement is often included within the contract.

In the event that a club wishes to amend the conditions of a player's employment (e.g. increase his salary if he is performing particularly well), under PL Rule T.27, the club is obliged to extend the term of the Playing Contract by a Year.

Under PL Rule T.13, all the terms relating to player's remuneration must be contained within the Playing Contract (and related contracts such as an Image Rights Agreement) and disclosed to the PL and FA.

3.5 Length of contract

Pursuant to PL Rule T.11 a contract between a club and a player may be for any period of time provided the expiry date is 30 June. Exceptions to this are: T.11.1, contracts with players under the age of 18 are not capable of lasting longer than three years, T.11.2, contracts no greater than one month in duration and T.11.3, week by week contracts.

In accordance with T.12, a player under the age of 17 year may not enter into a contract of employment with a club and may only be registered as an academy player.

3.6 Disciplinary

If, due to an action of a player, a club wishes to discipline a player, they must do so according to the procedure set out in Schedule 1 of the Playing Contract. This firstly involves a full investigation into the case, the player will then be given full details in writing of the complaint against him and he will be given an opportunity to state his case either personally or through his representative at a disciplinary hearing. The player then has a right of appeal to the club Board against any disciplinary decision. This procedure aims to ensure that the club behaves fairly in

investigating and dealing with allegations of misconduct with a view to helping and encouraging all employees of the club to achieve and maintain appropriate standards of conduct and performance.

In the event that it is found that the player has indeed committed a breach of contract, clause 4.1 of the Playing Contract provides for a scale of sanctions ranging from an oral or written warning to a fine not exceeding two weeks basic wages for a first offence (unless otherwise approved by the PFA) and up to four weeks wages for subsequent offences in any consecutive period of twelve months.

It is also possible for the club to "*order the Player not to attend any of the Club's premises for a maximum period of four weeks. In circumstances which would entitle a Club to dismiss the Player under the contract, the Club may instead suspend and / or fine the Player for a maximum period of six weeks*".

Within these parameters, clubs (and managers) have wide discretion to discipline players. By way of example, in the 2018/19 season Watford introduced a fine of £100 per minute that players arrive late for training. José Mourinho also confirmed that Anthony Martial was fined for failing to return to the USA 2017/18 pre-season tour after the birth of his child in France.

3.7 What rights does a Club have to exploit a Player's image rights?

Unless a player has assigned his image rights to an image rights company (in which case payments in respect of the club's use of such image will be dealt with in a separate image rights agreement), under the Playing Contract, players grant the right to their club, for the term of the Playing Contract, to exploit their image rights in a "Club Context". Such rights can be used in relation to the club, club products and services, the League's licensed products, services and sponsors. This is subject to the use of the player's image (either individually or with not more than two players) being no greater than the average usage of all regular first team players. The player's image should not be used to imply any brand or product endorsement by the player.

Clause 4.3 expressly acknowledges and respects that a player may be bound by existing commercial arrangements made either in his personal capacity or in his capacity as a member of his national team, but subject to this, provides that a player, during the term of the Playing Contract shall not "*do anything to promote, endorse or provide promotional marketing or advertising services or exploit the Players Image either (a) in relation to any person in respect of such persons products, brand or services which conflict or compete with any of the Clubs branded or football related products (including the Strip) or any products brands or services of the Clubs two main sponsors/commercial partners or of the Leagues one principal sponsor or (b) for the League*".

3.8 Discrimination clauses

After high profile cases in which Chelsea's John Terry and Liverpool's Luis Suarez both received bans for racial abuse, the PFA encouraged clubs to include a clause in the Playing Contracts making discriminatory abuse a gross misconduct offence that could lead to immediate dismissal by the club. Although the decision on whether to take action will ultimately rest on the employers, Gordon Taylor, the Chief Executive of the PFA, pointed out that any club failing to act "*could be held responsible for condoning* [racism]".

Whilst this clause does not form part of the Playing Contract, the inclusion of this clause in an annex to the Playing Contract is deemed to be good practice and is used by many clubs. As well as racist and homophobic language, players will also be warned not to use discriminatory terms referring to religion or disability in accordance with the Equality Act.

3.9 Player pension

The Playing Contract also provides for contributions to be made to a Professional Footballers' Pension Scheme the 2018/19 Season Contract provides for a contribution of £5,208 per year, such sums to be funded by the levy on transfer fees. The player can of course make additional contributions to this scheme. The pension will generally be payable when a player turns 55.

3.10 Illness injury

The Playing Contract provides for an extensive period of sick pay in the event of a long term sickness or injury (more so when the injury/ illness has not been caused by a player's breach of contract).

Clause 7.2 provides that if the "*Player shall become incapacitated from playing by reason of any injury or illness (including mental illness or disorder) the Club shall pay to the Player during such period of incapacity or the period of this contract (whichever is the shorter) the following amounts of remuneration for the following periods:*

7.2.1 in the case of a Player Injury his basic wage over the first eighteen months and one half of his basic wage for the remainder of his period of incapacity;

7.2.2 in the case of any other injury or illness his basic wage over the first twelve months and one half of his basic wage for the remainder of his period of incapacity".

Player Injury is defined as "*an injury or illness (including mental illness or disorder) other than any injury or illness which is directly caused or results directly from a breach of the Player of his obligations under clause 3.2.1 of this contract or any other of his obligations hereunder amounting to Gross Misconduct*".

Clause 7.3 ensures that a player retains entitlement to relevant bonus payments during such period of sick leave.

3.11 Damages

Many English clubs now include a clause in an annex to the Playing Contract which expressly provides for criteria to be taken into account when assessing the compensation to be awarded in the event of the player's material breach and/or early termination of the Playing Contract (whether pursuant to Article 17 of the FIFA RSTP or otherwise). This may include criteria such as the age, position, any international appearances of the player, value of any image rights etc. and/or provide for liquidated damages (e.g. a genuine pre-estimate of the club's loss). It is to be noted that under English law, penalty clauses are not enforceable as they are not considered to be a genuine pre-estimate of loss.[41]

3.12 Buy-out clauses

A buy-out clause is distinct from a release clause which provides for an opportunity for a player to open discussions with another club with a view to a transfer when a specified sum of money is offered to the player's current club from a new club. This type of release clause is more common in English playing contracts. However, even if the release clause is met, that does not necessarily oblige a club to negotiate with a new club and sell the player for a fixed sum, as this will all depend on the precise wording of the release clause. A good example of this was Arsenal's pursuit of Luis Suarez in the summer of 2013. Whilst it appeared that Arsenal may have triggered a buy-out clause of £40m when they submitted a £40,000,001 bid, to Arsenal and Suarez's frustration, Liverpool refused to negotiate and sell. The authors understand that the clause in the Playing Contract did not place an absolute obligation on Liverpool to negotiate and sell even if the release clause figure was met. Liverpool ultimately managed to hold on to Suarez for another season.

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[41] Penalty clauses are unenforceable in English law on grounds of public policy, including unconscionable or oppressive provisions which aim to punish the party in breach, instead of protecting the legitimate interests of the innocent party. See the landmark joint judgment by the English Supreme Court in the cases of *Cavendish Square Holding BV v Talal El Makdessi* and *ParkingEye Ltd v Beavis [2015] UKSC 67*. It is accepted that the rule against penalty clauses is an infringement of parties' freedom of contract, so is used sparingly (*Euro London Appointments Ltd v Claessens International Ltd [2006] EWCA Civ 385*, Chadwick LJ). Where a liquidated damages clause is considered to be a penalty clause, the strict legal position is that the clause remains in the contract, but it is unenforceable beyond the claimant's actual loss (see *Jobson v Johnson [1989] WLR 1026*, 1040 Nicholls LJ). Accordingly, the court will ordinarily assess damages payable to the claimant in accordance with the common law principles for the assessment of damages which include the rules on causation, mitigation and remoteness of damage.

4. Transfer agreements

The transfer agreements for the transfer of players domestically does not tend to differ materially from the agreements used in respect of international transfers (dealt with elsewhere in this book). The FA, PL or EFL do not prescribe that transfer agreements take a specific form, and unlike playing contracts, there is not the concept of a standard/template transfer agreement.

Key provisions to bear in mind when dealing with a transfer in England however are:

- prior consent is required from The FA when a club proposes to acquire an interest in a player owned by a foreign club or a third party and the following conditions must be met:
  - (i) all sums payable to a third party must be paid prior to the expiry of the initial contract of employment of the player;
  - (ii) all sums are payable via The FA's designated account;
  - (iii) the club grants no right, commits to any payment or confers any benefit to any party in relation to the future sale of the player, unless it agrees to pay a sell on fee to the player's former club;
- any third party's existing interest in the registration of the player will end on his registration with The FA; and
- the club must lodge the agreement to buy out the third party interest with The FA within 5 working days of its completion.[42]

Prior consent is also required from the PL Board for:

- any contract the club proposes to enter into which gives the club or any third party to the contract any rights relating to the future transfer of the player from or to the club or any rights relating to the employment of the player;[43] or
- any contract the club proposes to enter into, other than a representation or image contract, which gives the club or a third party to the proposed contract, a right to receive payments in respect of the player.[44]

All transfer documentation must be lodged with the relevant league and FA within 5 days of execution.

From 30 June 2017, the PL and EFL share an on-line system for the transfer of professional players (similar to a domestic transfer system in a sense).

The total transfer fee payable must be paid within the term of the initial playing contract.

Domestic transfer fees are payable via a Compensation Fee Account held by the Premier League.

When the buying club pays the first instalment of the transfer fee, it must also pay VAT on the total transfer fee.

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[42] The FA Handbook 2018/2019, Third Party Interest in Players Regulations Section D.

[43] Premier League handbook 2017/2018 Section U, clause U.7, 209.

[44] Premier League handbook 2017/2018 Section U, clause U.8, 209.

In respect of a Intermediary's involvement in the transfer, the necessary Intermediary forms must be completed.

Pursuant to the FA Regulations on working with Intermediaries, it is necessary for each Intermediary involved in the domestic transfer, whether for the club, player, both (or both) to be registered with the FA (and lodge a copy of the relevant representation contract within 10 days of execution and in any event no later than the date of the transaction) to complete the necessary Intermediary declaration forms (IM1 forms),[45] in respect of their role and the commission to be paid.

When registering players, clubs must be mindful of the need to comply with the requirements of the domestic HGPR (in a 25 man squad there must be at least 8 Home Grown Players (i.e. those players who have trained with an English club for at least 3 years before they turn 21)).

Another important requirement when signing foreign players (from outside the EU/EEA at present) is whether the player satisfies the requirements of a Governing Body Endorsement (GBE/work permit). A player satisfies the requirements of a GBE if his national team is ranked in the top 50 national teams in the world (FIFA ranking) and has played the required percentage of matches which is:

– for national associations ranked 1-10 in the Aggregated FIFA world rankings – 30% and above;
– for national associations ranked 11-20 in the Aggregated FIFA world rankings – 45% and above;
– for national associations ranked 21-30 in the Aggregated FIFA world rankings – 60% and above;
– for national associations ranked 31-50 in the Aggregated FIFA world rankings – 75% and above.

In the event that the player does not satisfy the criteria to be granted a GBE automatically, there is scope to apply for a Review before an Exceptions Panel (based on objective criteria like transfer fee and wages payable as well as the level at which the player has previously performed).

5. Termination of contracts

5.1 Termination of playing contracts

It is very rare for a professional footballer's Playing Contract to be terminated, both from the player and the club perspective. The vast majority of contracts come to an end naturally or by mutual consent to enable a transfer to occur. When Playing Contracts *are* terminated, it is often because of serious breaches of contract

[45] A copy of the IM1 form can be found on The FA website, at: www.thefa.com/football-rules-governance/policies/intermediaries/standard-forms (last visited on 28 January 2019).

and gross misconduct although, the financial implications of following through with the right to terminate are often prohibitive for clubs.

We set out various ways in which an employment contract between a player and club can be brought to an end below.

5.1.1 Expiry of contracts – Capped compensation

Non-renewal of a fixed-term contract upon expiry is deemed to be a dismissal. Clause 19 of the Playing Contract applies to this situation, where a club does not make an offer of re-employment to a player by the date of expiry of his existing contract and also to the situation where the club does make an offer of a new contract to the player, but the new contract is on terms that are less favourable than the terms that applied to the player over the last twelve months of his Playing Contract (or the contract length if shorter).

In such circumstances, sub-clause 19.2 of the Playing Contract provides that the club will continue to pay to the player, post expiry of his contract, a payment equal to his weekly wage for a period of up to one month or until he signs for another club, whichever period is the shorter. If the player secures a new contract within the one month period, but his new salary is less than his salary paid by the old club, he will receive a payment, equivalent to the difference between the two salaries for the remainder of the one month period.

Pursuant to sub-clause 19.3, the maximum amount payable to the player under clause 19.2, is double the maximum compensatory award which an Employment Tribunal can award for a claim for unfair dismissal (£83,682 as at 2018). The payment to be made to the player pursuant to sub-clauses 19.2 and 19.3, is conditional upon the player refraining from submitting a claim to the Employment Tribunal for unfair dismissal and/or a statutory redundancy payment. Sub-clause 19.3 provides for maximum payments of double the statutory cap so therefore players in the top leagues, such as the Championship and Premier League, would receive more money pursuant to clause 19 than they could hope to achieve if they pursued a claim for unfair dismissal. In summary, there is little incentive for players playing in the Premier League and Championship in particular to bring an unfair dismissal claim following non-renewal of their contract.

It is worth noting that clause 19 only applies to a dismissal arising from non-renewal of a fixed-term contract. It does not apply to situations where either the club or the player terminate the contract prior to the expiry date, in breach or otherwise.

5.1.2 Mutual agreement

When a club wishes a player to transfer, at the club's instigation, it may be that there are payments such as signing on fees or image rights payments which are still due to the player for the remainder of his contract, which the player may

request from the club in consideration for him consenting to the transfer of his registration.

In the event that the club pays such sums to the player, it will generally do so under the terms of a 'settlement agreement' whereby a current or former employee or worker agrees to waive or settle a claim (or more usually, various claims) against the employer in return for a payment, usually on termination of employment.

Although common law claims (such as breach of contract or negligence) can be waived or settled by way of any legally binding written or oral contract, certain statutory employment rights and discrimination claims (such as the right not to be discriminated against, unfair dismissal, constructive dismissal and unlawful deduction from wages) can only be waived or settled by way of Advisory, Conciliation and Arbitration Service (ACAS)[46] conciliation or a settlement agreement that meets certain statutory requirements. Such statutory requirements for a settlement agreement include the employee receiving legal advice from a relevant independent adviser on the terms and effect of the proposed agreement and its effect on the employee's ability to pursue the statutory rights in question before an Employment Tribunal.

When entering into a settlement agreement, the employer's aim will be to achieve an effective waiver of all possible claims that the employee may have against it. It should be noted that it is not possible to waive certain statutory employment rights claims, claims in relation to accrued pension rights and claims for personal injury that might arise in the future.

The main clause, from the employee's perspective, is the compensation clause which confirms the sum that the employee will receive, in consideration for the termination of his employment and him entering into the settlement agreement and when it will be paid. The clause will confirm whether some or all of the payment is subject to statutory deductions (including income tax and national insurance contributions). A payment made to an employee on the termination of employment pursuant to a settlement agreement, is either taxable in the normal way or taxed as a termination payment.

A waiver of claims by the employee, including a warranty that the claims listed are the only claims which the employee has against the employer is the most important clause for the employer, being confirmation by the employee that he waives any and all claims he may against the employer, save for claims that cannot be waived.

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[46] ACAS is an organisation which provides information, advice, training, conciliation and other services for employers and employees to help prevent or resolve workplace disputes. For more information regarding ACAS, please see www.acas.org.uk/index.aspx?articleid=1342 (last visited on 28 January 2019).

5.1.3 Player termination

Grounds for a player to terminate the Playing Contract are limited, under clause 11, to circumstances in which the club is "*guilty of serious or persistent breach of the terms and conditions"* of the Playing Contract or if the club fails to pay any remuneration or other payments or bonuses due to the player and still fails to make such payment within 14 days of the due date for payment.

Non-payment of players is a fairly rare occurrence, however, it did happen at the start of the 2019/20 season at both Bury Football Club and Bolton Wanderers Football Club. Bury FC's financial difficulties were such that it was ultimately kicked out of the EFL in August 2019[1] and faces a winding up petition from HMRC. Bolton Wanderers barely escaped the same fate.

Prior to the Bury and Bolton examples, the last high profile instance of non-payment to players occurred at Portsmouth Football club, which was unable to pay players wages in January 2012 due to the club being in severe financial difficulties. Whilst the players had the right to terminate their respective contracts with the club, agreement was made with the club's administrators for the deferral of wages so that the club could address its financial difficulties. A similar situation arose at Glasgow Rangers prior to its liquidation.

5.1.4 What is the position if a player becomes seriously injured?

According to clause 8 of the Playing Contract, in the event that the player suffers permanent incapacity or is incapacitated from playing by reason of or resulting from injury or illness (including mental illness or disorder) for a period (consecutive or in the aggregate) amounting to eighteen months in any consecutive period of twenty months, the club shall be entitled to serve a notice upon the player terminating the Playing Contract.

This was the case with former West Ham and England striker Dean Ashton, once touted as the ideal England strike partner for Wayne Rooney. Ashton's career was ended after breaking his ankle during training with England in August 2006 leading to the termination of his contract by West Ham.

5.1.5 Club termination

Clause 10 of the Playing Contract makes provision for a club to terminate a player's contract by way of 14 days' written notice in the event that the player:

a) is guilty of 'gross misconduct'
b) disregards a final written warning (as part of disciplinary procedures)
c) is convicted of a criminal offence (which entails an imprisonment of three months or more).

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[47] BBC Sport, '*Bury expelled by English Football League after takeover collapses*', 28 August 2019, available at www.bbc.co.uk/sport/football/49451896 (last visited on 22 October 2019).

Football is an industry in which employers are generally reluctant to terminate the employment contract of an employee, even where there are clear grounds to establish his material breach of contract. This is due to the financial value in a player's registration when he is transferred during the currency of his Playing Contract.

If the club terminates the player's employment for any reason under clause 10 of the Playing Contract, the club must, within seven days thereafter notify the player in writing of the full reasons for the action taken.

The player has a right of appeal to the League against the decision of the club and such appeal shall be determined in accordance with the procedures applicable pursuant to the League Rules.

The operation of this clause is illustrated by the case of the former Chelsea player Adrian Mutu who was dismissed by the club after testing positive for cocaine use in 2004, which Chelsea considered to be gross misconduct. Following Chelsea's termination of the Playing Contract, the club commenced legal proceedings against Mutu for compensation for his breach of Contract (e.g. part of the £15.8 million spent in acquiring the player from Parma). After numerous cases heard before the FIFA Dispute Resolution Chamber and the Court of Arbitration for Sport ("CAS"), Mutu was ordered to pay the sum of £14.5 million. Due to difficulties in enforcing this award against him, Chelsea attempted to recover the damages from the player's subsequent clubs, Livorno and Juventus, in accordance with the principle of joint and several liability under Article 17.2 of the FIFA Regulations. However, this was dismissed by CAS in 2015, leaving the player solely liable.

After Mutu failed to successfully appeal the decision of both CAS and the Swiss Federal Tribunal, in July 2010 he submitted an appeal to the European Court of Human Rights ("ECHR"). Mutu's appeal was made on the grounds that: his Article 6 rights had been breach as the CAS panel was not independent and impartial; his Article 4 rights had been breached as the amount of damages awarded constituted slavery as he would have to work for the club for the rest of his life in an attempt to buy back his freedom; and his Article 1 of Protocol No.1 rights were also breached as due to the size of the damages he would consequently be deprived of the right to ownership for the rest of his life. Unfortunately for Mutu in October 2018 his appeal was dismissed by the ECHR. Chelsea have since confirmed they will be pursing the player for the damages.

This extensive legal battle perhaps illustrates why it is so rare that a club terminates its employment relationship and the struggle they may find themselves in to recover their losses if they do terminate.

A club is also able to terminate a player's Playing Contract *"if he is convicted of any criminal offence where the punishment consists of a sentence of imprisonment of three months or more"*. An example of this can be seen in former Wigan Athletic striker Marlon King who was convicted of sexual assault and causing actual bodily harm and jailed for 18 months, as a consequence of which, his Playing Contract with Wigan was terminated. Another example is

Sheffield United's dismissal of the Welsh player Ched Evans, who was convicted of rape in 2012 and sentenced to five years in prison, of which he served two and a half years. However, his conviction was overturned after a retrial at Cardiff Crown Court in 2016 and Ched Evans is now suing his original lawyers for loss of earnings.

5.1.6 Players' value to a Club

Whilst there are examples of clubs terminating a player's Playing Contract as a result of gross misconduct - and leaving aside for a moment the drawn out legal disputes that clubs would want to avoid - the reality is that players are highly valuable assets on a club's balance sheet and simply terminating a contract and disposing of a player rarely makes financial sense from a club's perspective. Manchester City's handling of Carlos Tevez in the example above is an ideal example of this.

Further, even if a club was entitled to terminate a contract by providing 14 days' notice due to a player's misconduct, a player's value to the team on the field is often the single biggest factor in a club's decision in whether to do so. So while Chelsea terminated Mutu's contract (a player who was not a key part of their squad) for failing a drugs test, Manchester United stuck by Rio Ferdinand (one of their star players) even after his 8 month ban for missing a drug test in 2003. Similarly, even after Luis Suarez was found guilty and handed an eight-match ban for racially abusing Patrice Evra in 2011, instead of criticising Suarez for his behaviour, Liverpool did the opposite and supported their star player. The club also stood by Suarez after his 10 match ban for biting Chelsea's Branislav Ivanovic in 2013. Another great example is Eric Cantona who did not have his contract terminated by Manchester United even after his infamous kung-fu kick on a Crystal Palace fan in 1995. Despite a long term ban and a criminal trial, Manchester United did not terminate Cantona's contract, and the player ultimately returned to the team and played a key role in helping the club win more trophies. It is difficult to imagine whether Manchester United and/or Liverpool would have acted in the same way and stood by their players if the players involved in these incidents were not highly valuable stars on and off the field - like Ferdinand, Suarez and Cantona undoubtedly were.

6. National training compensation and solidarity mechanisms / Levy on transfers

6.1 National training compensation

Where a player has been offered a new contract by his club in accordance with the relevant Premier League or EFL Rules (see section 2.6 above), the player is free to reject that offer and look to seek registration with any club of his choice on

the expiry of his contract of employment. However, the club for which he signs is bound by a set of regulations should the player be under the age of 24.[48]

If the player is under the age of 24 on the 30th June in the year that his Playing Contract with a club has expired then the club signing the player will be obliged to compensate his former club for the former club's training and development of the player. This is effectively a domestic system of 'Training Compensation'. The rationale is to compensate a club who has trained and developed the player up to the point that he moves to another club on the expiry of his Playing Contract.

There are effectively two elements to the calculation of compensations:

a) a formulaic approach for age groups under 9 to under 16 which is in line with the *Elite Player Performance Plan* ("EPPP") which states set amounts of compensation payable in respect of a Player's early years of training and development; and
b) a non-formulaic approach for years 16-24 overseen by the Professional Footballers Compensation Committee ("PFCC").

Prior to 2012, when the new system was introduced, young professional players could move from Academy to Academy and the PFCC would determine any compensation at a tribunal, if the clubs were unable to reach agreement. The formulaic approach for the earlier years came into existence following the introduction of the EPPP in 2012.

The EPPP was created following consultations between the Premier League, EFL and The FA. The intent was to help to create more Home-Grown Players and empower the individual players by helping them to maximise their potential in football, education and life. The idea was to put the player's well-being and personal development first.

Clubs are independently audited under the EPPP system and given a category status of 1 to 4, 1 being the most elite. Many different factors are taken into account in allocating the status including productivity rates, training facilities, level of coaching, education and welfare provisions.

Like the FIFA international Training Compensation rules the EPPP creates a fixed fee system for calculating how much compensation is due for the early years of training. This fixed fee will be based on the time the player has spent at the club, the age of the player and the category of the Academy.

Age Group of the Academy Player	Category of the Academy of the Training Club at the relevant time	Applicable Annual Fixed Fee
Under 9 to Under 11	All Categories	£3,000
Under 12 to Under 16	Cat 1	£40,000
Under 12 to Under 16	Cat 2	£25,000
Under 12 to Under 16	Cat 3	£12,500

[48] As per s67 of the EFL's Rules & Regulations and sV17 of the Premier League Handbook.

Further fixed fees are payable on the player making first team appearances in any professional senior competition.

	Divisional Status of the Club			
Number of First Team Appearances	Premier League Club	Football League Championship Club	Football League 1 Club	Football League 2 Club
10	£150,000	£25,000	£10,000	£5,000
20	£150,000	£25,000	£10,000	£5,000
30	£150,000	£25,000	£10,000	£5,000
40	£150,000	£25,000	£10,000	£5,000
50	£150,000	£25,000	£10,000	£5,000
60	£150,000	£25,000	£10,000	£5,000
70	£100,000	£25,000	£10,000	£5,000
80	£100,000	£25,000	£10,000	£5,000
90	£100,000	£25,000	£10,000	£5,000
100	£100,000	£25,000	£10,000	£5,000

Unlike the FIFA Regulations, where Training Compensation is only due when a player signs their first professional contract or each time he is transferred before he turns 23, under EPPP rules the set amounts of compensation will be due as soon as the player registers for a new academy under the age of 16 (i.e. a professional contract is not a condition of payment).

On one hand it can be argued why shouldn't a club who has provided training and pastoral care for a young player over a period of years be compensated for the time and money invested. On the other hand, others question whether it is fair, for example, that a 15-year-old player who has spent three years at a Category 1 Academy could demand a compensation fee of £120,000?

For players over the age of 16 but under 24 the amount of compensation is determined in a more subjective, non-formulaic manner. The two clubs in most cases agree a compensation sum themselves. However, if the two clubs cannot reach an agreement as they both value the player differently the matter can be referred by either club to the PFCC for determination of the compensation.

The PFCC is incorporated under the rules of both the EFL and Premier League. It has jurisdiction to act as an arbitrator when two English clubs have failed to agree on the amount of compensation to be paid. The PFCC is comprised of an Independent Chairman who will have a legal background, representatives from the EFL or Premier League (as appropriate), a representative from the PFA and a representative from the League Managers Association ("LMA"). The PFCC hearing is conducted in private and its decision is final and binding.

The decision making is based on a subjective process. Both clubs are asked to value the player and submit evidence to support their valuations. The training club can base its valuation of the player on costs incurred for living accommodation, training and playing facilities, scouting, coaching and admin staff, education and welfare requirements, playing and training kit, medical and first aid facilities and the cost of matched and overseas tours.

The PFCC, in making its decision, will look at various factors:

- the status of both of the clubs in an attempt to assess the clubs' level of commitment in training and developing players;
- the age of the player to assess the future potential of the player and the likelihood they will succeed as a professional and at what standard;
- whether the player was trained in accordance with Youth Development Rules and the amount of time they were trained;
- whether the former club had paid a transfer fee or compensation previously for the player;
- how long the player was registered with the former club and with how many other clubs the player has been registered;
- both the former club and new club's contract offers to the player;
- The player's playing record and any international appearances, which will help to build a picture of the calibre of the player;
- Finally, they will look at any interest in the player from other clubs which again helps to build a picture of the calibre of the player.

It is often the case that when the PFCC makes an award of compensation, in addition to a guaranteed lump payment, contingent payments will be due dependent on the success of a player (e.g. number of club appearances / national team appearances etc.). There is also often a sell on clause so the training club will benefit from any future sale of the player.

In 2016 the PFCC handed down the largest compensation award for an out of contract player in the history of professional football following Danny Ings' move from Burnley to Liverpool. Burnley valued the player at £10 million (whom they had trained and developed between ages 19 to 22) and Liverpool valued him at £6 million. The PFCC examined over 400 pages of evidence from Burnley to assist them in assessing his worth. The tribunal settled on an initial payment of £6.5 million followed by add-ons based on appearances totalling £1.5 million.

When Daniel Sturridge left Manchester City to join Chelsea aged 20 in 2010, Manchester City hoped to recoup approximately £10 million in compensation. The PFCC however ruled that Chelsea must pay an initial payment of £3.5 million followed by further payments of £500,000 if he was to make 10, 20, 30 and 40 first team appearances for Chelsea. A further £1 million would be due if he was to make an international appearance and Manchester City were also owed 15% sell on fee if he was to leave Chelsea. When Sturridge moved from Chelsea to Liverpool in 2013 this meant the total amount eventually paid to Manchester City was £8.3 million.

For players and clubs lower down the leagues the compensation amounts are much smaller. When George Porter left League 1 club Leyton Orient to sign for Burnley the compensation awarded was an initial £90,000 followed by £17,500 on 15, 30, 45 and 60 First team appearances. There was also a sell on fee of 16.5%.

The subjective approach is said to provide greater flexibility and gives the PFCC the opportunity to determine the valuation on the merits of the individual case.

As opposed to the more structured international approach, with this subjective approach there is always inherent uncertainty. However even if the process is uncertain and there are no definitive guidelines as to what the level of compensation will be, the previous PFCC decisions (available to clubs) can be used as a guideline. Even though each case has its own set of circumstances it is possible to try and compare to previous decisions.

Although for Liverpool it was a negative and costly decision and the FIFA system would have meant they were liable for a much smaller payment (270,000 euros as opposed to £8 million), of course for Burnley the use of the domestic system was of huge financial benefit.

6.2 Transfer Levy

When a player is transferred, either during the period of his contract or on the expiry on his contract the Transferee club must pay a levy (4% in the Premier League and 5% in the EFL) of the whole transfer fee or whole compensation fee (as applicable) to the relevant league. This levy is not deductible from the transfer fee. This levy is also due on any player signed from abroad.

This is a similar principle to FIFA solidarity mechanism. However, unlike the solidarity payment which goes to the player's training clubs, the proceeds of the levy (less the league's expenses) is used to finance the pension plan for players. If there are any surplus funds which occurs when the premium payable to the pension is exceeded, then this surplus is added to the Professional Game Youth Fund. This fund makes payments of grants to those clubs who operate Academies in accordance with the Youth Development Rules.

7. Judicial bodies

The appropriate forum for the resolution of football disputes in England is a complicated and uncertain issue. The forum depends on whether the player involved is playing in the Premier League or the EFL, and even then there can be a few different forums which can hear the dispute depending on the nature of the dispute.

A key provision of the Playing Contract in respect of any disputes is Clause 18 of the Playing Contract, which expressly acknowledges the "*specificity of football*" and that the "*rights and obligations*" of the club and player and the fixed term period of employment "*reflect the special relationship and characteristics involved in the employment of football players and the participation by the parties in the game of football*".

There is furthermore an express acknowledgement that matters of dispute (including termination and/or compensation payable in respect of a termination or

breach) should be decided by the appropriate tribunal, panel or other body in accordance with the PL rules and the provisions of the Contract. It is very rare that disputes between players and clubs would be heard publically in the ordinary courts. One example is any dispute under the Equality Act which would be heard in the employment tribunal (a public forum). This is precisely what happened when the ex-Argentina national player, Jonás Gutiérrez successfully brought a claim for disability discrimination against his former club, Newcastle United, following his treatment for testicular cancer.[49]

However, generally there is a presumption that sporting disputes should properly be heard within the sport by way of arbitration, rather than before the ordinary courts. Such arbitration is considered to offer the benefit of enabling the parties to deal with their disputes privately, quickly and cost effectively.

Clause 17 of the Premier League Playing Contract states as follows:
"*Any dispute between the Club and the Player not provided for in clauses 9,10,11,12 and Schedule 1 hereof shall be referred to arbitration in accordance with the League Rules or (but only if mutually agreed by the Club and the Player) in accordance with the FA Rules*."

Clause 9 of the Premier League Playing Contract refers to disciplinary procedures, clauses 10 and 11 refer to termination by the club or player[50] and clause 12 refers to a grievance procedure which players can file. Those clauses clearly set out the procedure to follow if the clauses are applicable. For the purposes of this publication however, the authors will not focus on those four clauses but instead, will focus in this section on the more interesting question of what would happen if none these four clauses apply.

If none of those four clauses apply, pursuant to clause 17 above, a dispute should be referred to Premier League arbitration under Premier League rules or, only if the club and player agree, under FA arbitration. Both of these forums are considered in turn below.

7.1 Premier League arbitration

Dealing first with Premier League arbitration, the relevant rules governing Premier League arbitration are contained in Section X of the Premier League rules, which sets out the procedural rules which govern the dispute including, *inter alia*, how the tribunal is appointed, the powers of the tribunal and how costs are awarded.

Some elements of Premier League arbitration worth noting are:

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[49] The authors acted for Gutiérrez in his successful claim against Newcastle United.

[50] Termination is permitted by the club with 14 days' notice if the Player is guilty of gross misconduct (as defined in the PL rules) or of a criminal offence where the punishment is a prison sentence of three months or more. Termination is permitted by the Player with 14 days' notice if the club is guilty of "serious and persistent breach of the terms" of the contract, or if it fails to pay the agreed salary and bonuses (subject to a grace period of 14 days).

– a tribunal is composed of either a sole arbitrator or a panel of three, to be chosen from a pre-established list of arbitrators. Each party selects an arbitrator, and those two arbitrators (or the Premier League Board in the event of a disagreement) appoint a legally qualified chair/president;
– legal costs are ordinarily awarded to the party who wins the case (subject to the discretion of the tribunal), and the parties are joint and severally liable for the tribunal's costs; and
– awards issued under Premier League arbitration are final and binding,[51] i.e. cannot be appealed to the CAS.

7.2 FA Rule K Arbitration

Alternatively, under clause 17 of the Playing Contract, if the parties mutually agree, a dispute can be heard under the FA rules instead of at Premier League arbitration. The rules of the FA[52] include Rule K, which sets out an arbitration clause and a set of procedural rules for the determination of disputes referred to arbitration under that clause.

Rule K(1)(a) states:

"*Subject to Rule K1(b), K1(c) and K1(d) below, any dispute or difference between any two or more Participants (which shall include, for the purposes of this section of the Rules, The Association) including but not limited to a dispute arising out of or in connection with (including any question regarding the existence or validity of):*

(i) the Rules and regulations of The Association which are in force from time to time;
(ii) the rules and regulations of an Affiliated Association or Competition which are in force from time to time;
(iii) the statutes and regulations of FIFA and UEFA which are in force from time to time; or
(iv) the Laws of the Game,

shall be referred to and finally resolved by arbitration under these Rules".

A 'Participant' is defined in the FA Rules as:

"*… an Affiliated Association, Competition, Club, Club Official, Intermediary, Player, Official, Manager, Match Official, Match Official observer, Match Official coach, Match Official mentor, Management Committee Member, member or employee of a Club and all such persons who are from time to time participating in any activity sanctioned either directly or indirectly by The Association*".

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[51] Subject to sections 67-71 of the Arbitration Act 1996, which involve, *inter alia*, where the tribunal incorrectly accepted jurisdiction.

[52] A copy of The FA's rules can be found in The FA Handbook 2018/19, available at www.thefa.com/football-rules-governance/lawsandrules/fa-handbook (last visited on 16 January 2019).

In the authors' experience, disputes heard under Rule K are most often club v club, club v manager, player v intermediary, or club v intermediary. However, as is evident above, the wording of Rule K is deliberately broad and is designed to capture any kind of dispute between Participants. Of particular relevance to this publication, a dispute between two clubs relating to a transfer agreement could be heard under Rule K arbitration.

For completeness, the authors note that due to a recent case heard at the High Court,[53] there is now a significant amount of uncertainty as to when Rule K applies, and when it does not in a scenario where there is no written agreement that expressly refers to Rule K, but all the parties to the dispute classify as Participants. An analysis of that case is outside the scope of this publication.[54] It would suffice to state that when there is a written arbitration agreement specifically referring to Rule K, there should not be any issues regarding jurisdiction.

7.3 EFL disputes

Similar to the Premier League Playing Contract, clause 17 of the EFL Playing Contract[55] states that any disputes (other than disciplinary procedures, termination or a grievance) should be referred to EFL arbitration under EFL rules, or only if the club and player agree, under FA arbitration.

Pursuant to Article 63.10 of the EFL regulations,[56] a club or player could appeal against a decision to terminate the employment contract to a Player Related Dispute Commission. There is also a 'catch all' provision in Article 73.1 of the EFL regulations stating that any player v club disputes not expressly provided for in the EFL regulations can be heard by a Player Related Dispute Commission. Pursuant to Article 74.1 of the EFL regulations, decisions by a Player Related Dispute Commission can be appealed to a League Appeals Committee, whose decisions are then final and binding.

7.4 Summary

As is evident from the above, there are a few different forums in which disputes can be heard in English football. Determining the appropriate forum to file a claim

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[53] *Mercato Sports (UK) Limited & Anor v. The Everton Football Club Company Limited* [2018] EWHC 1567.

[54] For an analysis of this case and its impact on the issue of jurisdiction under FA Rule K arbitration, see S. Sibel, '*Harmony at the price of principle: the impact of Mercato Sports (UK) Limited & McKay v Everton FC [2018] EWHC 1567 (Ch)("Mercato")*', Blackstone Chambers, 6 September 2018, available at www.sportslawbulletin.org/harmony-price-principle-impact-mercato-sports-uk-limited-mckay-v-everton-fc-2018-ewhc-1567-ch-mercato/ (last visited on 16 January 2019).

[55] A copy of the EFL Playing Contract can be found as 'Form 17' in the PL Handbook 2018/19, available at www.premierleague.com/publications (last visited on 16 January 2019).

[56] Available at www.efl.com/-more/governance/efl-rules—regulations/ (last visited on 16 January 2019).

in the event of a dispute requires a careful analysis of the nature of the dispute, the identity of the parties and the league in which he/it participates in as well as the jurisdiction clause(s) in the relevant agreement (e.g. employment or transfer agreement) which is the subject of the dispute.

8. Conclusions

Football transfers in and out of England have been, and will be likely to command high values, given the calibre of players plying their trade there. In the 2018 summer transfer window alone, £1.2bn was spent by Premier League clubs on inbound transfers.[57] In light of such vast sums of money being spent by clubs, when dealing with transfers in England it is imperative that clubs, players, agents and lawyers understand the nuances contained in the rules and regulations relating to such transfers.

An important point to reiterate is that there are standard playing contracts in both the Premier League and the EFL, and that these have been collectively bargained between the League and the players' union, and therefore provide safeguards and protections for both club and player. There are no standard transfer agreements prescribed for parties to use. However The FA, Premier League and EFL have set the parameters within which clubs can agree to transfer a player's registration. In this chapter, the authors have identified the key rules and regulations to consider, as well as some of the more unique rules in England, such as emergency goalkeeper loans, transfer levies and rules against inducement / 'tapping up'.

[57] Deloitte Sports Business Group, 'Premier League clubs' gross player transfer expenditure falls as first pre-season deadline day closes', Deloitte, 9 August 2018, available at www2.deloitte.com/uk/en/pages/press-releases/articles/premier-league-clubs-gross-player-transfer-expenditure-falls-as-first-pre-season-deadline-day-closes.html (last visited on 15 February 2019).

NATIONAL TRANSFERS IN FRANCE

by *Alexandre Mialhe, Alexandre Antonini* and *Benjamin Arnaud*[*]

1. National Framework

1.1 French Historical Context

The French regulatory framework governing the transfer of players is understandable if it is put in the historical and legal context of French professional football.

In France, the State law has a long-standing and in-depth influence on sport in general, and football in particular.

French ordinary law has a supremacy over sports rules, included those enacted by FIFA or UEFA in terms of the hierarchy of standards.

The French government has often shown itself to be a forerunner in the regulation of the football sector, in particular by keeping control of national sports federations as early as 1945 through the concept of "public service mission delegation". Through this legal concept, the State was able to set up a framework for organising, controlling and sanctioning the football stakeholders and defining the management of competitions.

Moreover, as early as the 1920s, and even before the birth of the professionalism of French football in 1932, the French Football Federation (FFF) regulations already required among the conditions for the transfer of footballers the agreement of the club of origin before granting a new license to a player moving to a new club.

However, after the Second World War, French professional football developed around the concept of a "lifetime contract" thereby binding players to their club until their 35th birthday.

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This de facto block on players' transfers between clubs, combined with a low wage practice, notably provoked the famous quote by Raymond Kopa,[1] "Players are slaves", published in 1963 in the French newspaper "France Dimanche".

In 1968, there was an air of freedom in France in all parts of its society and economy, which led to the establishment of the "fixed-term contract" in July 1969, and then in 1973, the Professional Football Charter, which had the value of a collective agreement for clubs and professional football players.[2]

Footballers in France had thus ensured for themselves a safe regime to cover their interests and impose obligations on clubs to comply with numerous legal requirements. This introduced to the transfer market in France the first set of detailed and effective regulations.

1984 was the year in which the law on the organisation and promotion of physical and sports activities was promulgated. This text was supplemented several times and amended on many occasions, especially in 1992 when specific provisions were drafted in order to regulate the activity and remuneration of sports agents.

1984 also saw the birth of the National Directorate of Club Management (hereafter "DNCG"), described as "the financial watchdog of French football" which, 25 years before the introduction of Financial Fair Play by UEFA, had already been commissioned to verify that professional clubs in France were not spending beyond their financial means to generate income, under the threat of possible sanctions if they were.

Finally, the compilation of various texts related to the French sports sector led to the entry into force in 2007 of the Sports Code, which itself has been amended and supplemented several times since.

1.2 The French legislative framework

Together with the applicable ordinary civil, commercial and labour law provisions, four national legal instruments contain the special rules on transfers and football player employment contracts, namely:

– the Sports Code;
– the Professional Football Charter;[3]
– the General Regulations of the French Football Federation (FFF);
– the Regulations of the LFP.

These instruments provide detailed legal governance of related matters, such as the issuance by FFF of players' licence, the LFP competitions' management,

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[1] 1958 *Ballon d'or* winner and the first player to leave the French league to join a foreign club, Real Madrid CF in 1956.

[2] May 68 of the French footballers[article] Alfred Wahl - Twentieth Century. Revue d'histoire Année 1990 26, 73-82 - Part of a thematic issue: Football, sport of the century.

[3] J.-M. Marmayou, *Employment relationship of National Level: France, in Regulating employment relationships in professional football* (M. Colucci & F. Hendrickx eds), 2014 (1), SLPC, 145-17.

the conclusion of employment and transfer contracts of players between clubs, and the intervention of intermediaries.

The FIFA Regulations on the Status and Transfer of Players are only applied in a supplementary manner and they do not bind the French legislative, executive and judicial powers.

Thus, in the event of litigation before a French court, judges will not consider themselves bound by the FIFA Regulations on the Status and Transfer of Players, as according to French law, they have no direct effect on French law. Therefore, players and clubs would not be able to challenge before a French court a decision or action taken by the FFF that was contrary to the FIFA Regulations on the Status and Transfer of Players.[4]

This kind of scenario already arose in France, for instance, in respect of a FFF rule for the recruitment of players outside the registration period as established by FIFA,[5] and also regarding the French rules governing FFF Sports Agents, which had to prevail over the FIFA regulations on the activity of sports agents.[6]

However, like all the other national football federations, the FFF is forced to comply with FIFA statutes and regulations through its affiliation.

This situation reveals an inevitable "schizophrenia" of the French legal system in regulating football player transfers.

Indeed, when FIFA rules contradict ordinary provisions of French law, the FFF must make the choice either to implement the FIFA rule, knowing that it will not apply in the case of litigation before the French courts, or to refuse to do so, exposing itself to coercive measures by the international football body.

This legal reality is a given fact that any sport contractual law practitioner working in French professional football must always bear in mind.

However, this uncertainty does not raise major difficulties since, on the one hand, cases of discrepancies between French law and international sports regulations are very rare, and on the other hand, in case of a dispute, a French legal practitioner representing the interests of a club or a professional player in France will always have to rely on French law.[7]

1.3 The current context of the transfer market in France

According to the latest DNCG financial report on professional football for the 2017/2018 season, French professional clubs (Ligue 1 and Ligue 2) were very active in the transfer market, totalling 248 transfers registered for an overall

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[4] CE, 28 June 1989, n. 101894, Bunoz, Rec. CE p. 144, AJDA 1989, 627, concl. Faugère et 426, chron. Honorat et Baptiste, Gaz. Pal. 1989, 2° sem., note Houves 878.

[5] CE, 3 avr. 2006, n. 282093, Chamois Niortais F.C., Cah. dr. sport 2006, n. 4, 9, note J.-M. Duval.

[6] CE, 8 nov. 2006, n. 289702, Dalloz 2007, n. 13, note Sophie Dion.

[7] J.-M. Marmayou - F. Rizzo, *Les normes sportives privées internationales*, Revue de la recherche juridique - Droit prospectif 2011, special issue: Cahiers de méthodologie juridique n. 25 «Les normes privées internationales», 2341-2355.

transaction amount of 1.522 million Euros (vs. 602 million Euros in 2016/2017), with 5 transfers alone accounting for 35% of the total, i.e. 525 million Euros. 172 transfers were international. Only 76 players were transferred between French clubs, for a total amount of 363,1 million Euros.

In terms of payroll, the French professional clubs committed in total, to the benefit of all professional players in the first and second division, 791,8 million Euros. Fixed wages represented 91,77% of the payroll, with the rest being variable payments for a non-negligible amount of 65,1 million Euros.

The payroll for the players-in-training amounted to a total of 33,2 million Euros composed of 85,8% fixed remuneration and 14,2% variable payments.

Finally, it is interesting to note that coaches and other staff of the French professional teams represented a total payroll of up to 108 million Euros, of which 88,15% was fixed wages and 11,85% was variable premiums.

Furthermore, it is interesting to note here that the French law n. 2017-261 of 1 March 2017 also entrusted to the DNCG of the activities of sports agents. In 2017/2018, the financial flow generated by the activity of agents represented commissions of over 91 million Euros paid by clubs in Ligue 1 and Ligue 2.

All of these economic elements become the content of contractual clauses, whether in the form of employment or transfer agreements. They must be carefully drafted, well-designed and clearly written.

However, the large number of contracts they have to deal with, and the fact that the contracts are often concentrated within a short period of time (a large number of transactions are concluded in the last days, or even the last hours, of the registration periods) require the lawyers to work efficiently to establish a basis for contracts to govern all the conditions/clauses that are negotiated, and which are able to effectively cover any relevant fact or circumstance that may arise.

2. Registration and transfer rules

2.1 The legal operation of a transfer under French law

Whether it is the general law of obligations, or the texts relating to sports matters, French law does not regulate the "transfer" of players.

There is no special provision on the subject in the Sports Code. Article L222-7 is the only text that indirectly refers to transfers, stating that a sports agent can bring two clubs together to conclude a transfer operation that will result in the player's engagement with a new club.

The rules of the FFF and the LFP do not provide any specific guidance on the definition and qualification of the transfer of players.

However, practitioners legally identify the various acts, which are indispensable to concluding and executing transfers of professional players. For this reason, in the absence of special rules, the common law of contracts applies.

Thus, according to the general theory of obligations, the transfer falls within a contractual technique whereby a club agrees to terminate, before a previously stipulated deadline, the player's employment contract, in order to enable him to commit to another club, in return for payment by the latter of a financial indemnity.

The operation is based on a triangular agreement between the athlete and the clubs concerned:

– the former club agrees to release the player early;
– the latter commits himself to joining the new club which, for its part;
– is obliged to compensate the former club.[8]

The rules of the LFP still provide a framework for the conditions of a transfer operation.

2.2 The rules of the LFP governing transfers in the professional sector

2.2.1 Brief description of the LFP

The LFP is a private law association created by the FFF to ensure the management of professional football activities. In accordance with Article 1 of its statutes, it is governed by the law of 1 July 1901, the laws and regulations applicable to associations and those relating to the organisation and promotion of sport activities.

The LFP ensures the management of professional football activities in compliance with the rules of the FFF and the provisions of the convention concluded between them.

Among the missions conferred by this convention, the LFP organises and manages the Ligue 1 and Ligue 2 championships and all the other sports events it promotes, within the limits of its competence.

It is on the basis of this convention that the LFP Administrative Regulations govern national transfers of footballers.

The LFP also has a legal service in charge of ensuring the proper application by the French Professional Clubs of the rules imposed by the LFP Administrative Regulations on employment contracts and football player transfers.

This legal service executes the mission to review any act, that either infringes the federal legislation or raises some issue of interpretation worthy of being submitted to the assessment and decision of the LFP legal committee.

Moreover, the LFP legal service provides useful advice and reminders to French Professional Clubs, notably during the summer and winter registration periods in order to ensure the legality of the transfer operations that French clubs are concluding. They thus offer valuable assistance to the club's legal practitioners, which is highly appreciated and must be duly highlighted.

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[8] F. Buy, J.-M. Marmayou, D. Poracchia, F. Rizzo, *Droit du sport*, LGDJ, 2018.

2.2.2 The supervision of transfers and loans in France by the LFP Administrative Regulations

a) General principles

Obligation to inform clubs beforehand

Whenever a club wishes to recruit a player or coach on a temporary or definitive basis, it is required to inform their current club in writing by e-mail or registered letter with acknowledgement. Failure to comply with this provision exposes an offender to the application of the sanctions set out in the rules enacted by the FFF.[9]

In practice, we see that it is becoming increasingly difficult to apply this rule and consequently to sanction any offending club/person.

Currently, although it is illegal, the usual way that negotiations are conducted is confidentially, "behind the back" of the club with which the player is under contract. It is only when said club receives an offer from another club that it is then able to assume that "its" player has informally negotiated and concluded an employment contract with the other club.

Obviously, this aberrant behaviour is not exclusively related to France but is symptomatic of a situation that typically has become the norm rather than the illegal exception.

Although this practice is fairly widespread in French football, few infringement cases have been brought before the competent bodies of the LFP. When such disputes happen, the underlying aim of the plaintiff is only to exert pressure on the offending club in order to raise the transfer fee or obtain compensation when a club starts negotiations with a player whose contract term with his current club is very close to entering the last semester of execution.[10]

The requirement to inform the player's current club also applies in the event that the player is in training (i.e. aspiring, apprentice, trainee footballers) and is even reinforced by a gentleman's agreement whereby French clubs must refuse to solicit players under a training contract with another French club. A French club that violated this sensitive obligation for the protection of young players, to the detriment of one of its national competitors, was recently sanctioned with a fine of 15 thousand Euros, 10 thousand of which was deferred.[11]

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[9] Art. 211 LFP Administrative Regulation.

[10] LFP Legal Committee – Ordinary and Plenary Session, 6 February 2018.

[11] LFP Legal Committee – Ordinary and Plenary Session, 13 June 2017.

Transfer periods

1. Registration of contracts

A player may only be registered with one club at a time (in the event of a temporary transfer, this principle is not breached as long as the player's contract with his parent club is suspended in order to be registered only with the loaning club).

A player may not be registered with more than three successive clubs per sports season. During this period, the player may only play in official matches for two clubs.

Rarely implemented, this rule made the news during the winter transfer window of January 2015 in relation to the transfer of Hatem Ben Arfa from the English club Newcastle United to OGC Nice.

Ben Arfa had been loaned by Newcastle United to Hull City during the first half of the 2014/2015 season. But before the loan started, the Frenchman had also played two games in August 2014 for Newcastle United U21.

Ben Arfa could therefore be registered with a third club, OGC Nice, but could he participate in an official match with his new club? In other words, could the matches played with Newcastle United U21 be qualified as "official"?

To take no chances, the FFF raised this regulatory point with FIFA, who responded to this latter question in the affirmative, even though the Football Association in England, who had also been solicited, clearly did not consider the matches played by Hatem Ben Arfa in the summer of 2014 to be official.

As a result of FIFA's response, Hatem Ben Arfa could not play an official match for OGC Nice for the remainder of the 2014/2015 Ligue 1 Championship and OGC Nice was forced to delay his signing to the beginning of the 2015/2016 season.[12]

2. Special provisions concerning pre-registration of contracts of certain professional players

Any free player, or a player whose professional contract expires within 6 months (excluding cases of termination or early termination), may sign a professional contract with a French professional club. The effective starting date of the new employment contract shall be, at the earliest, the day after the end of the player's current contract.

However, a player may not enter into a contract under the pre-registration arrangement with a club with which he has already been registered during the current season. In addition, the contract submitted for pre-registration must be accompanied by an official document issued by the player's current club or its federation/association confirming the expiration date of the current contract of

[12] LFP Legal Committee – Ordinary and Plenary Session, 30 January 2015.

the player if the last license of the player is or has been registered abroad, and a letter to the player's current club if his last license is registered in France.

The contract must be forwarded to the legal service of the LFP which will proceed with its pre-registration. In the absence of subsequent approval of the contract, the parties shall immediately be released from any commitment to the other.

Recruitment of players outside of registration periods

Notwithstanding the principle of the recruitment of players during the two official transfer windows decided by the LFP, certain categories of players may be registered outside those periods.

However, in order to preserve the integrity of the competitions, no contract or training agreement may be approved beyond the closing of the additional, winter transfer window, generally set at 31 January of the relevant season at 11:59:59 pm, for players registered with the club after this deadline, with the exception of Medical "Wild Card" player.

These categories of players who may be registered outside the transfer windows applicable in France are:

- "Free" players: a player whose employment contract expired before the closing of the main registration period.
- Players from a club that has been the subject of a collective action: a player whose contract was broken between the official closing of the first registration period and the opening of the additional registration period in the context of the beginning of a collective action.
- Transferred player temporarily re-joining his parent club in order to be immediately transferred: a temporarily transferred player may re-join his parent club at any time in order to be immediately transferred to a new club. If this new transfer takes place in favour of a French professional club between the close of the main registration period and the opening of the supplementary registration period, the player concerned will be counted as a "wild card".
- Non Medical "Wild Card" player: A club may, from the day after the last day of the first registration period until the day before the first day of the supplementary registering period, recruit a player called a "wild card". This exceptional recruitment opportunity is strictly limited to one player per club per season.
- Medical "Wild Card" player: A club may, at any time, recruit a player in the following cases:
  - Death of a player under contract;
  - Serious injury to the goalkeeper or his replacement (in this case, the club can only recruit a new goalkeeper);
  - Serious injury to a player under contract, while on international duty with the French national team, if this injury causes the player a disability of a duration of more than or equal to three months.

Transformation of a temporary transfer into a permanent transfer – renewal of a temporary transfer

The temporary transfer of a professional player may be transformed at any time into a permanent transfer, with the agreement of the player. A club, which has accepted a player on loan, is not authorised to transfer him to a third-party club without the written permission of the lending club and the player concerned.

The temporary transfer of a professional player may be renewed at any time, with the agreement of the player and in accordance with the applicable contractual provisions.

Fixed number of non-EU/EEA players allowed in a French squad

Article 553 of the National Collective Agreement for Football Professions imposes a limit on the number of non-EU/EEA footballers in a French squad. Therefore, clubs are required to be especially careful and cautious in verifying the identity of their professional staff in order to ensure compliance with the quotas of nationalities.

In fact, French Ligue 1 professional clubs can have under employment contracts a maximum of only four players (only two in Ligue 2) who are not nationals of an EU country, an EEA country, or a country with an association or cooperation agreement with the EU.

It is further specified that in case of temporary transfers of two or more non-EU/EEA players from a French club to other French clubs, all players will be administratively counted as players of both clubs (i.e. the parent club and the host club), except for the first player who is transferred on loan, who will be counted as only being a player of his host club.

Limitation of temporary transfers

In addition, there is a rule applicable only to loans between French clubs, which must be considered prior to any temporary transfer operation: the limitations on the number of players who can be temporarily transferred. More precisely, only seven players can be loaned by the same French club to other French clubs, and a French club cannot receive more than five players on loan from other French clubs, of which a maximum of two can be from the same club.

Again, it can be seen that the reforms of the Regulations on the Status and Transfer of Players currently under discussion at FIFA tend to be closer to the current French rules.

Prohibition of any partnership agreement for a recruitment priority right

This ban is fairly "new" since it was incorporated into the LFP Administrative Regulations as of the 2016/2017 season.

To understand this, it is necessary to go back in time a few months to January 2016 when the LFP Legal Committee was presented with a new case concerning a "Master Partnership Agreement" granting a Ligue 1 club priority recruitment options on five players from a Ligue 2 club, subject to the payment of a lump sum of 2 million Euros.

Forced to find that this partnership agreement did not, on a strictly legal basis, violate any legal, regulatory or contractual provisions in force at the time, in particular since the clubs involved were competing in two different European championships, the LFP Legal Committee nevertheless referred the matter to the LFP head office to alert it to the risks of undermining the integrity of competitions in the event of a multiplication of such agreements. In this context, the commission proposed the following measures: the limitation of the number of players likely to be affected by this type of priority recruitment option, the time-limit of such agreements, a ban on clubs of the same division entering into such agreements with each other, and the prior agreement of the players concerned.

Finally, the LFP Board of Directors preferred to ban this type of partnership agreement purely and simply in the name of the integrity of competitions.

Accordingly, the LFP Administrative Regulations expressly provide that any partnership agreement between two professional clubs, including recruitment options for one or more players or priority rights, is prohibited.[13]

b) Special provisions

Prohibition of the transfer or acquisition of the economic rights of a player

The French sports authorities were the first to have banned what was later qualified as "TPO" (third party ownership), after the FC Brest Armorique affair in 1986-1987, which was a case involving a club that had financed the recruitment of a Paraguayan player and an Argentinean player by relying on funds from a private investment firm created for the occasion by nearly a hundred local business leaders.

Thus, according to LFP Administrative Regulations, a club may not enter into a convention with legal persons other than another club, or physical entities, whose objective entails, directly or indirectly, the benefit of such persons, conferring on them the total or partial acquisition of economic rights resulting from the transfer of one or more of its players.

The violation of this ban shall be punishable by way of a fine of at least the amount of the sums unduly paid, and disciplinary sanctions shall be imposed on the club management. It may also result in the limitation of approval, or the non-homologation, of new contracts for one or more seasons.

The prohibition, on the other hand, is not included in the Sports Code. No law or decree is concerned with this practice.

[13] Article 203 LFP Administrative Regulation.

2.3 Registration of transfers via IsyFoot software

In order to exercise control over the legality of all definitive transfers, temporary transfers and employment contracts, the LFP has developed a software programme called IsyFoot, made available to professional clubs, which centralises and standardises a set of procedures and formalities to follow.

A club's use of this interface is a necessary prerequisite for the approval of the different agreements and therefore the registration of its players.

The procedure for registering transfers

The transfer operation is based on three separate legal operations:
- The definitive transfer agreement between the two clubs setting the financial terms;
- Contractual termination of the player's working relationship with the selling club;
- The employment contract entered into by the player with the acquiring club.

Each of these three contracts must be forwarded to the LFP for approval through IsyFoot.

2.4 The impact of the control of club finances by the DNCG on transfers

The DNCG, created in 1984, has independent powers of assessment. It ensures the administrative, legal and financial control of clubs, and monitors club accounts several times a season, checking that sports investments do not exceed financial means.

It takes stock of the financial situation and the accounts of professional clubs for the past season.

In light of this review, the DNCG may impose sanctions in the event of failure to comply with the mandatory provisions relating to book keeping, control procedures and the production of documents. In particular, it may:
- control the recruitment of new players under contract by setting up a planned budget or a limited payroll forecast;
- prohibit, all or in part, the recruitment of new players under contract;
- limit the number of players transferred.

3. Employment contracts (standard contract and main clauses)

3.1 Inventory of different employment contracts between French professional clubs and football players

Can the career of a professional football player be analysed as a fairy tale?[14]

[14] M. Ranouil and N. Dissaux, *Once upon a time... Legal analysis of fairy tales*, – Dalloz – 2018.

Before achieving the status of a professional player, almost all players experience years of pre-training and then training in club-managed centres. During this period of time, clubs and players will conclude several types of employment contracts.

3.1.1 The non-solicitation agreement - player contract for pre-training (13-15 years old)

The "training" of a professional football player, and the conclusion of a related employment contract, may not take place before the player is 15 years old. Between the ages of 13 and 15, this is considered as the "pre-training" period.

During this "pre-training" period, only one agreement can be validly concluded: a non-solicitation or "ANS" agreement.

The ANS, which is therefore the very first type of contract that a football player in France may legally sign, is called a promise of employment contract, and therefore is like an employment contract in the light of French social laws.

Indeed, the ANS consists of a bilateral commitment provided in conformity with the Professional Football Charter. The mutual obligations can be concluded between a training centre of a French club and a young player as of 1 January of the year of his thirteenth birthday. This agreement must be approved by the FFF.

In the case of a legal act involving a minor, this document must inevitably be countersigned by one or several of his legal representative(s). Therein, special vigilance will be given to all documents that can duly prove the tenure of parental authority in order to ensure that this act is valid.

The purpose of the ANS is to allow the young player to play football in the club of his choice and to stay with his family until he has completed his obligatory schooling requirements, i.e. until 15 or 16, the age at which time he has to conclude and execute a candidate player contract with the ANS beneficiary club. In case of refusal to conclude the aspiring player contract with this club, the player will be banned for three seasons from signing an employment contract or a training agreement with another professional club or even to play in a first team match in a competition organised by the Professional Football League, since the contract was not accepted within the allotted time.

The execution of the ANS by the player, that is to say, the obligation to make no commitment to another French club, shall not give rise to any form of remuneration by the ANS beneficiary club.

The club, for its part, has to offer this candidate player contract for 2 to 3 seasons depending on the age of the signatory. Failing to do so, they shall pay him an indemnity corresponding to the remuneration that this player would have received in the first two seasons of said contract.

The ANS is formalised through a standard form only issued by means of IsyFoot IT solution, the official platform of the LFP. In addition, the ANS must be approved by the LFP, again through IsyFoot.

The ANS may be terminated by mutual agreement between the club and the player by a cancellation endorsement which must be done by using a standard form generated by IsyFoot software.

The use of ANS is unlimited for young players already registered with the training centre of the professional club. On the other hand, it is limited to six or eight players per season depending on the level of the training centre of the French club. This restriction is intended in principle to ensure the efficiency of the system and thus prevent clubs from "blocking" players inadvertently and by only offering an ANS to a player in whom they really believe.

In fact, the ANS represents a guarantee for players to obtain football training at the end of their basic schooling requirements, and for clubs it is a form of a non-hostility pact, which restricts competition and pre-emptively guards against over-bidding for players.

Nevertheless, the ANS is purely a French device used in France and therefore presents a weakness in terms of competition from foreign clubs unbound by these types of arrangements. The case of Paul Pogba, who committed himself at the age of 16 to the English club Manchester United while he was bound through the ANS to Le Havre AC, is the perfect illustration.

Indeed, Paul Pogba and Le Havre AC had signed an ANS in November 2006, which had been automatically extended for an additional season as the player had not completed his first cycle of secondary education during the 2008/2009 season. Regardless, the player refused to sign the training agreement and aspiring player contract that Le Havre AC had offered him while the player was already enjoying the facilities of the French club's training centre. Investigating this case, the LFP Legal Committee banned Paul Pogba from signing an employment contract or a training agreement with another French club and from playing in a first team match in a competition organised by the LFP for a period from 1 July 2009 to 30 June 2012.[15] Nevertheless, this sanction did not prevent Paul Pogba from engaging with the English club Manchester United in the summer of 2009 by concluding an "Academy Contract".

However, unlike the cases relating to players "in training", no French club seems thus far to have prevailed in FIFA proceedings, or in the state courts, on the binding forces of the ANS against players who decide ultimately to register in a club affiliated with a foreign federation.

3.1.2 The special case of players from the FFF "young hopeful" training centres

The 14 FFF "young hopeful" player training centres are "pre-training" centres approved by the Ministry of Sports and the FFF which host between twenty-five and fifty children between 13 and 14 years of age each season in order to prepare them for entry into a training centre at the end of two years of pre-training.

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[15] LFP Legal Committee Ordinary Plenary Session, 9 July 2009.

Any student at a "*Pôle Espoirs*" is required to sign a player-in-training contact as an "apprentice" or a contract as a candidate player in a French professional club when one of them makes him an offer. As such, Appendix 1 of the Professional Football Charter confers the right to students of the FFF "young hopeful" centres to conclude contracts with a professional club as early as their first year of pre-training. Thus, these contracts can only take effect at the end of the normal cycle of pre-training (2 years) and cannot be terminated before their effective date, except by the club for medical reasons or for reasons relating to the young player's conduct.

3.1.3 The training agreement, an act supporting employment contracts for players-in-training

Once the secondary schooling requirements have been completed, and the player is fifteen years old on 31 December of the relevant football season, he is entitled to start a training course to become a professional footballer at an approved centre. This training is necessarily formalised by the conclusion of a "training agreement" between the professional club and the young player as required by Article L211-5 of the Sports Code. The training period can vary from one to five seasons.

The professional club utilises this training agreement, to offer the young player a dual sports training programme, in order to qualify either for a career as a professional academic athletic instructor or professional football player. The first qualification becomes indispensable in the event that the player fails to become a professional footballer, or alternatively at the end of the player's career as a professional footballer.

This agreement is not an employment contract but provides the necessary support in the event that the training club wishes to employ the young player by proposing the conclusion of one of the three player-in-training contracts provided by French law, respectively for an apprentice player, candidate player and trainee player.

However, it is possible to conclude with a player only a simple training agreement without the need to attach a player-in-training employment contract. In this case, the player-in-training does not receive any form of remuneration.

No training agreement may be entered into, executed or renewed beyond the end of the season in which the player reaches 20 years of age. Thus, in France, any player over the age of 20 must have professional status to be able to continue to train with the first team or the reserve team of a professional club.

Like the non-solicitation agreements, the validity of this contractual document is conditional upon its countersignature by the legal representative(s) of the player if the latter is less than 18 years old. Similarly, the training agreement is incorporated in a standard document, approved by the Ministry of Sports, usable only by means of the IsyFoot IT solution, the official platform of the LFP, after having entered the information on the identity of the player and some data relating

to the organisation of the training (place and timetable of training and schooling, objective of the school training, modes of transport and accommodation...). This contract must also be approved by the LFP, again through IsyFoot.

The training agreement is composed of 16 Articles. The first eight rules deal with the purpose, duration and practical aspects of the training, and the last eight recall the legal mechanisms, regulatory and contractual arrangements provided by the Sports Code, the federal regulations or the Professional Football Charter.

In this way, the French federal authority ensures that all the training agreements contain all indispensable information and training-related details in accordance with the provisions of the Sports Code, without the parties involved in the agreement having the slightest possibility of adding, removing or modifying any of the stipulations.

The main interest for clubs to sign such an agreement lies in the young player's commitment to conclude, at the end of his training, his first professional player contract with his training club. Otherwise, the player or his new club owes to the training club the payment of training compensation provided for by the Professional Football Charter, the principles and amounts of which are based on the training compensation provided for in the FIFA Regulations on the Status and Transfer of Players. This training compensation may be supplemented by training bonuses in the event of the player's participation in matches of national teams (from U19 to A Team), Ligue 1 games, or in case the player extends the contract with his new club or transfers to another club.

The training agreement may be terminated by mutual agreement between the club and the player by way of a cancellation endorsement, which is also a standard form generated by IsyFoot software. It may also be terminated for failure by either party to fulfil their obligations under the agreement. In particular, for disciplinary cases involving a player bound by a simple training agreement and without a player-in-training employment contract, it is useful to ensure that the procedural rules of the training centre apply and are binding on all players, whether they are full employees or not. Such a method of termination is very useful in order to validly find the basis of the breaches committed by the player and clearly define his fault. In this way, the club can save resources, without the burden of having to provide general training of the beneficiary during the following school year.

Lastly, the French training agreement withstands the international dimension of a young player's career a little better than the simple ANS when he no longer holds a contract as a player in training. The Court of Arbitration for Sport has upheld the cogent force of the player's training agreement with compensatory allowances and disciplinary sanctions provided for in Article 17 of the FIFA Regulations on the Status and Transfer of Players.

3.1.4 The employment contracts of players-in-training

From the age of 15, several types of player-in-training employment contracts are provided by the Professional Football Charter which may be successively concluded between a player and a club, in superposition to the training agreement, before a player reaches professional status.

These are the apprentice contract, the aspiring/candidate contract, the trainee contract, and finally the Elite contract.

These player-in-training contracts are formalised by a standard one-page contract only published by means of IsyFoot IT solution, the official LFP platform. It is possible to supplement the terms by amendment which must also be established via IsyFoot. The scope of the amendments is constrained because the additions are limited in terms of number of characters. These player-in-training contracts, and their possible amendments, are also subject to LFP approval, which occurs via IsyFoot.

Minimum wages are provided for by the Football Charter for the holder of each of these contracts.

3.1.4.1 Apprentice

The apprentice contract covers two seasons and concerns young players aged 15 to 17 who have completed their compulsory schooling. The apprentice player must therefore follow training in an apprenticeship training centre, in addition to his school and football training provided by the Professional Club. Upon completion of the two-year apprenticeship period, the player sits an examination called Certificate of Professional Aptitude (CAP) of football professions, which is the equivalent to a secondary education diploma from a vocational school, qualifying the youth as a skilled worker or employee in a specific occupation.

3.1.4.2 "Aspiring" player

The aspiring player contract can be concluded between 15 and 17 years for a duration of one to three seasons depending on the age of the signatory. The aspiring player prepares for a career as a professional player. The first two months of the contract are considered as a trial period. After that, the contract can only be broken by the mutual consent of both parties, except in cases of force majeure or serious misconduct.

Finally, it is possible for French professional clubs to amend the aspiring player contract with a club's unilateral obligation to offer a professional player contract, as well as several extensions of it. The player retains his right to agree to the effective entry into force of the future professional contract and its extensions.

3.1.4.3 Trainee

The trainee contract corresponds to either the continuation of the apprentice or aspiring player contract's training, or the beginning of training to become a professional. The trainee contract is concluded for a period of 2 years if the player is under the age of 19 and one year if he is under 20 years old. Young players from a French amateur club must be at least 18 years old and at most 19 years old on 31 December of the year of the contract.[16]

3.1.4.4 Elite

The Elite player contract is often considered as an "intermediate" contract that governs the employment relationship between the training and professionalism stages. It concerns players between the ages of 18 and 23 who either reach the end of their apprentice or aspiring player contract, or have only a simple training agreement, or come directly from an amateur, professional or foreign club without ever having had an apprentice or aspiring contract.

The main interest of this contract lies in its five-year duration, partitioned into two years of training and three years under professional status. The Elite contract is therefore a good tool for French clubs wishing to retain their best young people from 18 years of age.

In the first two years of training, the Elite player may be temporarily transferred to another French football club, but in the same way as trainee players, cannot be transferred on a permanent basis.

3.1.5 Federal player

A federal player is a French or foreign player who, although having an employment contract and therefore being an employee of his club, still does not achieve full professional status in France.

To this end, only French clubs without professional status (*i.e.* French clubs outside of Ligue 1 and Ligue 2) are authorised to enter into such employment contracts.

In other words, the federal player is a football player making his living from football but keeping the level and qualification of an amateur playing in amateur championships. A professional club cannot legally hire a player under such status.

French clubs without professional club status are obliged to sign a federal player contract with players including those who were previously under professional, Elite, trainee or federal contracts.

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[16] CAS, 27 June 2005 and 17 July 2007, n. 2004/A/791, *SASP Le Havre Athletic Club c/ FIFA, Newcastle United FC et N'Zogbia*, (https://jurisprudence.tas-cas.org/Shared%20Documents/791.pdf).

The federal player contract is a standard contract automatically generated by the FFF software "Footclub". Its terms may be amended subject to FFF approval.

Non-professional clubs may, without limitation, sign contracts with foreign players, except for the independent clubs of the National Championship 1 (3rd French division), which can only sign contracts with 3 foreign players, non-EU/EEA nationals, or nationals of countries without an association or cooperation agreement with the EU. Moreover, foreign players must apply for a work permit issued by the competent French authorities.

A federal player cannot temporarily transfer to another French club.

3.1.6 Professional player

As stated in Article 500 of the Professional Football Charter, a player becomes professional by making football his profession. The right to enter into a professional player contract is reserved for professional clubs and those players who have previously held the status of aspiring, apprentice, trainee or elite player and /or players who have been under a training agreement.

The player classified as "amateur" and /or federal player does not have the right to access professional status until his 20th birthday.

In the same way as player-in-training contracts, professional player employment contracts are finalised by a standard one-page contract only available via the IsyFoot IT solution, the official LFP platform. It is possible to amend the forms via IsyFoot. However, amendments are constrained by the limited number of characters accepted by the software. These professional player contracts, both the official forms and their amendments, must furthermore be approved by the LFP, which always occurs via IsyFoot.

Players from a foreign federation must, regardless of age, sign a professional player contract with a French club if they have been under contract as a professional for at least six months with their parent club.

Since the entry into force of Law n° 2015-1541 of 27 November 2015 to protect high-level athletes and professional sportsmen and to secure their legal and social situation in France, professional player contracts, such as player-in-training employment contracts and federal player contracts, have been governed in particular by Articles L.222-2 to L222-2-8 of the Sports Code.

These provisions have introduced the new "specific" fixed-term employment contract specially created for professional athletes and vocational coaches.

The law prohibits French professional clubs from entering into an indefinite contract with their players. This means that, on the one hand, the conclusion of several successive limited duration contracts ("CDDs") between the same club and the same player no longer carries any risk of re-classification to an unlimited duration contract ("CDI"). On the other hand, the main basis for the economy of football clubs, namely the system of player transfers and training

compensation, is protected since the professional player is deprived of any right to resign.

The law expressly justifies the obligation to enter into a specific fixed-term contract by the need to ensure the protection of professional athletes and to guarantee the fairness of competitions.

The specific CDD must be in triplicate copy and must contain several mandatory provisions such as the definition of employment and the amount of gross earnings. The former legal obligation to explain expressly in the employment contract the reason for the use of a fixed-term employment contract has, however, logically disappeared. It must be given to the player no later than two days after the hiring.

The duration of a specific CDD can be from one to five football seasons, and a season must consist of twelve months, unless the contract is ended during the season and provided that the contract runs until the end of the season. In addition, the specific CDD may be renewed but for no more than five seasons for each renewal.

A major exception is however provided in relation to the first professional football player employment contract concluded by an athlete-in-training. This contract cannot last more than three seasons. As a result, this law enshrines and validates a principle provided by the FIFA Regulations on the Status and Transfer of Players. In this regard, it is nevertheless important to note that Article 47 of the Law for the freedom to choose one's professional future, provides for the possibility of extending the duration of the first contract of a professional sportsman within the limit of 5 years. This article was deleted, in its legislative form, by the Constitutional Council in its decision of 4 September 2018.[17] However, it is quite likely that the subject of extending the duration of the first professional contract from 3 to 5 years will soon come back on the agenda of the meetings of the National Assembly in France. In the current state of the law, professional clubs also have an instrument to attach one more year to the services of a player who agrees to sign his first professional contract with his training club. This is section 223 of the LFP Administrative Regulations which authorises clubs to sign a contract with their player-in-training on 1 July of a given season which only takes effect on the following 1 July, resulting in an additional year of the professional contract.

Any professional footballer employment contract that does not apply the substantive and formal rules of the specific CDD shall be deemed to be a CDI.[18] A theological interpretation of this legal reclassification from CDD into CDI suggests that the legislator's willingness is to protect as much as possible the professional sportsmen's financial interest, since under French social law, the regime of dismissal without real and serious cause of a CDI is more favourable to employees than that of the unlawful early termination of a CDD.[19]

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[17] CC. Décision n. 2018-769 DC, 4 September 2018.

[18] Art. L.222-2-8 I Sport Code.

[19] G. Rabu, "*Individual labour relations in professional sport at the end of Law No. 2015-1541 of 27 November 2015*", Cahier de Droit du Sport 2016, No. 43, 28.

The law also emphasises the obligation already established by the jurisprudence[20] and the Professional Football Charter,[21] obliging the clubs to grant all their professional players equivalent conditions of training.

In addition, the law also confirms the prohibition of unilateral breach clauses within the specific CDD which are already forbidden by the LFP Administrative Regulations.[22] Therefore, these "pure and simple" unilateral severance clauses are "null and void". It is interesting to note that LFP Administrative Regulations mention three categories of such clauses worth taking into consideration: "Buyout clauses", "Resolutive clauses" and "unilateral termination clauses". A Buyout clause authorises the anticipated breach of the contract in exchange for a lump sum indemnity owed by the breaking Contracting Party. A Resolutive clause authorises the anticipated breach of the contract, at the request of one of the parties, in the occurrence of a clearly defined and wholly unintentional event.

For instance, LFP will reject contracts containing clauses such as: "*in the event relegation in Ligue 2 championship at the end of the 2018/2019 season shall not be approved by the LFP, the player shall be released from his contractual commitment, without compensation to be owed by the club and shall be allowed to engage with any third party club of his free choice*" or "*The player shall be automatically transferred in case of a bid higher than the price paid by the club to the player's parent club on the occasion of his initial recruitment*".

Finally, French professional clubs are now allowed to conclude a "Image Contract" with their professional players, in order to pay them, in addition to the salary received in return for the performance of the employment contract, an additional royalty not subject to social security charges in return for the commercial exploitation of the player's individual image.[23] This exploitation and the associated royalty must give rise to a separate contract between the club and the player. The basis for determining the amount of the fee must correspond to the revenue from the actual exploitation of the individual image in the areas of sponsorship, advertising and marketing of derivatives (revenues from TV rights and ticketing for club games are excluded from the scheme).

A collective agreement shall fix a limit on the fees liable to be paid to the sportsman and the minimum remuneration under the employment contract above which the "Image Contract" may be concluded by the sportsman or professional coach. At the 29 March 2018 session of the National Joint Committee of the Football Charter, player and club representatives adopted the following principles for the implementation of the scheme, whose effective character is still subordinate to their integration within the Professional Football Charter:

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[20] Cass. soc., 14 janvier 2004, n. 01-40.489.

[21] Art. 507 de la Charte du football professionnel.

[22] Art. 202 du Règlement administratif de la LFP.

[23] Art. L. 222-2-10-1 du Code du sport et Décret n. 2018-691, 1 August 2018.

- The threshold for triggering image rights applies for remuneration more than 4 times the social security limit;
- The individual image entitlement limit may not exceed 50% of a certain wage remuneration insofar that the image rights compensation does not exceed 33.33% of the individual overall compensation;
- In the event of a loan, the player's remuneration may not be lower than that provided for in his employment contract, including any image rights fee;
- Breaking the employment contract will simultaneously result in the breach of the image rights contract (in case of temporary transfer, the remuneration paid by the new club cannot be lower than that received under his employment and image rights contract from his parent club);
- The royalty from image rights should not be subject to VAT.

3.2 The main clauses in the footballers' employment contracts

3.2.1 The procedural rules

Article 600 of the Professional Football Charter obliges the French clubs to set up rules of procedure, which govern the player's working relationship with the club.

As a result, every employment contract encloses these rules of procedure in a separate, annexed document. Such rules are dictated by the club and are not open to negotiation or debate.

The rules of procedure act like an internal regulation of the club and are intended to govern the general discipline and behaviour that players must adopt as employees, both in the professional sphere and in the private sphere, to the extent that the player's personal activities may have an impact on his image, performances and career. All these matters are obviously of extreme interest for the club.

All procedural rules must be forwarded to the LFP Legal Committee for registration.

The Professional Football Charter also provides that failure to comply with the procedural rules of a professional club in France (e.g. rules relating to absence or lateness of players for training sessions, matches, unauthorised interviews, etc…) must result in adequate sanctions, for example a deduction from salary and disciplinary penalties.

The Professional Football Charter also establishes a list of the main offences that a player can commit and the scale of the sanctions applicable. These include the following offences: the refusal to participate in an official match, poor conduct on the field against a teammate, an opponent, a referee or the public, disrespect to an official or coach, consumption of an alcoholic beverage, disobedience to an official or coach or whenever the player is repeatedly the subject of sanctions taken by the FFF, the LFP or any other official body.

The sanctions can range from a warning letter to termination of the contract.

These procedural rules govern player rights, duties and obligations. Their wording must be precise and careful. The legal practitioner has to focus the utmost concentration to the details of a player employment contract, highlighting the compensation clauses and any clauses on the possibility of extending the duration of the contract.

The legal practitioner must also ensure compliance with French legislation regulating activities of sports agents.

Finally, the question of insurance policies covering the various risks that may be encountered by the player and the club must also be dealt with.

3.2.2 The player's compensation clauses

Under penalty of default, all amounts mentioned in a player's contract must be expressed in euros and gross of charges and taxes, and the salary payment must be on a monthly basis.

Prior to negotiating with a player of a foreign club, it is also important to question his tax status. Indeed, France has in its legal system a preferential tax scheme from which any individual of any nationality, even French, may benefit for eight years on condition that they have not been a French tax resident during the past five years. This is the so-called "repatriates" tax scheme and was introduced with a view to increasing the attractiveness of France for foreign investments. Thanks to this scheme, 30% of a foreign player's regular pay is exempt from income tax.[24] The express reference to the benefit of this scheme in the employment contract's clauses is essential in order to give the player this tax benefit.

A signing bonus may be validly granted.

The player's fixed remuneration clauses generally do not pose any real difficulties to those who are drafting the contracts. However, it may be advisable to clearly determine the fixed remuneration to be paid during the different seasons covered by the duration of the contract. This is a real issue, in particular, for clubs likely to be facing the possibility of relegation to a lower division. These clubs would prefer to provide distinct remuneration packages depending on which division they are competing in.

The vigilance of the person drafting the employment contract must strongly focus on the clauses relating to the player's variable remuneration.

It is effectively common for the structure of remuneration to be constructed with the aim of encouraging the player to seek, achieve and maintain the highest possible level of individual and collective performance. Thus, bonuses for participation in matches or qualification in a competition are usually included in the contract.

In this case, it should be clear and leave no room for ambiguity by defining all the important terms.

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[24] Article 155 B General Tax Code.

For example, in the event of a bonus for the player's participation in a match at his club, it will be necessary to exclude or include friendlies, to specify whether only starts will be taken into account, to indicate whether a minimum playing time is required and in this case, establish that the only authoritative document to determine playing time is the official game sheet. It may be useful to expressly exclude any abandoned match that is postponed to a later date.

In regard to goal bonuses, it may be advisable to mention the minutes taken from the LFP competition commission which confirms the identity of the scorer in order to guard against difficulties arising when a goal is finally awarded to a player different to the scorer who was initially declared.

As regards the bonuses for qualifying for European competitions, it will be useful to distinguish the group stages from the qualifying rounds. Contractual provisions relating to administrative/disciplinary and financial factors of admission may protect clubs from a decision to be excluded from the competition due to financial fair play or reprehensible behaviour of club officers or supporters. Finally, as the group stage begins after the closing of the summer transfer window, it will always be useful to indicate clearly whether such a bonus will be due to the player in the event that, when the club enters the European competition, his employment contract has already expired (in the hypothesis of an unextendible contract termination) or has already been suspended or has already been terminated (in the hypothesis of a temporary or definitive transfer of the player).

In addition, there is another bonus category, usually known as an "ethics bonus", which is due when there has been media coverage on the athlete's attitude. This bonus may be included in professional player employment contracts operating in France. This is intended for the club to optimise the exemplary attitude of the players so that their behavior in their professional life, as in their personal life, is likely to improve the club's image.

This ethical bonus is generally paid to the player on a monthly basis subject to the absence of any public comment, or any negative attitude toward the club and its members or supporters during matches or training sessions but also outside the game and/or during the player's working time, and when he is on international duty.

On the other hand, certain bonuses may be subject to being cancelled by the federal authorities. We mention here the so-called "loyalty bonus", when it is likely to produce the same effects as a release clause. This bonus is due to the player when the Club rejects a transfer offer greater than or equal to a certain amount. If the amount of this bonus proves to be unreasonable and incompatible with the club's economic and sporting situation as well as the player's fixed remuneration, or the amounts of the bonus and the transfer fee are equivalent, the club therefore has no serious economic interest in refusing to transfer the player and the loyalty bonus is nothing other than an attempt to circumvent the prohibition of release clauses.

The Player's incentive bonuses on possible future transfers[25] must meet the same requirements as the bonuses that may appear in transfer agreements between clubs, and to which developments are described hereafter. It may therefore be that the opt-out ban led to uncertainty as to the validity of the interest clauses under which the players benefited from a profit-sharing incentive in the form of a percentage on the future amount of their eventual transfer to a third-party club.

First approved by the LFP, these clauses were subsequently banned in the wake of FIFA prohibiting third-party ownership ("TPO"), as they considered them to be a form of TPO. The LFP Legal Committee therefore only tolerated "lump-sum departure bonuses", the amount of which should not be related to the amount of the transfer fee received by his employer club for a transfer.

Finally, when questioned by four European clubs, FIFA confirmed in a press release of 26 June 2018 that players are not considered a "third party" as referred to in definition 14 and Article 18 b of the FIFA Regulations on the Status and Transfer of Players.

Consequently, the LFP confirmed the same opinion of FIFA and therefore authorised again, from the beginning of the 2018/2019 season, the right of professional players to receive remuneration (percentage or lump sum) on the amount of their future transfer fees to another club, without this being considered as third-party ownership, which remains forbidden.

3.2.3 Clauses extending the duration of the player contract

In France, still to this day, the LFP refuses to approve any player's contract which provides for the automatic extension for one or more additional seasons in the event that planned objectives relating to the player's individual performance are met (e.g. 30 starts in a given season, 50 goals scored by the player in the first three seasons, etc...). The LFP Legal Committee considers such extension clauses as unilateral conditions.

However, the LFP Legal Committee adopts an opposite viewpoint and therefore validates clauses that provide an extension of the duration of a player's employment contract in case of achievement of a collective performance (maintaining the club in Ligue 1, qualifying for a European competition, obtaining the title of champion, etc…) considering that this type of clause is favourable to the player's interests especially when the condition relates to the club's promotion to a higher division.

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[25] F. Rizzo, «*La clause d'intéressement au transfert d'un sportif professionnel*», Les principales clauses conclues en droit des affaires, J. Mestre and J. Ch. Roda (eds.), Lextenso, 2011, 519.

3.2.4 The problem of sports agents

Unlike FIFA and many countries around the world,[26] France has maintained legislation introduced in 1992, which has been reformed on several occasions, in order to regulate sports agent activities and the form of their remuneration.[27]

This legislation, of a criminal nature, is considered to be a "policing law",[28] in the sense of private international law, which means it is intended to apply to any legal subject when their situation concerns an element of attachment to French national territory, regardless of their nationality.

Thus, any remuneration paid by a French club, or by a French player to a sports agent, is governed by French law.

It is therefore crucial for professional clubs to ensure that the remuneration paid to sports agents in the course of their activity of intermediation between the club / player or the club / club is carried out in full compliance with French law.

Generally, concerning the conclusion of a professional player's employment contract, the club does not use the services of an agent but negotiates with the player's agent.

As such, it must first be stated that French law firmly prohibits even the smallest fee for a sports agency linked to the conclusion of a contract of a player who is a minor at the time of signing.

In addition, French law provides a provision that prohibits the same agent representing a club and a player in the same transaction.

The Sports Code, however, authorises French professional clubs to pay the amount of the sports agent's remuneration normally owed by the player to his agent under the sports agency contract binding the player to his agent. The commitment made by the club towards the agent to remunerate him in substitution of the player, in return for the discharge of the agent towards the player, must be formalised through the signing of a tripartite agreement between the club, the player and the agent.

This remuneration remains however a fringe benefit granted by the Club to the player in addition to salaries, and other elements of remuneration. The sports agent gives a receipt of the payment to the co-contractor of the athlete.

This monetary benefit is therefore subject to social security contributions (see L242-1 of the Social Security Code) and income tax. However, this phenomenon remains neutral for the player since he may deduct the cost of his taxable income via a flat-rate reduction of 10% for professional expenses or the deduction of actual costs.

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[26] J.-M. Marmayou, *EU law and principles applied to FIFA regulations*, Michele Colucci ed., International sports law and policy bulletin, 2015 (1), SLPC, 71-107, 2015, The FIFA regulations on working with intermediaries – Implementation at national level, 978-88-940689-3-1.

[27] Art. L.222-5 à L.222-22 – R.222-22 à R.222-42 – A.222-1 à A.222-6 du Code du sport.

[28] F. Rizzo, *Encyclopédie droit du sport – Etude thématique n. 272-90 à 272-100* - Actualisation, novembre 2018.

The remuneration of the agent is capped in France at 10% of the amount of the contract concluded by the parties through the negotiations organised by the agent.

In case of plurality of sports agents who have been solicited by the same party in the context of the same transaction, the total amount of the overall remuneration to be paid and allocated by the client amongst each of its agents may not exceed 10%.

Thus, the contractual definition of the basis for calculating the amount of the agent's remuneration based on the rate granted by the club and accepted by the agent must be drafted with the utmost care.

One of the priority issues is the payment schedule of the sports agency fee by the club. The agent has every interest in requesting payment in full, determined in accordance with the previously agreed rules of calculation. Conversely, the club's interest will be to schedule the payment annually over the duration of the player's employment contract and bind the payment to the player's employment by the club for the season concerned.

This issue falls within the contractual freedom of the parties, in France and internationally in view of the current FIFA regulations on the subject. Yet in our view, imposing a phased and conditional payment based on the player's permanent employment by the club would be a fundamental rule in order to reinforce the concept of contractual stability as specified in FIFA Regulations on the Status and Transfer of Players.

Finally, it may be emphasised that the player's employment contract must mention the identity of the agents who intervened in its conclusion and the party they represented.

Thus, only qualified agents with a license issued by the FFF may be remunerated for sports intermediation activity. The list of agents holding an FFF license is published on the FFF official website.

Intermediaries registered with another sports federation of a member state of the European Union or the European Economic Area must, in order to be remunerated by a French professional club, have previously been authorised, either as a temporary exercise (usually issued for one year from May 15 of a given year to May 14 of the following year) or as a permanent establishment, by the FFF through the submission of a file examined carefully by the FFF. This is a process of recognition by equivalence of the professional qualifications of European sports agents with a character check on the agent.

The list of "European" agents authorised to practice in France is published on the FFF official website.

To be complete, it should be mentioned that there is a unique possibility for the "European" agent without a license or an FFF equivalence to receive valid remuneration from a French club or player, but this can only be used exceptionally.[29]

[29] Art. L.222-15-1 Sport Code.

This may happen legally whenever a concluded contract is presented by an agent already authorised by the FFF (holder of an FFF license or an FFF equivalence), within the limit of one contract per sports season. The purpose of this contract concerns the commitment of the authorised FFF Agent, against remuneration of the non-authorised FFF Agent, to present the non-authorised Agent to any French club that might be interested in signing an employment contract with the Player the non-authorised Agent is representing. This presentation is accompanied by assistance in the different stages throughout the negotiations.

EU sports agents can only conclude one presentation contract per season.

Agents registered with a sports federation of a state that is not a member of the European Union or the European Economic Area, have no other choice but to resort to the so-called "presentation" mechanism.

All of these contractual documents must be communicated to the FFF at the expense of the sports agent concerned.

Lastly, the case of the "sports agent" lawyer[30] who has a hybrid status, may be briefly mentioned in that it derogates from both the status of sports agents and the status of other lawyers. Unlike the sports agent whose main mission is intermediation between the club / club or club / player, the main mission of the sports agent lawyer lies in procuring legal advice and taking actions as a representative under the meaning of French civil law.[31] In other words, the "sports agent" lawyer is not subject to the obligation of holding an FFF sports agent license but must address any agreement concluded with a club or a player to the FFF.[32] As regards remuneration, and unlike other lawyers, the "sports agent" lawyer may be exclusively interested in the result of his intervention, within a limit of 10% of the amounts entered in the contract for which he acted, in a manner strictly identical to what is intended for the sports agent. The "sports agent" lawyer can only be remunerated by his client,[33] thus excluding him from the benefit of the tripartite agreements provided for in Article L222-17 of the Sports Code.

Given the specificity and complexity of French law in the exercise and remuneration of sports agent activity,[34] the role of the club's legal practitioners will often be to raise awareness and inform agents, particularly foreign ones, throughout the year, in order to be able to cooperate, in a transparent and lawful manner, where appropriate during a transfer window.

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[30] Art. 6 ter de la Loi n. 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques.

[31] Art. 1153 à 1161 du Code civil.

[32] Art. L. 222-19 du code du sport et art. 66-5 ter de la Loi n. 71-1130.

[33] Art. 10 de la Loi n. 71-1130.

[34] J.-M. Marmayou, «*L'encadrement juridique de la profession d'agent sportif en Europe*», Cah. dr. sport n. 31, 2013, 67.

3.2.5 Insurance to cover the player capital of professional clubs

The recruitment of a professional player represents a significant financial investment for professional clubs that hope to obtain a future source of revenue in the event of a future transfer. Therefore, the risk of accident, injury or illness may have, beyond the human tragedy, catastrophic economic consequences for the employer club, but also for a salaried player in pursing his professional activity if he is placed in a situation of physical disability, partial or total incapacity, temporary or permanent incapacity.

In France, professional clubs can protect their interests by subscribing to a special insurance policy referred to as a guarantee against "loss of license / death" which is intended to compensate for the financial consequences linked to sports incapacity or death of the player by granting an indemnity covering the investment made to employ the player (costs of transfer, costs of training, accommodation costs, agent commissions, etc.).

It is therefore part of good practice for clubs to declare the recruitment and departure of any player to their insurance company as soon as the formal documents are signed.

In addition, clubs have the legal obligation to inform their players of the interest they have in subscribing to a complementary health insurance policy in addition to personal insurance in order to cover, beyond the three months referred to in Article 276 of the Professional Football Charter, the loss of their salary. An informative clause can therefore be usefully entered into the player's employment contract in order to formalise that the club has complied with its duty to advise him of such.

4. Transfer agreements

4.1 Temporary Transfer Agreement

In France, until the application of the Law n. 2015-1541 of 27 November 2015, the temporary transfer of a player in exchange for a sum of money was prohibited because French law considered these operations as a type of "illicit lending of labour".[35] Therefore, only temporary transfers free of charge could be concluded legally by French clubs. The only possibility for French clubs to receive or pay a price in exchange for the temporary release of a player was to provide an option to obtain the final transfer of the player. Indeed, French law allowed French clubs to monetise their consent to grant the host club a potential right to request that the player be the subject of a definitive registration at the end of his loan. In other words, French clubs were forced to take the risk of not being able to reject the definitive departure of their players if the Parent club wished to receive a fee

[35] Article L8241-1 et 8241-2 Labour Code.

from the host club in consideration of the loan. In order to mitigate this risk, clubs frequently applied exorbitant transfer amounts in the event of the exercise of the option in order to dissuade the host club from exercising it or, on the contrary, to secure a considerable economic advantage in the event of an undesirable transaction from a purely sports-related point of view.

In view of law simplification and recognition of the new circumstances, Article L.222-3 of the Sports Code now stipulates that the notion of "illicit labour lending" does not apply to the temporary transfer of football players. French clubs have therefore benefited since the end of 2015 from the same rights granted to their European counterparts in this respect.

A temporary transfer in France is limited to one season.[36] However, two clubs, subject to the player's consent, may, at any time of the season, renew a temporary transfer for an additional season.[37] Thus, it is conceivable for the French clubs to foresee in the initial transfer agreement an option for the renewal of the loan for an additional season. In such a case, the player must have prior knowledge and acceptance of the terms of the contract of employment which would apply for the extended loan period. The exercise of the option may be either a purely discretionary right open to one of the clubs, in which case it will be advisable to set a deadline by which it must be exercised. If the option is an automatic obligation conditional upon the occurrence of a particular event, it is advisable to specify a condition relating to the collective performance of the club concerned rather than the player's individual performance in order to ensure that the LFP Legal Committee does not consider the clause to be a unilateral condition (see paragraph 3.2.3 hereabove). This is also true for definitive transfer options (as well as the observations concerning the definitions of official match and qualification or participation in European competitions if it is foreseen that the option is automatically exercised in the event of the occurrence of a specific event). Lastly, it may be recalled that the temporary transfer of a professional player can be changed into a permanent transfer at any time during the loan period with the player's consent and that the club welcoming a temporarily transferred player may transfer him to a third-party club with the written permission of the parent club.[38]

The 2015/2016 season also saw the validation by the French federal authorities of a type of clause hitherto prohibited within the framework of purely French temporary transfers. This is the clause by which the temporarily transferred player and his host club forbid the player from playing in a match between the host club and the parent club during the season that he is on loan.

A recent case can be mentioned in relation to a temporary transfer with an option for the definitive transfer of a player. In 2018, the French federal authorities cancelled such an operation due to the contractual ability of the French lending club to oppose the exercise of this option by the borrowing club. It should be noted

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[36] Art. 504 de la Charte du Football Professionnel.
[37] Art. 214Bis du Règlement Administratif LFP.
[38] Art. 214 du Règlement Administratif LFP.

that the player's professional contract expired at the end of the 2018/2019 season and had just been extended for two additional seasons a few days before the conclusion of the temporary transfer agreement.

Consequently, the LFP Legal Committee, responsible for the approval of both the extension amendment and the temporary transfer agreement, considered that these two separate acts constituted an inseparable contractual unit and that the examination of the respective validity of these two separate acts should be the subject of a comprehensive and common reading. In this way, the LFP Legal Committee considered that the right of the French club to oppose the exercise of the option was in fact a way to ensure the non-extension of the player's contract, which had been removed from the extension amendment in order to certify its approval, and then integrated into the transfer agreement in order to retain the benefit. Thus, the extension amendment became *in fine* a mere unilateral promise of the player to extend his contract without a binding effect for the French club.

By this bold method of interpretation, the federal authorities were able to justify the refusal to approve the extension amendment because of a clause that was not included in this document, which resulted in a cascade of refusals to approve the suspension of an employment contract, with such approval being a suspensive condition for the taking of effect of the temporary transfer agreement.

4.2 Permanent transfer agreements

Permanent transfer agreements are a terrain of great contractual freedom in terms of defining transfer prices, whose only limits would almost be those of the clubs' imagination.[39] Therefore, we shall consider here some concrete situations dealt with by the French clubs.

As regards the cancellation of a professional player contract concluded between the French selling clubs and their player, it is highly recommended to expressly insert the precise framework in which this early termination is carried out and hence to mention the identity of the acquiring club that is the third party in the definitive transfer agreement. This precaution will ensure the reinstatement of the player in the squad of the selling club in the event that his transfer fails due to a disciplinary sanction, medical problem, the International Transfer Certificate not being issued, or renegotiation of the player's remuneration conditions. Failing to mention this, the player would become free of any commitment and could then enter negotiations with any other club of his choice without his current club being able to claim any transfer fee.[40]

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[39] "International football player transfer contracts: between common law and Lex sportiva": Comparative views on the contractual phenomenon, Act of the colloquia organised by the Centre for Economic Law of the Paul Cézanne University, the Centre for Comparative, European and International Law of the University of Lausanne and the Swiss Institute of Comparative Law, PUAM 2009, 259. Article written in collaboration between Jean-Michel Marmayou and Fabrice Rizzo.

[40] LFP Appeal Committee Ordinary Session – 23 November 2018.

Moreover, in the same way as for the bonuses in professional player employment contracts, the drafting of clauses relating to bonuses in the event of qualification of the acquiring club for European competitions is important. These clauses include the right to choose between the notions of "participation" or "qualification" and to specify what is meant by "direct" or "indirect" qualification or participation. The French federal authorities have indeed incorporated in their case law the decision of 5 June 2013 of the FIFA player status committee, according to which the mere fact that a club participated in the qualification phase of the Champions League did not mean that this club was already qualified for the Champions League and that, by analogy, the mere fact that a club participates in the qualification phase of the Europa League organised by the same institution as the Champions League does not imply that this club is already qualified for the Europa League.

Among the clauses that deserve to be drafted with the utmost thoroughness in view of the financial stakes at hand, and the multitude of different situations in which these clauses may be brought into effect, are those dealing with the profit-sharing on future transfer (sell-on fee).

These clauses should as far as possible translate precisely the will of the parties by considering all the scenarios and defining all the important terms. Thus, when the profit-sharing is based on the capital gain made by the acquiring club in the context of a future transfer, it will be useful to specify whether the costs of the agent who allowed the new transfer of the player may or may not be taken into account in the calculation of the potential gain. Without specific mention, the club of interest will not be allowed to deduct them. A fortiori, in the absence of any express agreement of the parties on a specific definition of the concept of surplus value and its methods of calculation, it is customary for the French federal authorities to consider that it means the pure and simple difference between the transfer and acquisition prices of the player.[41]

A club which is liable for the payment of profit sharing on a future subsequent transfer shall comply with a strengthened obligation of loyalty and transparency towards the creditor club, notably in the event that the debtor club would proceed at the same time to transfer the player concerned and another players to one or two third party clubs.[42]

For example, French selling Club A and French acquiring Club B agreed a profit-sharing clause on the transfer of Player 1. Subsequently, Club B transferred Player 1 to Club C. The day after this transfer, Club B transferred a second player, Player 2, to the same Club C for a price higher than the price obtained for player 1. Club A assumed then that Club B and Club C had been able to agree on an overall price for the transfer of Player 1 and Player 2 and that Club B had deliberately under-valued the Player 1 transaction and therefore overestimated

[41] LFP Appeal Committee - Ordinary Plenary Session – 5 April 2012.
[42] LFP Appeal Committee - Ordinary Plenary Session – 3 December 2008.

the price of Player 2 for the purpose of reducing its debt to Club A in respect of the sell-on fee. Despite the troubling elements of the case, Club A was unable to provide sufficient material evidence to establish the alleged fraudulent actions of Club B and was therefore denied claims for compensation.

Finally, it may be of interest to present a case involving a temporary and definitive transfer of the same player during the same season. The LFP Legal Committee recently had to process and validate the following transfer transactions: during the winter registration period, the acquiring club A entered into a definitive transfer agreement with the selling club B for a player who was then the subject of a temporary transfer to club C until June 30th. The club had concluded with club C a new temporary transfer agreement for the player so that he could finish the season.[43]

This scheme was likely to be considered as contrary to French restrictions according to which, on the one hand, a player cannot be registered with more than 3 successive clubs per period from 1 July to 30 June,[44] and on the other hand, players who are not already licensed to the club from the previous registration period or those who have already been temporarily transferred by this club during the previous season cannot be the subject of temporary changes, unless the player is temporarily transferred to the club he has just left.[45]

In order to make these complex operations legal, it was considered that "the departed club" should be the one in which the player has developed sports-wise last, in order to allow the player to play within the same club, without discontinuity, during the same sports season.

5. Termination of contracts

As mentioned in paragraph 3.1.6 hereabove, the Law n. 2015-1541 of 27 November 2015 created the legislative framework for the "specific fixed-term contract", commonly referred to as "specific CDD" in France.

This framework covers the salaried professional athlete, defined as any person whose paid activity involves the exercise of a sports activity in a legal relationship of subordination with a sports association or a company.[46]

This specific CDD, unlike the classic CDD that is limited to 18 months, can be concluded for a maximum duration of 5 years.

However, as regards its termination, the specific fixed-term CDD does not escape the conditions of breach of common CDD law. Article L1243-1 of the Labour Code, for example, refers to four cases of termination:

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[43] LFP Legal Committee Ordinary Plenary Session – 24 January 2018.

[44] Art. 212.1 du règlement administratif de la LFP et Art. 5.3 du Règlement du Statut et du Transfert du joueur de la FIFA.

[45] Art. 266 de la Charte du football professionnel.

[46] Art. L222-2 du Code du sport.

- Serious misconduct: this is conduct that makes it impossible to maintain the contractual relationship until the end of the term fixed by the parties. Rarely invoked, in late 2017, Toulouse Football Club was forced to invoke it following an altercation between the player, Zinédine Machach and the coach of the reserve team with whom he had been summoned. Following this breach, the player was free to commit with the Italian club Napoli. This is, of course, the reason why clubs avoid this type of termination, which deprives them of the ability to negotiate a transfer fee.
- The incapacity of the employee found by a labour specialist doctor - for the same reasons as in the case of a breach for serious misconduct, this mode of forced termination is damaging for the club, which is deprived of potential financial indemnity, and for the player too. The latter is forced to stop his career suddenly. In August 2018, this was the situation experienced by Guingamp and Razza Camara. The latter, after a long series of medical exams, was declared unfit to pursue his professional career due to heart problems, forcing his club to terminate his employment contract.
- Force majeure: it is a cause of termination rarely invoked. For example, the injury of a player, the temporary detention of a coach, and the judicial reorganisation of a club, were not deemed to constitute a case of force majeure. To our knowledge, no professional player contract in the French championships has been broken by a club for a cause of force majeure.
- The agreement of the parties "*mutuus dissensus*": as in common law, any contract can validly be subject to a bilateral revocation. It is precisely this contractual technique that is used as a base in the context of a transfer. Indeed, the *sine qua non* condition for an efficient transfer is the conclusion of a termination amendment between the player and the selling club, approved by the LFP.

Some examples of the main clauses included in a termination amendment:

- Termination clause: The parties shall provide the effective date of termination of the player's contract, which must, as a general rule, be concurrent with the date of transfer and the date of conclusion of the employment contract with the buying club.
- Financial clause: if necessary, the selling club may accept a lump sum payment to the player from whom they separate (example: starting or departure bonuses), in addition to making a monthly salary payment under which the player's contract is terminated. The club may also be obliged to pay the player a fee if his employment contract provides an incentive clause on the transfer and the negotiated fee is linked to the definitive transfer and satisfies all the conditions already laid down (for example, if the club achieves a net capital gain of ten million euros, the player is entitled to receive a fee corresponding to 15% of this net capital gain).
- Restitution clause: this is the clause by which the player undertakes to return all the goods, materials and documents made available by the club during the

contractual relationship (company car, mobile phone, accommodation, etc.). If the contract provides for an identical return of the goods at the end of the contract, the cancellation amendment may be the occasion, in the event of degradation observed by the club, to place on the player the burden of restoration, by a payment or by withholding part of his remuneration that the club owes to the player as part of his definitive transfer.

– Declaration clause: this is the clause by which the player declares his rights under the contractual relationship to be completely fulfilled, which ends and renounces any claim from the player, with the exception of the indemnities expressly granted by the club, for any amount of money from the club. The player waives any right to challenge the conclusion, execution or termination of the contract. In this way, the club ensures that the player will not start litigation relating to the past contractual relationship.

6. National training compensation and solidarity mechanisms

Apart from the arrangements enforced through the FIFA Regulations on the Status and Transfer of Players (FIFA Training Compensation and FIFA Solidarity Contribution), four compensation mechanisms are established to benefit French training clubs and/or interregional FFF "Young Hopeful" centres as provided by national regulations.

The two mechanisms stemming from FFF General Regulations are intended for French amateur clubs, their districts and Young Hopeful centres, while those provided by the Professional Football Charter are enacted for the benefit of professional clubs.

6.1 Compensation mechanisms governed by FFF General Regulations

6.1.1 Pre-training compensation that professional clubs must pay to FFF Young Hopeful centres

Article 10 of the FFF "Young Hopeful" Regulations establishes pre-training compensation to be paid by any professional club to the benefit of the Young Hopeful's Section when a training agreement of more than one season is concluded with a player within the Young Hopeful centre.

This pre-training compensation ranges from EUR4,000 to EUR6,000 depending on the case. The FFF and the LFP are responsible for the collection of this pre-training compensation from the professional clubs.

This pre-training compensation is cumulative with all other indemnity mechanisms.

6.1.2 Pre-training compensation which professional clubs must pay to amateur clubs and football districts

Article 56 of FFF General Regulations imposes the payment of pre-training compensation from professional clubs to amateur clubs and their home district on the occasion of the first signing of a trainee, elite or professional contract for a player under 23 who has been registered with an amateur club in the categories U10, U11, U12 and U13.

Amateur sections of professional clubs are excluded from the benefit of this mechanism which is not applicable or enforceable to foreign clubs. Moreover, this indemnity is only due on one occasion, so that the signing of a professional contract by a trainee player no longer gives rise to this indemnity.

This pre-training compensation varies from EUR12,500 to EUR15,000 in total depending on the case. The FFF and the LFP are responsible for the collection of this pre-training compensation from the professional clubs and the distribution to beneficiaries.

6.1.3 Compensatory transfer indemnity

Article 51 of the FFF General Regulations establishes a compensatory transfer indemnity which must be paid by any professional club signing a trainee, elite or professional contract with a player coming from an amateur club, which has had another player signing such a contract during the same season.

The amount of this compensatory transfer indemnity is fixed at the lump sum of EUR11,435 and is due only once within six months of the signing of the trainee, elite or professional contract.

6.2 Compensation mechanisms governed by the Professional Football Charter

6.2.1 "Purely French" training compensation (mechanisms only used in France)

Article 261.1 (a) of the Professional Football Charter transposes nationally the system of training compensation provided for in the FIFA Regulations on the Status and Transfer of Players in connection with transfers of players between two clubs affiliated to National associations of the European Union or the European Economic Area.

This training compensation benefits any French professional club that has made a contract offer before 30 April to one of its players-in-training, who has refused to go to another French professional club by training agreement or by contract of apprentice, aspiring, trainee, elite or professional player on terms of remuneration at least equivalent to those offered.

The amount of this "Purely French" training compensation is set by applying calculation rules similar to those established in the context of transfers between national associations. Thus, the player's training is assessed from the season of his 12th birthday to the season of his 20th birthday and a fixed amount is set per year according to the category of the training club.

For the period between the 12th and 15th birthday of the player, an annual fee of EUR10,000 is due, regardless of the category of the training club. It is the same for players between 16 to 20 years old who only have a training agreement.

For the period between the 16th and 20th birthday of the player, a professional training club classified in Category 1 is credited with the sum of EUR90,000 per season, compared to EUR60,000 per season if the training centre is classified Category 2 (2a or 2b), or EUR30,000 per season if its training centre is classified in Category 3 (2c) or EUR10,000 per season if the professional club has no accreditation for its training centre.

It may be useful to recall that until the 2008/2009 season, the Professional Football Charter sanctioned a player's refusal to conclude a contract with a club at the end of his contract as an aspiring or trainee player, with a three-season ban forbidding him to sign for another French professional club under any status whatsoever.

6.2.2 Recovery compensation

Article 261.1 (b) of the Professional Football Charter establishes a mechanism known as "recovery compensation", which consists of three different types of compensation.

These mechanisms aim to reward professional clubs whose quality of training promotes the development of players to be able to play regularly in Ligue 1, and even at international level, without having been able to enjoy the talents of the players or to at least obtain a transfer fee.

The first category of recovery compensation is provided by article 261.1.b.1) of the Professional Football Charter, which is due to be paid to the last or the last two professional clubs of a player, as soon as the player, having already been the subject of the training compensation provided for in Article 261.1 (a), has a certain number of official national selections (depending on the category concerned: U19, Young Hopeful) or 30 appearances in Ligue 1 matches.

This first category of recovery compensation allows the professional training club(s) the expectation to collect the amounts below, in case the following event(s) occur during the execution of the contract with the new club:
EUR200,000 for the 3rd official national U19 selection;
EUR400,000 for the 1st hopeful selection or after 30 actual matches in L1;
EUR600,000 for the 1st selection in the national A team;
EUR400,000 for the 2nd selection in the national A team;
EUR200,000 for the 3rd selection in the national A team.

However, a limit in the amount of EUR1.5 million is set by Article 261.1 (b) of the Professional Football Charter. In this way, and in the event that a training club has collected all of the first three amounts, the recovery compensation corresponding to the 2nd national team selection A shall be reduced from EUR400,000 to EUR300,000 and the compensation provided for the 3rd national selection shall not be due.

Furthermore, it should be clarified that the recovery compensation is due as soon as its triggering event has occurred, regardless of whether it occurs wholly or partly with the training club and/or with the new club. Thus, the compensation provided for the 3rd national team selection (U19 or A) will be paid by the new club even if the first two are triggered while the player is with the training club.

The second category of recovery compensation, provided in Article 261.1.b.2), is due to be paid to the last or the last two professional clubs of a player, each time the player, having already generated the payment of the training compensation provided for in Article 261.1.a), and/or the first category of recovery compensation, extends the duration of his contract with his new club until the season of his 23rd birthday.

This compensation allows the professional training club (s) an amount equal to 12 months of the player's average fixed gross monthly salary *stricto sensu* (excluding variable and packaged pay) calculated on the duration of the prolonged contract. However, the sums which would have been due and/or already paid under the first category of recovery compensation will have to be deducted to calculate the amount due in this case.

The third category of recovery compensation is also provided by Article 261.1.b.2) and is triggered by the final transfer in France or abroad of a player who has already generated training compensation in favour of a professional training centre, until the season of his 23rd birthday.

The selling club shall be liable to pay the professional training club (s) recovery compensation of 20% (twenty percent) of the net transfer fee it receives from the player's new club for the transfer. Again, the sums which would have been due and/or already paid under the first category of recovery compensation will have to be deducted to calculate the amount due in this case.

Lastly, with regard to these three types of recovery compensation, if several professional clubs are beneficiaries, the compensation is divided equally amongst them.

6.3 The treatment by French football authorities of litigation related to training or recovery compensation

In view of the complexity of the mechanisms mentioned above, it is interesting to focus on concrete cases recently dealt with by the LFP Legal Committee.

6.3.1 Litigation related to "Uniquely-French" training compensation

Player J concludes, at the age of 15, an aspiring player contract for a period of 3 seasons with the French professional club A.

Player J does not receive a new contract offer from Club A before 30 April of the last season of his aspiring player contract.

At the end of this aspiring player contract, Player J and Club A continue their relationship through a simple one-season training agreement. Player J is thus reclassified as "amateur" in the ranks of Club A.

Before 30 April of the season of this training agreement, Club A offers a professional contract to Player J with effect from the following season. However, Player J terminates his training agreement due to the fault of the club and then signs a professional player contract with the French professional Club B.

Consequently, by not offering a new contract to Player J before 30 April of the last season of execution of the aspiring player's contract, Club A loses *de facto* the benefit of the right to training compensation for the period covered by this aspiring player contract.

Club B is therefore indebted to Club A only with training compensation of EUR10,000, corresponding to the season during which the player was under a training agreement.

6.3.2 Litigation relating to recovery compensation

Player J refuses the offer of a first professional contract from the French Professional Club A during the last season of his trainee contract with the club.

Player J chooses to sign his first professional player contract with French professional Club B.

A season later, Player J is temporarily transferred to Club C. During the winter transfer window, Club C consents to the player's early return to Club B in return for a sum of S so that Player J can be permanently transferred by Club B to Club D in exchange for a Price P.

In respect of the recovery compensation, Club A claims from Club B a sum corresponding to 20% of Price P. Club B refuses and claims that the sum S must be deducted when calculating the recovery compensation.

However, since Club D paid the entire Price P to Club B before Club B transfers the sum S to Club C, Club A rightly claimed solidarity contribution calculated on the basis of Price P.

7. Judicial bodies

Certainly, sport needs an appropriate justice system, with the ways and means to make decisions that meet the requirements of efficiency, speed and the specificities of sport.

France, unlike some foreign systems, has not yet established a specialised jurisdiction that would be responsible for handling all dispute litigation related to sport. In spite of some peculiarities, the justice of sport is therefore part of the ordinary jurisdiction.

Sport is a matter of both public and private justice and thus falls under both.

Disputes relating to national transfers can be dealt with by the LFP within the framework of its own regulations, or by state courts, arbitral tribunals or in the framework of conciliation proceedings.

7.1 Appeal to the LFP Legal Committee

Like most federations, the LFP – which stems from the FFF and is intended to manage professional football – has created internal commissions, which are responsible for distinct matters.

Among these commissions, the LFP Legal Committee is the one responsible in particular for examining disputes relating to transfers.

Indeed, it decides, irrespective of possible further judicial proceedings, on all claims resulting from a dispute between clubs.

On a procedural level, although the LFP Legal Committee is not a court or judicial body, the fact remains that most of its operating rules are taken from those of the State Justice system. The LFP Legal Committee must therefore respect the basic principles of the rights of defence, and decisions must be motivated by reason and subject to appeal, etc.

As a general rule, whereby the LFP Legal Committee finds violations, shortcomings or breaches in the LFP's Administrative Regulations, the National Collective Agreement for Football professions and the Football Administration Collective Agreement, it has the right to take any measure it deems justified. These administrative measures take the form of fines or disciplinary sanctions provided for in the General Regulations of the FFF.

As an example of a dispute, where the LFP Legal Committee finds that a termination fee has not been paid in the context of a final transfer, the Commission may take two alternative or cumulative measures:

– The Commission may proceed, by way of compensation, to draw up levies on sums due to the defaulting club, in particular, the audiovisual rights of which the clubs are creditors.[47]
– And/or it may pronounce a ban against the club concerned, prohibiting the recruitment of any new player until the situation is resolved.[48]

When the creditor club refers such a dispute to the LFP Legal Committee, the club has every interest to propose to the LFP the sanction which seems to

[47] Article 221 du Règlement administratif de la LFP.
[48] Article 409 du Règlement administratif de la LFP.

them to be the most appropriate in order to obtain an effective decision, allowing the receipt of the expected funds as soon as possible.

Very often, a dispute arises between clubs about a sell-on fee which is due by the acquiring club to the initial selling club, when this acquiring club subsequently transfers the player to a third club.

If the transfer agreements are not sufficiently well-drafted and do not specify clearly enough the conditions for granting such an incentive, then it is for the LFP Legal Committee to interpret the relevant clause in the light of "the common intention of the parties".

Following the decision of the Legal Affairs Commission, most of the time the parties reach an agreement. This transactional outcome is largely due to the threat to the club at fault to be banned by the LFP from recruiting players and therefore encourages it to comply with the LFP demands.

As a result, only a tiny fraction of this type of litigation is transferred to the state judge.

7.2 The recourse to state jurisdiction

If one of the parties involved in the dispute decides to bring the case before the state judge, given the commercial nature of the companies that manage the professional sports activity, it is up to the applicant club to choose the correct commercial court that is competent or designated by a jurisdiction clause.

Classic judicial procedure is established under the Code of Civil Procedure.

Clubs may also choose, under an arbitration clause, to resort to a neutral, independent and impartial third party to arbitrate all disputes that may arise in the course of the contract.

7.3 The path of arbitration

The advantage of resorting to an arbitration procedure is mainly to allow for a prompt and definitive resolution of disputes, in the utmost confidentiality, by lawyers/experts especially competent in the matter.

Logically, clubs therefore tend to call on arbitratos who specialise in sport law.

This is why clubs are moving away from traditional commercial arbitration in favour of an arbitration exclusively devoted to sports matters.

Two options are open: an internal arbitration, with the Chamber of Arbitration of Sport hosted by the French National Olympic and Sports Committee (CNOSF), or an international arbitration with the Court of Arbitration for Sport.

As regards internal arbitration, the CNOSF, whose statutes provide that it has jurisdiction "to facilitate the settlement of conflicts arising within the sports area, by conciliation or arbitration", set up an arbitration structure in 2007, with the

aim of supplementing the already existing system of extrajudicial resolution of sports disputes located in France.

Arbitration before the Chamber of Arbitration of Sport hosted by the French National Olympic and Sports Committee (CNOSF) does not escape the common law of internal arbitration as governed by Article 1442 of the Code of Civil Procedure and by Articles 2059 to 2061 of the Civil Code.

The decision it renders and has the authority of *res judicata*. It is not subject to appeal unless the parties wish otherwise. Only an action for annulment remains open, before the Court of Appeal, in the cases exhaustively provided for by Article 1492 of the Code of Civil Procedure:

– The arbitral tribunal wrongly declared itself competent or incompetent;
– The arbitral tribunal was irregularly constituted;
– The arbitral tribunal ruled without complying with the mission entrusted to it;
– The adversarial principle has not been respected;
– The sentence is contrary to public order;
– The award is not motivated or omits to indicate the date on which it was rendered or the name of the arbitrator (s) who issued it or does not include the required signature (s) or was not made by a majority of votes.

7.4 The optional conciliation before the CNOSF

For a certain type of sports litigation, the legislator has provided for a compulsory conciliation phase before the CNOSF: this concerns conflicts resulting from decisions, whether or not they are subject to internal appeal, taken by federations in the exercise of prerogatives of public authorities or in application of their statutes.[49]

The litigation of transfers thus escapes this phase of compulsory conciliation.

Nevertheless, the parties have the option of initiating an optional conciliation procedure, provided of course that each club agrees.

In the latter case, they resort to optional conciliation and the procedure is based on a classic conciliation procedure: a conciliator is appointed, and a hearing takes place at the CNOSF.

The parties must reach an agreement at the hearing, otherwise the conciliator must merely notify them with a non-conciliation report, without the possibility for him to propose in writing measures to settle the dispute.

Largely dependent on the goodwill of the litigants, optional conciliation is, in general, naturally not "fenced" in strict rules of procedure. Since the optional conciliation takes place in a context where recourse to use the CNOSF was not compulsory, the applicant may decide, at the same time, to present his case before the courts.

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[49] Article R141-5 du Code du sport.

[50] J. Carbonnier, *Essai sur les lois*, 2nd edition, Répertoire du notariat Defrénois, 1992, 336.

[51] "Really, what little morality I know, I learned on the football fields and theatre stages that will remain my true universities" - Albert Camus - Television statement May 12, 1959.

In practice, the litigation of transfers is never the subject of an optional conciliation before the CNOSF, as the clubs prefer other ways to settle their disputes.

8. Conclusion

A review of this detailed description of the legal environment, in which the sports lawyer works in a French football club, lays bare the fact that professional football in France has succumbed to "*panjurisme*". The risk of seeing and having to write detailed legal provisions everywhere was analysed in a doctrinal work which concluded that "law is infinitely expansive, just as it is totally homogeneous, it tends to fill the whole social universe without leaving any emptiness".[50] This unbreakable expansion has obvious and legitimate reasons in respect of the sport's economic growth and the increasing financial stakes both benefiting and burdening clubs and professional players.

Now, where there is money, there must be rights and obligations.

Yet it is also up to legal practitioners to make a point of never losing sight of the fact that football is and remains a sport game and therefore an area where morality/ethics should reign sovereign.[51]

The essential role of the legal practitioner in a professional football club is the prevention of litigation, rather than its resolution.

For this, beyond the rigor with which the legal practitioner must carry out his actions, he must always prioritise ethical considerations and make sure that they take priority over any other consideration in order to enhance the legal, financial and moral interests of his club.

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[50] J. Carbonnier, *Essai sur les lois*, 2nd edition, Répertoire du notariat Defrénois, 1992, 336.

[51] "Really, what little morality I know, I learned on the football fields and theatre stages that will remain my true universities" - Albert Camus - Television statement May 12, 1959.

NATIONAL TRANSFERS IN GERMANY

by *Jonathan Wilkens*[*]

1. The Framework for National Transfers in Germany

Although transfer fees for national transfers within Germany are far off from the hundred-million-euro range reached in several international transfers during the 2017/2018 and 2018/2019 seasons,[1] the revenue resulting from players' transfers is still an important source of funding for German football clubs: in DFL's[2] 2019 Economic Report, the share of transfer revenues in the overall revenues averages 12% in Bundesliga 2 and 16.9% in Bundesliga.[3]

To grasp the functioning of (national) transfers in Germany, the understanding of the national framework – with respect to the organization of German football itself as well as to the applicable sources of law – is of essence.

1.1 Organisational framework: Football organizations in Germany

German football is organised in a pyramidal structure comprising the German Football Association (*Deutscher Fußball-Bund*; DFB), the German Football League (*Deutsche Fußball Liga*, DFL) and 26 regional or state football associations (*Regional- und Landesverbände*).

1.1.1 Deutscher Fußball-Bund, DFB

The German Football Association (DFB) as Germany's football governing body is affiliated with more than 25,000 clubs with more than 6.8 million individual members.

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[1] The transfer of Julian Draxler from FC Schalke 04 to VfL Wolfsburg for an assumed amount of EUR 43,000,000 is still the most expensive national transfer within Germany: www.transfermarkt.de/1-bundesliga/transferrekorde/wettbewerb/L1.

[2] The German Professional Football League (*Deutsche Fußball Liga*), see below, section 1.1.2.

[3] DFL, The 2019 Economic Report, available at www.dfl.de/wp-content/uploads/sites/3/2019/02/DFL_2019_Economic_Report_EN_S.pdf.

DFB is composed of 27 member associations (five regional football associations, 21 state football associations and DFL). DFB itself is a member of UEFA and therefore also a member of FIFA.

DFB organises the Men's and Women's senior and under age national teams, the men's national cup competition (*DFB-Pokal*), the men's highest football league below the leagues organised by DFL ("3rd League", *Dritte Liga*), and the national competitions in women's football.

DFB is also responsible for the disciplinary bodies in German football (with competence for the leagues organised by DFL, too).

1.1.2 Deutsche Fußball Liga, DFL

DFL was founded in December 2000 and has since been responsible for overseeing all aspects of professional football in Germany, including the organisation and marketing of Bundesliga and Bundesliga 2 as Germany's top two football leagues and of the German Supercup. DFL is composed of the 36 clubs playing in the top two leagues and itself is an ordinary member of DFB. There, DFL holds a blocking stake in DFB's general assembly on questions regarding the interests of Bundesliga or Bundesliga 2.[4]

As a result of historical development, DFL is solely responsible for the registration of players with clubs of Bundesliga and Bundesliga 2 and, therefore, plays an important role in the (national) transfers of players in Germany.

1.1.3 Regional and state football associations

The federally structured five regional and 21 state football associations[5] take responsibility for all divisions below the 3rd League. These divisions are organised on the respective regional or state level which have their own administration and disciplinary organs.

1.2 Legal framework: National state law and associations' statutes

Transfer agreements involving German clubs as well as employment contracts of football players employed with German clubs are – in the first place – governed by the statutory regulations of FIFA, DFB and DFL.

DFL and DFB are associations under German private law and therefore benefit from the freedom of associations guaranteed by article 9 of the German Constitution (*Grundgesetz, GG*). Article 9 GG ensures the associations' self-determination regarding their own organisation, the process of their

[4] Section 26 (2) of DFB' statues of association.

[5] An overview of all regional and state football associations is given at www.dfb.de/en/about-dfb/regional-associations/.

decision-making and the conduct of their business.[6] Relevant statutory regulations governing employment contracts with football players are part of DFB's and DFL's statutes. In accordance with their respective association's purposes, DFL's statutes[7] contain specific regulations applicable to Licensed Players of clubs of Bundesliga and Bundesliga 2 whereas DFB's statutes[8] contain regulations applicable to players employed with clubs in the 3rd league and below. DFB as well as DFL implement mandatory FIFA regulations applicable at national level in their respective frameworks.

However, as in other jurisdictions, the freedom of association is not unlimited as the statutory regulations are completed or even discarded by mandatory state law.

While there are only a few general mandatory state law principles governing transfer agreements, the provisions of German labour law are largely considered as mandatory in the light of their purpose to protect employees' rights. As German labour law applies a strictly functional definition of employees and therefore does, in general, not differentiate between highly remunerated football players and other employees, the clubs are obliged to comply with major parts of German labour law. That is why employment contracts with football players in Germany may, *inter alia*, not deviate from the players' right to a six-week continued payment of salary in the event of illness,[9] or the legal minimum of vacation days[10] or the right to refer disputes arising from the employment contract to state Labour courts.[11] Regarding these three examples of mandatory state law, for the sake of clarification, Sections 9 and 10 of DFL's Licence Regulations on Players even refer to the relevant legal provisions.

On the other hand, unlike in lots of other European countries, in German football there are no collective agreements applicable to players' employment contracts.[12]

1.3 Players' legal framework: the German application of article 2 of FIFA RSTP

The distinction between professional and amateur players according to article 2 of the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP") has

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[6] BVerfG, ruling from 15 June 1989 – 2 BvL 4/87 = *NJW* 1990, 37.

[7] DFL's statutes are available (in German language) at www.dfl.de/de/ueber-uns/statuten/.

[8] DFB's statutes are available (in German language) at www.dfb.de/verbandsservice/verbandsrecht/satzung-und-ordnungen/.

[9] Section 3 of the Act on the Continued Remuneration (*Entgeltfortzahlungsgesetz*, EntgFG).

[10] Sections 1 and 3 of the Federal Leave Act (*Bundesurlaubsgesetz*, BUrlG).

[11] Section 2 of the Labour Courts Act (*Arbeitsgerichtsgesetz,* ArbGG); see the remarks under section 7.2 below.

[12] Section 4 (1) lit. i) of DFL's statutes of association foresee the League's competence to negotiate and – subject to the general assembly's approval – conclude a collective agreement but there have not been any efforts towards such agreements until today.

been implemented in Section 8 of DFB's procedural regulations for national games (*DFB-Spielordnung*) and in the Preamble of DFL's Licence Regulations on Players.

Both regulations stipulate that a player is deemed to be an amateur if he is playing football due to his membership with his club and is earning no more than EUR 249.99 per month.

In contrast, every player earning a salary of at least EUR 250 per month is qualified as a professional player.

Within the category of professional players, the statutes of DFL and DFB differ between the so-called Licensed Players (players of a Bundesliga or Bundesliga 2 club whose legal regime is regulated in DFL's statutory regulations, especially in DFL's Licence Regulations on Players) and the so-called Contract Players (players of clubs of leagues below Bundesliga 2 or players playing for the second team of a Bundesliga or Bundesliga 2 club whose legal regime is governed by DFB's regulations and especially in DFB's procedural regulations for national games).[13]

Licensed Players do not only have an employment contract with their respective club,[14] but also a licence contract with DFL which assigns them the licence to take part in Bundesliga and Bundesliga 2 matches. Through this license, a direct contractual link between the player and the League is created which allows the League to directly impose certain obligations on the player and – in case of breach of these obligations – to sanction the player by means of a contractual penalty.

The following specifications focus on the regime applicable to Licensed Players while also summarising the essential principles applicable to Contract Players.

2. Registration and transfer rules

Following the explanations on the national framework in Germany under section 1, rules and regulations on transfers and registration of players will generally be found in DFL's and DFB's statutory regulations whereas state law only applies in its general rules and principles. There are no specific state law provisions on the transfer or registration of football players.

Hereafter shall therefore be examined of DFB's and DFL's regulations on national transfers of football players and on the registration of transferred players.

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[13] The category of Contract Players includes minors with whom so-called Advancement and Support Contracts can be concluded even under the age of 18; see section 3.2 below.

[14] See below, section 3.1.

2.1 Statutory regulations on national transfers of football players

Following the structure of German football described above, there are DFL statutory regulations on the transfer of Licensed Players and DFB statutory regulations applicable to the transfer of all players, including professional players as well as amateurs. On both levels, the mandatory regulations of FIFA RSTP are completed by specific national provisions.

2.1.1 Statutory regulations on the transfer of Licensed Players

DFL's provisions on the transfer of players are incorporated in DFL's Licence Regulations on Players. While the main principles are equivalent to the well-known rules of FIFA RSTP, there are several specific provisions applicable to transfers to German clubs.

2.1.1.1 Transfer periods

In line with article 6 of FIFA RSTP, as a principle, a player can be registered with a new club only within the two annual transfer periods. In Germany, these transfer periods are from 1 July to 31 August ("*Wechselperiode I*") and from 1 to 31 January ("*Wechselperiode II*") of each year.[15] On the last day of each transfer period, a player can only be registered with a new club if all necessary information is provided and all necessary documents are uploaded by 6 p.m. If this deadline is missed, the player will be registered in the next transfer period half a year later.

2.1.1.2 Transfer of out of contract players

As exceptions to this principle (for nationals transfers equally as for international transfers to Germany), there are two kinds of transfers that are possible outside the transfer periods: on the one hand, players whose contract (as Licensed Player or Contract Player) has expired prior to the end of August may be registered outside the transfer periods until 31 December at the latest (Section 5 of DFL's Licence Regulations on Players). This exception uses the flexibility clause of article 6 of FIFA RSTP but is limited to the first half of the season. Hence, a player whose existing employment contract expires before the end of the summer transfer period is able to join another club before the start of the winter transfer period in January (and, of course, until the deadline day of the winter transfer period).

In contrast, in the second half of the season, transfers outside the transfer periods are not permitted for reasons of the competition's integrity. By these means, a distortion of the competition shall be prevented which could occur in the scenario where a club registers new players for the last matches of a season only to avoid relegation.

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[15] Section 4 (2) of DFL's Licence Regulations on Players.

On the other hand, so-called "club's own players" (*vereinseigene Spieler*) meaning players who have already been registered with the club as Contract Players or amateurs since the end of the preceding transfer period can be registered as Licensed Players at any time.[16]

2.1.1.3 Squad composition requirements

In addition to the provisions on transfers of players, there are general rules on the composition of the squad of a Bundesliga or Bundesliga 2 club which each club has to comply with to get a licence from DFL. Practically, these regulations may influence a club's transfer policy as well.

According to Section 5 (4) of DFL's Club Licensing Regulations, each Bundesliga and Bundesliga 2 club must have twelve German players under contract. This provision, which was originally introduced with a view to the promotion of young German players, has been the object of some discussions about potential discrimination against foreign players. However, the actual effects of this provision are quite limited as there are no requirements to have a certain number of German players on the field or in the squad of 18 players for a match day. In addition, there is no squad size limit in Germany which means that a club may have an unlimited number of foreign players under contract or in the squad of 18 or on the field as long as there are twelve Germans under contract. Thus, there are no direct adverse effects on foreign players, whose number is not limited at all.

Besides this general rule on the squads' composition, there are more specific provisions on the minimum number of local players each club must have under contract. According to Section 5b (1) of DFL's Licence Regulations on Players, each club has to sign at least four Licensed Players qualifying as club-trained players and at least another four association-trained players in the sense of the respective UEFA regulations,[17] which means a player irrespective of his nationality and current age who, between the age of 15 and 21, has been registered with his current club (club-trained) or with clubs affiliated to DFB (association-trained) for a period, continuous or not, of three entire seasons or 36 months.

2.1.1.4 Loan of players

A loan of a player is generally possible under the conditions foreseen in article 10 of FIFA RSTP for international transfers.

Meanwhile, the national loan of a player is subject to the additional condition that the player is still under contract with the parent club after the end of the loan.[18]

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[16] Section 5 (5) of DFL's Licence Regulations on Players.
[17] Article 44.04/05 of UEFA Champions League Regulations 2018/19.
[18] Section 5 (2) of DFL's Licence Regulations on Players.

Once a player is on loan with another club, there is no special 'loan regime' applicable. In particular, there are no statutory restrictions on the player's right to play in matches against his parent club[19] and there are no limitations on the number of players a club can sign on loan or loan to other clubs. One specificity regarding players on loan is the fact that Bundesliga and Bundesliga 2 clubs are allowed to loan two of their local players to another club who will still be taken into consideration for the fulfilment of the number of local players required by the statutes.[20]

2.1.2 Statutory regulations on the transfer of Contract Players

Statutory provisions on the transfer of Contract Players can be found in Section 14 of DFL's Licence Regulations on Players (regarding Contract Players in Bundesliga or Bundesliga 2 clubs) and in section 23 of DFB's procedural regulations for national games (regarding Contract players of other clubs). In general, these regulations are very similar to the statutory regulations on transfers of Licensed Players described above.

Regarding minor players who have signed a so-called "Advancement and Support Contract" with a club maintaining a certified youth academy,[21] the provisions on the transfer of Contract Players apply as well.

2.2 Regulations on the involvement of intermediaries in a transfer

There are additional regulations that must be observed as soon as an intermediary is involved in a transfer.

First of all, the parties of a transfer have to respect the provisions of DFB's Regulations on Players' Agents,[22] the German implementation of FIFA's Regulations on Working with Intermediaries.[23] The German regulations essentially implement FIFA's minimum standards.

As additional requirements, intermediaries must produce a Police Clearance Certificate[24] and pay a registration fee of EUR 500 per season.[25] As a result of a legal challenge to DFB's regulations in 2015, DFB had to adjust the

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[19] As a consequence, parent clubs are trying to prohibit this by inserting special clauses in the loan agreement, see section 4.2.3.

[20] Section 5b (2) of DFL's Licence Regulations on Players.

[21] See below, section 3.2.

[22] *DFB-Reglement für Spielervermittlung*, available at www.dfb.de/verbandsservice/pinnwand/spielervermittlung/reglements/.

[23] Regarding FIFA's regulations on intermediaries and potential reforms of the system, see A. Bozza's and P. Capello's analysis in the first part of this book.

[24] Section 2 (2) of DFB Regulations on Players'Agents. For foreign intermediaries from countries that do not know Police Clearance Certificate, a comparable document has to be submitted. If the intermediary is a legal person, its legal representative has to submit the certificate.

[25] Section 2 (3) of DFB Regulations on Players'Agents.

intermediary declaration which is necessary for the registration, and in particular establish the provisions that the intermediary must declare to be bound by. FIFA's standard declaration, according to which an intermediary has to submit himself to be bound by all statutes and regulations of associations and confederations, as well as to the Statutes and regulations of FIFA, was judged to be disproportionally extensive and therefore in violation of article 101 TFEU.[26]

The clubs of Bundesliga and Bundesliga 2 have to submit to DFL, within two weeks of its conclusion, each contract concluded with an intermediary in the context of a transfer agreement or the conclusion or extension of an employment contract with a player.[27] The clubs are also obliged to ensure that the players are aware of each involvement of an intermediary in order to prevent any conflicts of interest at the player's expense. To support the clubs in fulfilling this obligation, the standard contract for Licensed Players asks for the details of any intermediary involved in the negotiation of the agreement.

Regarding the relevant contractual provisions relating to third-party ownership ("TPO"), the international TPO prohibition equally applies to national transfers in Germany.[28]

2.3 The registration of (national) transfers in Germany

Depending on the competent body – DFL for transfers to Bundesliga or Bundesliga 2 clubs and the respective regional or state football association for transfers to other German clubs – different registration mechanisms have been established in Germany which equally apply to national and international transfers.[29]

2.3.1 Transfer Online Registration ("TOR") for transfers to professional football clubs

Since the start of the 2015/2016 season, all transfers of players to a Bundesliga or Bundesliga 2 club are processed via an online-based registration system called "TOR" (Transfer Online Registration system).[30] The TOR-system was introduced with the purpose of simplifying the registration of new players for both clubs and

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[26] Judgement of *Landgericht* Frankfurt am Main from 28. May 2015 – 2-06 0 142/15 = *SpuRt* 2015, 263 (insofar confirmed by the judgement of *Oberlandesgericht* Frankfurt am Main from 2 February 2016 – 11 U 70/15 (Kart) = *SpuRt* 2016, 173).

[27] Section 5 (7) of DFL's Licence Regulations on Players.

[28] Articles 18bis and 18ter of FIFA RSTP are implemented on national level in Sections 5a (1) and (2) of DFL's Licence Regulations on Players.

[29] For international transfers, it is mandatory to process both, the registration via FIFA TMS (in order to be granted the ITC) and the registration via TOR (in order to be registered with DFL and to get the permit to play in Bundesliga or Bundesliga 2 matches).

[30] The use of the online registration system has been declared mandatory by the amended provision of Section 4 of DFL's Licence Regulations on Players which stipulates that players can only be granted a licence if the licence is applied via TOR and all necessary information and documents are uploaded to the system.

DFL (the latter being responsible for the registration of players of clubs playing in Bundesliga or Bundesliga 2).

If a club intends to register a new player via TOR, the club must enter the data necessary to identify the player and to allow DFL to register the player for the new club. The required data comprises the player's master data as well as the details of his contractual situation with his former club (expiration or termination of his employment contract with the old club) and with the new club (permanent transfer or transfer on loan, term of the contract, remuneration, participation of intermediaries etc.). In general, the data required to register a player via TOR is quite comparable to the data required for any international transfer according to section 4 of Annexe 3 to FIFA RSTP.

To enable DFL to verify the information entered by the club, the relevant documents supporting this information must be uploaded to the online registration system. The main documents necessary to successfully register a new player are *inter alia*:

- Employment contract between (new) club and player;
- Transfer agreement;
- Agreement on the resolution of the player's employment contract with the old club;
- Agreements with intermediaries involved in the transfer/conclusion of the employment contract;
- Certificate on the player's sports capability;
- Residence permit including a work permit;
- Player's declarations required by statutory regulations.[31]

As one of the aims of the introduction of an online registration system was the simplification of the process, these documents are no longer required to be submitted in hardcopy form. It is sufficient to upload scans of the signed documents.

Hence, the only documents that must be filed in paper form are the licence contract between the player and DFL and the arbitration agreement between player, DFL and DFB for which the written form is still required.

2.3.2 Registration with football clubs in the 3rd league and below

For transfers of players to German clubs playing in the 3rd League (organised by DFB) or in the divisions below (organised by the respectively competent regional or state football association), the registration process is managed by the competent local football association in the sense of the regional or state football association

[31] E.g. the player's declaration to comply with all statutory regulations of FIFA, UEFA, DFB and DFL, his confirmation not to have been eligible to play for more than two clubs and not to have played for more than one club in the current season (see Section 13 of DFL's Licence Regulations on Players).

the new club is affiliated to.[32] While the application for a new registration shall be possible online via DFB's online network DFBnet,[33] at this level the required documents must still regularly be submitted in hardcopy form.

3. Employment contracts (standard contract and main clauses)

In the area of players' employment contracts, again, the competences and respective regulations are divided between DFL and DFB. DFL is responsible for providing the clubs of Bundesliga and Bundesliga 2 with a standard employment contract for Licensed Players (see below, section 3.1), whereas DFB provides a standard contract for Contract Players (see below, section 3.3).

Regarding youth players under 18 years from Bundesliga and Bundesliga 2 clubs as well as from amateur clubs, DFL and DFB jointly provide the clubs with a standard contract for youth players (see below, section 3.2).

3.1 Standard Employment Contract for Licensed Players

As a service to its member clubs, DFL provides them with a standard employment contract for Licensed Players (*Musterarbeitsvertrag*) that contains a set of rules carefully balanced between the clubs' and the players' interests, taking into account the legal requirements of statutory and state law as well as the latest development of jurisdiction.

The current version of DFL's standard contract, which is not generally published but only provided to the member clubs, dates from May 2016 and was updated in May 2018 after the coming into force of the GDPR. This version now comprises around 40 pages and there are language versions in the official FIFA languages English, French and Spanish.

Apart from some mandatory clauses that the clubs have to insert into each employment contract with Licensed Players (see below, section 3.1.1), the clubs are free to use the standard contract, to amend the standard contract or to draft their own employment contracts. However, experience has shown that the large majority of the clubs (more than 90%) uses the standard contract provided by DFL and only adapt, amend or add specific clauses.

3.1.1 Mandatory clauses for employment contracts with professional players

While theoretically, DFL's statutes leave quite a broad freedom to clubs and players regarding the contents of their employment contracts, in practice the content and clauses of the standard employment contract provided by DFL are used by nearly

[32] The general conditions are regulated in the Sections 10ff. of DFB's procedural regulations for national games.
[33] Section 16a of DFB's procedural regulations for national games.

all clubs of Bundesliga and Bundesliga 2. However, even if a club prefers using its own contract or to amend the standard contract in certain aspects, DFL's Licence Regulations on Players predefine some requirements – with regard to formalities as well as material content – that each employment contract with a Licensed Player has to meet.

Section 10 of DFL's Licence Regulations on Players ("Form and Content of Contracts") is the central norm regarding obligatory requirements to be respected when concluding employment contracts with Licensed Players. First, the provision clarifies that all employment contracts with Licensed Players must be in writing and in German language. The parties are free to conclude a bilingual contract or to add a version in another language but in any case, there must be a German version and in case of disputes between the parties, only the German version is binding (Section 10 (1)). As to the content of the contract, Section 10 (2) of DFL's Licence Regulations on Players underlines the general freedom of the clubs in the drafting of employment contracts within the limits fixed by the statutes of DFL, DFB or the competent regional or state football association.

The most important provision concerning the content of employment contracts with Licensed Players is Section 10 (3) of DFL's Licence Regulations on Players. This provision sets the requirement that each player grants the club the right and permits the club to use and exploit the player's "commercialisation rights". These are defined as "all activities and services to be made or rendered by the player for the club within the framework of the employment contract as well as asset-constituting components of his personality rights and his other asset-constituting rights referring to his sports personality, insofar as they relate to the player's capacity as player for the club". Furthermore, the respective provisions on the player's commercialisation rights must also entitle the club to grant these commercialisation rights to DFL in order to enable league wide "group marketing" measures.[34] To this extent, the statutory provision of Section 10 (3) of DFL's Licence Regulations on Players explicitly refers to the standard employment contract. This requirement concerning the transfer of the player's commercialisation rights to the club is also mirrored in Section 5 (5) of DFL's Club Licensing Regulations (*Lizenzierungsordnung*) whereby the clubs' obligation to be granted the player's personality rights and to transfer these rights to DFL becomes part of the annual club licensing procedure and thus a prerequisite to the clubs' participation in Bundesliga or Bundesliga 2.

In contrast to other provisions of the standard contract where the clubs enjoy a large freedom of legal drafting, the detailed regulations on the players' personality rights are thoroughly controlled by DFL as the fulfilment of these regulations is of essence for the marketing of Bundesliga and Bundesliga 2.

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[34] Group marketing measures in the sense of Sections 14 ff. of the Regulations on the Exploitation of Commercial Rights of DFL e.V. (*Ordnung für die Verwertung kommerzieller Rechte des DFL e.V.*, OVR) are understood as a use of the Commercialisation Rights of a group of players who represent the Bundesliga and/or the Bundesliga 2 or the clubs or corporations of Bundesliga and/or Bundesliga 2 in their entirety or in characteristic or otherwise essential parts.

Apparently, these clauses on the transfer of the player's commercialisation rights to the club and to the league for leaguewide marketing measures have been the object of legal discussions as players or the players' union judged the set of rules on these rights to be too favourable for the clubs and the league, and at the players' disadvantage. In addition, the regulations have been the object of various legal proceedings in which DFL defended its group marketing products against other, non-authorised products of providers that have been using the players' names, data or images without having been granted these rights. In such court proceedings, the non-authorised providers of products such as manager games or daily fantasy games unsuccesfully argued that the standard clauses regarding the transfer of players' rights to the club and to the league had to be qualified as general conditions that were not transparent and were disproportionate at the expense of the players and therefore should be deemed invalid. In fact, these arguments have never been accepted by the courts, which decided in all cases that the standard clauses on the granting of rights from the players to the clubs and the league are legal and effective.[35]

These conclusions take into consideration that the transfer of the player's rights to the league (via the clubs) enables the league to promote and market its competition which increases the public's and the media's interest in the competition and its protagonists which finally benefits the single player as well. In addition, the standard contract does not deprive the player of the possibility to use his name, data or image for his personal purposes. It expressly guarantees the player's right to self-marketing as long as the club's legitimate interests are not compromised. Thus, the contractual duties regarding the player's commercialisation rights have been judged appropriate to the parties' respective interests.

Further statutory rules set out a minimum wage to be paid to all Licensed Players of a club of Bundesliga or Bundesliga 2 (Section 11 (1) of DFL's Licence Regulations on Players). This minimum wage for professional players is calculated in reference to the assessment limit for the statutory pension scheme: Licensed Players of Bundesliga clubs must be paid a monthly salary of at least 50% of the assessment limit for the statutory pension scheme which is equal to the amount of EUR 3,350 in West Germany (EUR 3,075 in East Germany) in the year 2019.[36] In Bundesliga 2, generally a minimum salary of 30% of this limit must be paid (EUR 2,010 in West Germany and EUR 1,845 in East Germany) but a minimum salary of 50% of the limit applies for players who shall be considered as local players in the sense of the statutory requirements of Section 5b of DFL's Licence Regulations on Players.[37]

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[35] Judgement of *Landgericht Frankfurt* from 2 December 2008 – 2 – 06 O 249/06 = *SpuRt* 2009, 207.

[36] The assessment limit for the statutory pension scheme is adjusted yearly.

[37] See above, section 2.1.1.3.

3.1.2 Other main clauses

Besides the required minimum content described above, the standard employment contract contains the main clauses on the player's responsibilities, duties and remuneration, as well as several provisions on miscellaneous topics.

3.1.2.1 Term of the contract[38]

In accordance with FIFA RSTP, the maximum duration of an employment contract is five years, while the minimum duration is until the end of the first season after the contract has become effective. Though not foreseen in the standard contract, prolongation clauses in accordance with the number of matches a player is fielded during a season are quite common as they allow both parties to adapt a contract's term to the success of the collaboration between club and player.

Subject to the parties' will, the validity of the contract is often dependent on the club's membership of a certain league, e.g. the contract is valid only for Bundesliga or only for Bundesliga and Bundesliga 2, which means that in the event of an unexpected relegation the player is able to leave the club and join another club as a free agent. On first sight, such a clause seems to only be favourable to the player. However, as a club's financial power, and especially the TV revenues, are considerably lower in Bundesliga 2 than in Bundesliga, and even more so in the 3rd league compared to Bundesliga 2, these clauses have already shown their use for clubs by giving them the chance to considerably reduce their personnel costs in case of relegation.

3.1.2.2 The player's responsibilities and duties

Naturally, the provisions regarding the player's responsibilities and duties are the key elements of each employment contract of a footballer. In this regard, the standard contract's provisions on the player's duties linked to his sporting activity stipulate the player's general duty to devote all his football capabilities exclusively to the club (with the exception of his participation in matches of his national team).

This general duty then comprises the obligations, *inter alia*, to conscientiously prepare himself for his fixtures and actively take part in all training activities and to observe athletic fairness towards all persons involved in matches and training sessions. The further obligation to wear the clothing made available by the club is one of the most discussed clauses as it opposes the club's interest to have its team equipped by the club's official supplier to the player's interest in signing his own contract with a sportswear supplier or a shoe manufacturer. Consequently, this clause is often modified if the player's interests prevail in the contract negotiations.

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[38] For the question of termination of the contract, see below, section 5.

Concerning the participation in training and matches, the employment contract contains the duty to participate in matches or training sessions of another team of the club under the condition that the quality and the circumstances of the training sessions of this team are equivalent to those that one can expect from a professional football club. To ensure these quality requirements, the standard contract allows training with the second team only if (i) the second team plays at least in the 4th (5th) division in case of Bundesliga (Bundesliga 2) clubs, (ii) the second team's coach holds at least the football instructor (coach A) licence and (iii) the training sessions effectively take place for a team (and not for one or a few players alone). While this or comparable clauses have been contested repeatedly, they have mainly been validated by jurisprudence available for this question.[39] In these cases, the measure of sending a player to train with the second team has regularly been confirmed at the conditions that (i) there is a contractual clause in the employment contract foreseeing the club's power to do so and (ii) the quality of the second team's training is comparable to the first team's.

Other duties of the player provided in the standard contract are his obligation to support the club's commercialisation efforts, to increase the club's reputation by means of his conduct on the pitch and in the public (especially on social media), to comply with all anti-doping regulations, and to respect several behavioural obligations in the context of betting, match manipulation and other potential irregularities in football.

3.1.2.3 Remuneration clauses

While the standard contract proposes a very compact clause, which only contains the monthly basic gross salary, most clubs use a separate attachment concerning remuneration. These attachments often contain very detailed provisions, not only on the monthly salary but also on the increase of the salary following certain pre-defined conditions, for example, the number of matches in which the player is fielded or at least in the squad of 18, or the sporting success that the club achieves in a given season. Furthermore, different contracts contain special bonuses for the achievement of certain individual or team successes.

Further provisions on the player's remuneration deal with the continued remuneration in case of illness (which the clubs must pay for at least the first six weeks of illness according to mandatory German labour law) and more specifically,

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[39] E. Herrich/J. Menke/T. Schulz, „*Trainingsgruppe 2" statt „1. Mannschaft": Beschäftigungsanspruch und Versetzungsrecht im (Profi-) Fußball im Spiegel der Rechtsprechung*", *SpuRt*, 2014, 187; Judgement of *Arbeitsgericht Berlin* from 17 February 2014 – 28 Ga 2145/14 = *SpuRt* 2014, 219; judgement of *Arbeitsgericht Bielefeld* from 16 February 2011 – 6 Ga 7/11 = *SpuRt* 2014, 215 whereas a judgement of *Arbeitsgericht Mannheim* from 28 August 2013 – 10 Ga 3/13 = *SpuRt* 2014, 217.emphasized that the second team's training must also have a competitive character (which was denied *in concretu* as the players had to train not with an official team of the club but in a closed group of suspended players).

the extent to which bonus payments for appearances of the player on the field are due during illness. In this regard, the standard contract proposes a graded share of bonuses that depends on the player's appearances in the last five matches prior to his illness.

3.1.3 Miscellaneous and GDPR clause

The main clauses described above are complemented by different further clauses that have proved their value in conflicts between the parties to the employment contract: these are for example clauses on the release of players for international matches in accordance with the provisions of Annex 1 to FIFA RSTP, clauses on the players' responsibilities in connection with players' agents, and clauses that foresee a cut-off period in which mutual claims arising from the employment contract must be notified to the other party.

As a consequence of the entry into force of the General Data Protection Regulation in May 2018,[40] the standard clauses on data protection have been updated and adapted in line with the new European law. As a result of this modification, the standard contract now has a specific Data Protection Attachment by means of which the club fulfils its obligations regarding information towards the player. In this attachment, the player is, amongst other points, informed about his personal data protection rights and about the purpose and legal basis of data processing carried out by the club, the league and the football associations.[41]

3.2 Standard contract for youth players

3.2.1 Scope of Advancement and Support Contracts

According to Section 2 (3) of DFL's Licence Regulations on Players, a contract for a Licensed Player (for Bundesliga and Bundesliga 2) can only be concluded with players who have reached the age of 18. Before this age, it is possible to conclude an Advancement and Support Contract (*Fördervertrag*) with the minor player with effect from the start of the season in which the player enters the club's Under 16 team, provided that the club has a certified youth academy (*Nachwuchsleistungszentrum*),[42] which is mandatory in Bundesliga and

[40] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016, 1–88.

[41] Concerning the legal basis of the data processing affecting the players' data, the largest part of the data processing is based on the purpose of fulfilling contractual obligations (article 6 (1) lit. b) GDPR).

[42] Section 11 of DFL's Licence Regulations on Players and the more detailed provisions in Section 22 (7a) of DFB's procedural regulations for national games (*DFB-Spielordnung*).

Bundesliga 2 but can also be put in place on a voluntary basis by clubs in the 3rd league and below.[43]

While such Advancement and Support Contracts can generally be signed six months prior to the effective date of the contract, they can be signed twelve months in advance of the effective date already if the player has continously been with the club since at least the Under 14 team. The purpose of this system is to prevent movements from one club to another at a very young age.

3.2.2 Content of the standard contract for youth players

As Advancement and Support Contracts are likewise used by clubs from DFL's Bundesliga and Bundesliga 2 and by clubs from lower leagues, the relevant standard contract is jointly provided by DFL and DFB. The standard contract is provided in German, English, French and Spanish, and has recently been updated for the entry into force of the GDPR.

Compared to the standard contract for Licensed Players, the standard Advancement and Support Contract is specifically adapted to the needs and interests of the training of young players. Hence, provisions on the commercialisation of the player's rights or on the player's duties to take part in club (marketing) activities are also part of the contract but they take up less room than in the Licensed Players' standard contract. On the other hand, there are other subjects such as the player's behaviour related to social media or the compatibility of training and school education that are especially highlighted in the contract. For example, the club shall attempt to provide for educational assistance and shall ensure a functioning cooperation between school and club, including additional training units within school and the coordination of the needs of sports activities with school-related requirements.

As is the case with the standard contract for Licensed Players, the clubs have a broad freedom to use, adapt or not use the standard contract. The mandatory requirements for an Advancement and Support Contract are stipulated in Section 22 of DFB's procedural regulations for national games (*DFB-Spielordnung*) and consist of a contract in writing, the prohibition of contradictions to the statutes of DFB and its member associations, and the club's duty to pay the player a remuneration of at least EUR 250 per month.

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[43] As of 1 January 2019, there are 55 certified youth academies in Germany including 10 academies of clubs that are playing in the 3rd league and 9 academies of clubs playing in a league below the 3rd league.

3.3 Standard contract for Contract Players

The third standard contract to be mentioned for the sake of completeness is the standard contract for Contract Players (*Vertragsspieler*) designating all players who are professional players in the sense of article 2 of FIFA RSTP and Section 8 of DFB's procedural regulations for national games but are not Licensed Players.

Considering the less important economic consequences, this standard contract contains a smaller set of rules. For these contracts, too, a contract in writing with a minimum remuneration of EUR 250 per month is required by the statutory regulations.

4. Transfer agreements

The framework that clubs must respect when entering into transfer agreements for national transfers of players in Germany is essentially provided by the regulations of FIFA RSTP and their implementation into the statutory rules of DFL and DFB. As shown above, there are only few additional rules on transfers of football players imposed by either statutory or state law in Germany.[44] Consequently, the vast majority of transfer agreements on national transfers are more or less straightforward and consist of a set of recurrent main clauses. Nevertheless, there are more specific clauses that have regularly been the subject of legal debates and shall be presented hereafter.

4.1 Main clauses

The main clauses to be used in transfer agreements on national transfers are related to the agreements' *essentialia negotii*, *i.e.* the transfer of the player's registration from one club to another and the remuneration to be paid in return.

4.1.1 Main duties of the parties

Whereas the contractual main duty of the new club is evident – the obligation to pay the transfer fee agreed on between the clubs – the concrete legal obligation of the releasing club is not that apparent and therefore is not uniformly described in transfer agreements. In the end, the releasing club has to do anything that is necessary to enable the transfer of the player to the new club. More precisely, this includes the obligation of the releasing club to dissolve its existing employment contract with the player to create the preconditions that the player can be registered with the new club. It is definitely advisable not to limit the releasing club's obligation to the dissolution of the employment contract but to determine as further contractual main obligations its duty to make all the declarations necessary to allow the

[44] See above, section 2.1.

registration of the player for the new club, to provide all required documents and to do so within the statutory deadlines.

Supplementary to its contractual main obligations, the releasing club has – in most transfer agreements – to issue several legally binding declarations on the contractual situation of the player. It is usual for the releasing club to guarantee that on the one hand no other contractual relations of the player to other clubs are known and, on the other hand, the releasing club is the owner of all transfer rights in the player and is exclusively entitled to request transfer compensation.

4.1.2 Effectivity of the contract: conditions precedent

To ensure that the mutual obligations are only due and enforceable if the intended transfer is carried out and the player is finally allowed to play for the new club, the transfer agreements normally contain different conditions precedent that have to be fulfilled for the contract to become effective. These conditions precedent – that are in the same or in a comparable way elements of an international transfer agreement as well – regularly are (i) the conclusion of an employment contract between the player and the new club and (ii) the granting of a playing permit to the player and respectively the registration of the player by DFL (for Bundesliga and Bundesliga 2) or DFB (for the 3rd league). To some extent, there are further conditions precedent, especially the dissolution of the employment contract between the player and the releasing club. This however seems to be included as part of the releasing club's main obligations rather than as a precondition to the contract.

When inserting conditions precedent in a transfer agreement, it is essential to stipulate clear deadlines for the conditions to be fulfilled. Otherwise, there is the risk that, if the intended transfer cannot be concluded in time, the releasing club cannot transfer the player to another club without risking the violation of contractual obligations, as long as the fulfilment of the predefined conditions is still possible.

4.1.3 Transfer fees

Even if the transfer fees received in national transfers in Germany have not yet reached the exorbitant amounts that have appeared in international transfers, the figures are increasing, which underlines the importance of the related contractual clauses.

Analysing transfer agreements concerning national transfers in Germany, one can find a broad variety of provisions on the transfer fee: the point of departure is a clause determining the fixed transfer compensation payable from the new club to the releasing club. The parties have to define whether this fixed amount is gross or net, when the payment is due and whether the transfer compensation has to be paid in a one-off payment or in a certain number of instalments. If the parties do not provide these details, in case of a conflict the competent court or arbitral tribunal must interpret the agreement pursuant to the general rules on the interpretation of contracts.

In this context, the well-known question from international transfer agreements whether possible payments for solidarity contribution or training compensation are included or not in the amount stipulated in the agreement does not arise in contracts for national transfers: the respective FIFA regulations are not applicable and the comparable mechanisms in Germany do not lead to an additional direct payment to be made by a club.[45] Looking into the future, these findings may change if the FIFA RSTP provisions on solidarity mechanism according to article 21 of FIFA RSTP are extended to national transfers with an "international dimension".[46] If these proposed changes are adopted, there will also be a strong need to clarify within the agreement for a national transfer whether such solidarity payments will be deducted from or added to the contracted transfer fee.

In relation to additional provisions on further components of a transfer fee to be paid between the two clubs, the clubs' possibilities are nearly limitless. For instance, agreements on additional payments in case of the realisation of certain clearly defined events are quite common (number of matches/minutes played by the player in total/in certain competitions; promotion of the new club to a higher league or qualification to a UEFA club competition; winning specified competitions; the calling up of the player for the national team; …) and these parameters can be combined or accumulated in various ways.

Another popular instrument to balance the clubs' different interests in the transfer are sell-on clauses which entitle the former club to a certain percentage in a future transfer of the player and in return gives the new club the possibility of lowering the initial transfer fee. Such sell-on clauses are admissible and legal and do not violate the national regulations on the prohibition of TPO[47] as a former club – in accordance with FIFA's understanding – is not qualified as a third party.

4.2 Specific clauses

In addition to these main clauses, there are some more specific clauses that have been discussed recently and therefore seem worth illustrating.

4.2.1 Loan agreements

National loan agreements in Germany do not show important differences from international loan agreements as foreseen by article 10 of FIFA RSTP. In return for a loan fee generally payable by the borrowing club, the parent club is obliged to suspend its employment contract with the player to enable the conclusion of an

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[45] See section 6 below.

[46] This development of the FIFA RSTP was announced by FIFA on 25 September 2018 following a meeting of the FIFA Football Stakeholders Committee: www.fifa.com/governance/news/y=2018/m=9/news=football-stakeholders-endorse-landmark-reforms-of-the-transfer-system.html.

[47] Section 5a (2) of DFL's Licence Regulations on Players.

employment contract between the player and the borrowing club for the duration of this suspension.

According to Section 5 (2) of DFL's Licence Regulations on Players, a loan must be agreed at least for the duration of six months between two transfer periods. In addition to the requirements of FIFA RSTP, a national loan in Germany requires that the player still has a contractual relationship with the parent club after the expiration of the loan, i.e. a loan until the end of the player's employment contract with the parent club is not admissible.

Depending on the clubs' bargaining power, the borrowing club often tries to negotiate into the loan agreement with the parent club a clause giving it the option to convert the loan into a permanent transfer after the expiration of the loan period. These clauses foresee the parent club's obligation to agree on a permanent transfer of the player for a fixed transfer fee in case the option is exercised. Thus, the borrowing club often has the chance to sign the player for a relatively low transfer fee that was negotiated at an early stage even if the player overperforms during the loan period. Of course, the permanent transfer also requires the player's consent to conclude an employment contract with the new club for the time after the loan.

4.2.2 "Buy back" clause

Recently, the insertion of "buy back"- clauses can be seen in an increasing number of transfer agreements. Via these clauses, the new club offers to the releasing club to agree on another transfer of the player back to the releasing club at a predetermined time in the future (and accordingly offers to dissolve its employment contract with the player and to provide all documents and declarations required for this future re-transfer) in the initial transfer agreement. The "buy back"-clause defines the transfer fee due in case the releasing club uses its option to re-transfer the player.

Of course, the practical enforceability of such clauses is dependent on the player's will to dissolve his employment contract with the new club and sign another contract with his former club that wants to transfer him back by using the option. Practically, the releasing club and the player will have a respective agreement on the player's anticipated consent for this case.

4.2.3 "No Playing"- clause

Another interesting clause which has been repeatedly used in loan agreements is a clause forbidding the borrowing club to field the player signed on loan in matches against the parent club.[48]

[48] The most recent case where such a clause was discussed was the transfer on loan from Vincenzo Grifo from TSG Hoffenheim to SC Freiburg in January 2019, http://www.kicker.de/news/fussball/bundesliga/startseite/740528/artikel_was-mueller-und-das-arbeitsrecht-mit-grifo-zu-tun-haben.html.

As there are no specific provisions in DFL's statutory regulations on this matter, an inadmissibility of such clauses could only be deduced from general rules like the prohibition for third parties to influence a club's policies or its team's performance.[49] However, other than UEFA's disapproval of a comparable clause in the case of *Thibaut Courtois'* loan from Chelsea FC to Atlético Madrid, DFL has not yet objected to "No Playing"-clauses. While at first glance, this different assessment of a comparable clause by UEFA and DFL could seem surprising, there is no contradiction from a legal point of view: in the knockout stage of UEFA club competitions where there are only two matches in every round, the fact of not fielding a player may be judged differently and more severely as a serious interference in the competition, compared to a league competition where the player is only absent in one out of 34 or (in case of a loan in winter) 17 matches.[50]

5. Termination of contracts

Termination of employment contracts – which has been the object of several well-known cases before FIFA and CAS – came into the centre of debate in Germany in 2017/2018 when a player from Bundesliga club FSV Mainz 05, *Heinz Müller*, sued his club before state labour courts and the issues regarding a professional player's contract's term and its termination finally had to be decided by the German Federal Labour Court. This case once again underlined the legal complexity and the practical importance of these questions and its consequences.

5.1 Admissibility of fixed-term employment contracts

The use of fixed-term employment contracts is not only absolutely common for professional football players (and professional players in other team sports, too) but even mandatory under FIFA RSTP.[51] In contrast, German labour law and especially the provisions of the German 'Part-Time and Limited Term Employment Act' (*Teilzeit- und Befristungsgesetz, TzBfG*) accept fixed-term employment contracts only under strict conditions. According to Section 14 of the Part-Time and Limited Term Employment Act, fixed-term employment contracts can – except for a one-time fixed-term contract of a maximum of two years – only be effectively concluded if this is justified on objective grounds foreseen by the law.[52] In the *Müller* case, the courts had to decide whether the specific conditions of Section 14 (1) n. 4 of this Act were fulfilled according to which objective grounds for a

[49] Section 5a (1) of DFL's Licence Regulations on Players which is identical to article 18bis (1) of FIFA RSTP.

[50] Comprehensively to the admissibility of "No Playing"-clauses, see B. Beck/P. Schulz, 'Die Wirksamkeit von sog. „Nicht-Einsatz-Klauseln" für den Wettbewerb der Fußball-Bundesliga', *SpuRt,* 2019, 2.

[51] Article 18 (1) of FIFA RSTP: "The minimum length of a contract shall be from its effective date until the end of the season, while the maximum length of a contract shall be five years."

[52] The typical cases where fixed-term contracts are admissible are the temporary need of the employer, a trial period or a temporary replacement of some incapacitated other employees.

fixed-term employment contract exist if '*the type of work involved justifies a fixed term*'.

In the particular case, the player believed the time limitation of the contract was void and his contract was concluded for an indefinite duration as the legal conditions under which fixed-terms contracts are admissible were not met. He held the view that the type of work of a footballer does not justify a fixed-term contract, neither under German law nor under the 1999/70/EC-Directive which was implemented in Germany via the TzBfG and thus gave an international dimension to this German case. The player outlined that a time limitation of the contract could not be justified by the uncertainty concerning older footballers' performances as a link between a time limitation and an employee's age constituted age discrimination forbidden by the German General Equal Treatment Act (*Allgemeines Gleichbehandlungsgesetz*).

In contrast, the club considered fixed-term contracts justified in professional football due to the high uncertainty regarding the future development of a player's performance (risk of injuries, development of a team's microstructure and especially regular changes of coaches which often go along with a change of the team's play system affecting a player's importance and value) and referred to the proven worldwide transfer market system based on fixed-term contracts. In the long term, the club considered a ban of fixed-term contracts would lead to an overaged team and an always increasing number of players as the termination of indefinite employment contracts is only admissible under strict conditions pursuant to German labour law.

After the first instance Labour Court had decided that there was no objective justification for a time limitation of the contract which consequently had been concluded for an indefinite duration,[53] the competent State Labour Court received the club's appeal and decided that the nature of a professional footballer's work justifies a fixed-term employment contract.[54]

The dispute was ended by a final judgement of the German Federal Labour Court[55] which definitively dismissed the player's claim by deciding that fixed-term contracts are justified in '*commercialized professional football which is characterized by a broad publicity'*. It stated so on the grounds that maximum sporting performances are expected and owed by professional footballers that can only be provided for a limited time, that football players' employment contracts are embedded into an international transfer system based on fixed-term contracts, and that fixed-term contracts are in the players' own best interest by giving them the possibility to easily join other clubs which would be much harder if all clubs had concluded with their players contracts for an indefinite duration.[56]

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[53] Judgement of *Arbeitsgericht Mainz* from 19 March 2015, 3 Ca 1197/14 = NZA 2015, 684.

[54] Judgement of *Landesarbeitsgericht Rheinland-Pfalz* from 17 February 2016, 4 Sa 202/15 = NZA 2016, 699.

[55] Judgement of *Bundesarbeitsgericht* from 16 January 2018, 7 AZR 312/16 = NJW 2018, 1992.

[56] See A. Koch, '*Arbeitsvertragsbefristung im Profifußball wirksam*', *RdA*, 2019, 54 who agrees to the Court's result while questioning especially the last two arguments.

The final decision strengthens the system of fixed-term contracts in professional football. Doing so, the Federal German Labour Court resisted the temptation of creating a "German Bosman case" and instead rendered a decision that – in its result – reflects the club's convincing legal arguments. The ruling enables clubs to continue engaging and replacing players according to their skills and the clubs' needs from time to time. Hence, the ruling meets the practical needs of both the clubs and players as well as the specific characteristics of highly professionalised sport.[57]

Against the background of the European roots of the German Part-Time and Limited Term Employment Act, a different ruling of the Federal Labour Court presumably would not have been restricted to Germany but impacted on the whole of European football and, consequently, on the legal framework of transfers in football in general.

5.2 Contractual termination clauses

As the use of fixed-term contracts has been confirmed by the highest German Labour Court, employment contracts of football players can – unless otherwise stated in the contract which practically does not happen in professional football – only be terminated extraordinarily, which requires a just cause.

Regarding the question of when such cause can be proven, mandatory German labour law must again be taken into consideration. Hence, the employment contract can be terminated without notice only if facts are present based on which the party giving notice cannot reasonably be expected to continue the contractual relationship until the end of the agreed term. For the appreciation of these facts, all circumstances of the individual case must be taken into account and the interests of both parties to the contract must be carefully balanced.[58]

To increase the foreseeability of the consequences of certain incidents, the standard employment contract for Licensed Players contains presumptive examples of incidents that regularly justify a termination for just cause.[59] With regard to a termination by the club, these examples include the withdrawal of the player's licence by DFL,[60] infringements against the player's behaviour obligations in anti-doping matters or the player's failure to comply with special behavioural obligations with respect to the prohibition of match manipulation, sportsmanlike and non-discriminating behaviour or his non-disclosure obligations. In all these

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[57] See C. Dressel/S. Karlin, '*The admissibility of fixed-term employment contracts in German professional football*', *World Sports Advocate*, February 2018, 4.

[58] Section 626 (1) of German Civil Code (*Bürgerliches Gesetzbuch, BGB*).

[59] Though, even if explicitly mentioned in the contract, a termination for just cause always has to meet the requirements foreseen in the law, cf: W. Walker, 'Die Kündigung von befristeten Spieler- und Trainerarbeitsverträgen', *SpuRt* 2018, 205.

[60] DFL shall withdraw the licence in case the conditions of its issuance are no longer met or if the player has culpably violated his obligations under the licence contract (Section 3 (2) of DFL's Licence Regulations on Players).

cases as well in other cases of a termination for just cause, a termination by the club is justified only if all circumstances of the particular case have been considered and – after having given due consideration to the interests of both parties – the club can no longer reasonably be expected to continue the employment relationship with the player.

On the other hand, the standard contract stipulates that the player shall be regularly allowed to terminate the contract for just cause if the club unlawfully fails to pay a player's salary for a considerable period of time and to a significant amount, provided that the player has put the club in default by granting a deadline. Taking into consideration the provisions of article 14bis of FIFA RSTP, such significant default should regularly be recognised if the overdue salaries reach the amount of at least two monthly salaries.

According to Section 626 (2) of the German Civil Code, notice of termination may only be given within two weeks from the date on which the person entitled to give notice obtains knowledge of facts conclusive for the notice of termination. After the expiration of this period, the termination cannot be declared anymore which makes it essential for both, clubs and players, to legally evaluate the facts potentially giving right to a termination within short notice. If a termination is notified, the party giving notice must notify the other party, on demand, of the reasons for the termination without undue delay in writing.[61]

5.3 Buy-out clauses

Although there are no statutory regulations on so-called "buy-out-clauses" meaning a clause that gives the player the right to demand the resolution of the employment contract from the club if specified conditions are met,[62] practice shows the importance of such clauses.

Other than in lots of other countries, buy-out clauses that provide for the player himself to pay a certain amount in order to have the employment contract dissolved are rarely used in Germany. In the first place, this can be explained by the effect that in this case, any payment made by a new club to the player to enable him to make the dissolution payment would have to be qualified as remuneration payment with all the (negative) implications on social security contributions as well as on its fiscal treatment.[63]

Instead, in the common buy-out-clauses, the right to demand the resolution of the contract is subject to the cumulative conditions that (i) the player declares the exercise of the option, (ii) a new club makes a binding offer to transfer the player for the amount foreseen in the clause and (iii) this amount is either directly

[61] Section 626 (2) sentence 2 of German Civil Code.

[62] See M. Kelber, '*Die Transferpraxis beim Vereinswechsel im Profifußball auf dem Prüfstand*', *NZA* 2001, 11 who correctly qualifies such clauses as "resolution options".

[63] Once qualified as remuneration, the payment is subject to income tax for the player and not VAT deductible for the club.

paid or guaranteed in an appropriate way until a predefined date. The clauses often foresee staggered amounts to exercise the option, depending on the time when it is exercised, the club (or more often the sporting category of the club in the sense of a club playing Champions League, Europa League, Bundesliga or lower) making the offer, and the sporting success the current club has achieved until the exercise of the option. In particular, the last category allows the parties to find suitable solutions enabling the player to leave a club for a lower transfer fee to develop his career elsewhere if a defined sporting success has not been achieved.

5.4 Other contractual provisions regarding the termination of the employment contract

The parties to an employment contract are free to modify or add the standard contract's provisions on the termination of the contract and they generously use this freedom by foreseeing, for example, a right of termination for just cause in case of a relegation of the club to the 3rd league, any criminal conviction of the player, or a drug or alcohol abuse committed by the player in public. While those contractual provisions are helpful to record the parties' common understanding of which behaviour regularly shall be qualified as just cause for terminating the contract, each termination can be brought to state labour Courts which will then examine whether the facts *in concretu* justify the legal prerequisites of a premature termination of the contract without notice.

Regarding the consequences foreseen in case of a unilateral termination without just cause, the standard employment contract for Licensed Players only contains a very short provision referring to the provision of article 17 of FIFA RSTP without foreseeing details on the amount due in such case. Accordingly, most contracts concluded by clubs do not contain special provisions on damages due for a unilateral breach of the contract without just cause as the mandatory German labour law severely limits the possibility of penalty clauses at an employee's disadvantage. Yet, the parties are free to insert into the contract clauses providing an amount or a mechanism how to calculate the amount due as compensation for a unilateral termination of the contract without just cause that would in any case taken into consideration if ever such a case becomes the object of a dispute before FIFA.

6. *National training compensation and solidarity mechanisms / levy on transfers*

On national level, there are – as far as professional football is concerned – two regulations comparable to FIFA's training compensation and solidarity mechanism, namely the "*Agreement on the protection and promotion of the training in the youth academies of clubs of the licensed football leagues*"[64] and the "*Guidelines on the recognition and promotion of training*".[65]

At first glance, the national mechanisms on solidarity payments and/or training compensation in Germany appear very similar to the well-known regulations for international transfers according to FIFA RSTP[66] and its annexes 4 and 5. Though, there is a clear difference between the international and the national mechanisms as on the national level there are no levies on transfers that one club is obliged to pay in addition to a transfer fee: the payment is either funded from a solidarity pool installed by DFL or the compensation payments only apply for the transfer of out of contract players so that actually there would not be any transfer fee.

It is therefore difficult to clearly classify the national mechanisms into one of the internationally known categories "training compensation" or "solidarity mechanism". While the national instruments in this regard would rather be qualified as mechanisms of training compensation, they also contain different components of the international solidarity mechanism. In the end, the exact categorization is a theoretical question that hardly affects the practical questions that clubs and their legal advisors have to answer when it comes to the application of the aforementioned regulations.

6.1 *Training compensation for transfers of (out of contract) youth academy players*

Until the year 2005, there were provisions in DFB's statutes – and likewise in the regional and state football associations' statutes – according to which a specified levy had to be paid by the new to the old club in case of transfers of Contract Players aged under 23. Following a dispute between two clubs from northern Germany, VfB Oldenburg and SV Wilhelmshaven, on the question whether such levies were due, these regulations of the competent state football association NFV[67] were challenged in court proceedings before the Higher Regional Court of Oldenburg.

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[64] *Vereinbarung über den Schutz und die Förderung der Ausbildung in den Leistungszentren der Clubs der Lizenzligen.*

[65] *Richtlinien zur Anerkennung und Förderung der Ausbildung.*

[66] Articles 20 and 21 of FIFA RSTP, for a further analysis of these mechanisms, see Mr. Reck's analysis in the first part of this book.

[67] *Niedersächsicher Fußballverband*, the football association of the state of Lower Saxony.

The court decided that the mandatory statutory regulations on training compensation contravened the professional freedom of the players which is protected by the German constitution and these regulations therefore were void.[68] Doing so, the court reasoned that a statutory levy to be paid by the new club is likely to deter a club from signing a young player and hence potentially compromises the player's professional development. This disadvantage for the player could not be justified by the regulations' purpose to promote the training of young players as only clubs that – more or less by accident – happen to bring a player into the semi-professional field of Contract Players benefit from the training compensation whereas the training efforts of all other clubs remain unconsidered.

Because of this jurisprudence, the concerned statutory regulations were abolished. Yet, some years later, the clubs still saw the need to promote and reward the qualified training of young players, especially in the certified youth academies that were introduced in the season 2001/2002. That was why, in the season 2011/2012, all clubs with a certified youth academy decided to conclude a multilateral agreement providing for training compensation to be paid in case of transfers of youth players between clubs with certified youth academies.

The provisions of this agreement have taken into consideration the jurisprudential criticism of the former statutory regulations by implementing a detailed set of rules that gives right to a training compensation only depending on several criteria which aim to reward the concrete training efforts really made by the old club and only if the old club otherwise has proven its interest in the player himself. In principle, a training compensation according to the clubs' multilateral agreement is due only for transfers of youth players who haven't had an Advancement and Support Contract with the old club or whose existing contract expires and who have received a binding offer for a (new) Advancement and Support Contract by the former club with effect from the next season, expressing the club's interest in the player.

If a player is transferred before the expiration of his Advancement and Support Contract with the old clubs, the multilateral agreement does not apply and the two clubs are free to negotiate a fee for the resolution of the existing contract.

Once these general conditions are met, the calculation of the exact training compensation depends on different criteria that shall attribute an objectified value to the training efforts made by the old club and the quality of the training the player has received.

The main criteria for determining the training compensation to be paid by the new club are:

– The age of the player;
– The period of time the player has been trained by the old club;
– The quality level of the old club's youth academy;[69]

[68] Judgement of *Oberlandesgericht* Oldenburg from 10 May 2005, 9 U 94/04 = *SpuRt* 2005, 164.
[69] The quality level of the youth academies is judged on behalf of the continued audit and certification of all youth academies by DFL and DFB which regularly is carried out every three years.

– The league of the new club's first team;
– The costs related to the accommodation given by the old club (in the club's boarding home or with host parents).

As the old club's claim against the new club is of purely contractual nature, the two clubs are free to mutually agree on any deviation to the agreement. The contractual nature of the claim also means that the payments must be paid directly between the two clubs involved and the claims according to the agreement are generally not enforced by DFB or DFL.

6.2 Solidarity pool for the promotion of young players

Other than the regulations on (training) compensation described above, the compensation mechanism incorporated in the Guidelines on the recognition and promotion of training in Annexe III to DFL's Licence Regulations on Players is not triggered by the transfer of a player itself but by the fact that a Licensed Player was fielded in a Bundesliga or Bundesliga 2 match for the first time. This compensation mechanism that has been existing since the 2006/2007 season combines elements from typical training compensation regulations with the idea of a solidarity pool financed by DFL. In this way, the 36 clubs from Bundesliga and Bundesliga 2 jointly fund the solidarity payments made, irrespective of the question which club finally benefits from the player's training by fielding him in an official Bundesliga or Bundesliga 2 match.

After the rule's reform prior to the 2017/2018 season, the mechanism can be summarized as follows: the compensation payment is triggered if a Licensed Player (i) at the latest in the season of his 23rd birthday and (ii) within the first two seasons since having signed a Licensed Player employment contract (iii) is fielded for the first time in a league game in Bundesliga or Bundesliga 2. In this case (and independent from any transfer fee paid in regard of the player's transfers), each club that has been training this player before this first game as a Licensed Player for at least one season between the season of the player's 6th birthday and the season of the player's 21st birthday is entitled to receive a reward payment. The amount awarded to the training clubs is EUR 4,200 for each season the player was trained between his 6th and 11th birthday and EUR 5,400 for each season the player was trained between his 12th and 21st birthday.[70] Pursuant to the current version of the regulations, also the club that signed the player as a Licensed player and finally fields him for the first time is rewarded for the time it was training him.

The funds paid to the training clubs is neither deducted from any transfer fee nor charged from the club that in the end benefits from the player's training by fielding him in a Bundesliga or Bundesliga 2 match but is taken from the solidarity

[70] For example: if a player is fielded in Bundesliga for the first time at the age of 19 and was trained by his local club from 6 to 12, by a smaller Bundesliga 2 club from 13 to 17 and by his current club from the age of 18 onwards, the local club will be paid EUR 30,600, the Bundesliga 2 club will be paid EUR 27,000 and his current club will be paid EUR 10,800.

pool financed by DFL to promote the training of young players. While the payments from this solidarity pool may be less important for Bundesliga clubs having contributed to the player's training, the amounts paid seem quite considerable from the perspective of an amateur club that once trained the player and thereby has contributed to the player's successful career.

After the reform of the solidarity pool, DFL's total payments to training clubs increased from EUR 512,000 in the 2016/2017 season to EUR 3,237,000 in the 2017/2018 season. As the provision's purpose is to promote the training of young players by German clubs, the payments are made regardless of the player's nationality for all players fulfilling the aforementioned criteria provided that the players were registered with a German club the first time no later than in the season of their 15th birthday.

6.3 Compensation for the transfers of amateur players

Regardless of the developments concerning statutory regulations on training compensation for the transfer of Contract Players (professionals in the sense of FIFA RSTP), there are statutory regulations on training compensation for the transfer of amateur players (i.e. players who did not have a contract providing a remuneration of at least EUR 250 per month with their old club). Generally, an amateur player is entitled to play for a new club as soon as the old club – within the transfer period – gives its consent to the transfer. If the old club refuses this consent, a transfer is not possible in the winter transfer period. In contrast, in the summer period a transfer is also possible without the old club's consent but in that case, the player is eligible to play for the new club only with effect from 1st November unless – and this is the scope of compensation for transfers of amateurs – the new club replaces the refused consent by paying the statutory compensation. As a result of such payment, the player is eligible to play with effect from the compensation payment even if the old club has refused its consent.[71]

The amounts that can be paid as compensation to replace the old club's refusal to consent to an amateur's transfer are considerably lower than the amounts due pursuant to the Agreement on the protection and promotion of youth academies described in section 6.1. Depending on the league that the first team of the new club is affiliated to, the compensation amounts range between EUR 250 and EUR 5,000[72] and can be increased or reduced depending on the player's age, the new club's efforts in the training of young players, and the period of time that the player was staying with the old club.[73] For amateur players aged under 17, there are special regulations providing lower compensation amounts.[74]

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[71] See the detailed regulations in Section 16 (2 and 3) of DFB's procedural regulations for national games.

[72] Section 16 (3.2.1) of DFB's procedural regulations for national games.

[73] Section 16 (3.2.2) and (3.2.3) of DFB's procedural regulations for national games.

[74] Section 3 (2) of DFB's regulations on youth players (*DFB-Jugendordnung*).

7. Judicial bodies

The judicial bodies competent to adjudicate legal disputes arising from transfers or employment contracts differ from one type of contract to the other. Again, disputes or legal actions linked to a transfer or a transfer's consequences (e.g. training compensation mechanisms) are open to arbitration if the parties opt for arbitration, whereas disputes arising from employment contracts are not only governed by cogent law but related disputes are in the exclusive competence of state labour courts.

7.1 Transfer-related disputes

When considering disputes relating to national transfers in Germany, one has to distinguish between horizontal disputes including two or more clubs arguing about the consequences of a player's transfer from one club to another, and vertical disputes between a club and the league regarding a player's registration or – more likely – a refusal to register a player.

For these vertical disputes, under DFL's Licence Regulations on Players, there is a clear procedural framework in which a club can challenge the League's decision not to register a player for a certain club because of a breach of one of the mandatory requirements.[75] In such a case, DFL would communicate its decision (including the grounds if a club's request to register a player is rejected) to the club, which then has the right to lodge a complaint within five days. If the complaint is not remedied, the club can lodge a second complaint within another seven days which will be decided by DFL's executive committee.[76] If the complaining club wishes to challenge the executive committee's decision, the club can file an appeal in front of the Permanent Court of Arbitration of the Professional Football Leagues. The Court of Arbitration's decision will finally decide the dispute as the club and DFL yearly conclude an arbitration agreement which refers all kinds of disputes between DFL (and/or DFB) and a club to arbitration and excludes the jurisdiction of any ordinary court.[77]

In contrast to these detailed provisions concerning disputes between a club and DFL, there are no comparable provisions on potential horizontal disputes involving two or more clubs. While the above-mentioned arbitration agreement between each club and DFL has effect on all possible disputes in this regard, the agreement does not cover disputes between several clubs. Therefore, a club is free to submit a case to state courts. In practice, however, clubs are quite reluctant

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[75] See the prerequisites of Section 4 of DFL's Licence Regulations on Players (see above, section 2.3.1).

[76] Section 20 of DFL's Licence Regulations on Players.

[77] Section 1 (I) of the arbitration agreement between DFL and clubs (Annexe II to DFL's Licensing Regulations; *Lizenzierungsordnung*), available at www.dfl.de/wp-content/uploads/sites/2/2018/11/Anhang-II-Schiedsgerichtsvertrag.pdf.

to refer a case to state courts, where their claims would be heard publicly and by judges that are highly qualified but most likely not specialised in sports or even football matters. That is why even in the absence of a general arbitration agreement, the clubs in case of a current dispute often opt for ad hoc arbitration proceedings where a panel is only composed for one specific dispute. In this way, it is common that disputes arising from different understandings of certain clauses in a transfer agreement are not brought to public state courts but will be decided confidently by an ad hoc arbitral tribunal.

7.2 Employment-related disputes

In Germany, disputes arising from an employment contract between a club and a football player have to be brought to national labour courts and must not be referred to arbitration. This principle results from the provisions of the Labour Courts Act (*Arbeitsgerichtsgesetz, ArbGG*) which gives the state courts exclusive jurisdiction for all employment related disputes,[78] with the exception of certain litigations between collective bargaining parties – an exception that, in the absence of collective agreements, does not apply to football.[79]

While jurisdiction of state courts cannot be excluded, most employment contracts based on the standard contract stipulate that, prior to going to court, the parties shall try to resolve any conflicts internally or with the help of DFL's Conciliation Body which offers conciliation proceedings that "shall aim at achieving a fast, constructive, confidential and, with respect to the costs of the proceedings, favourable solution of the dispute for both Parties". The composition and the functioning of the Conciliation Body are defined in Section 9 of DFL's Licence Regulations on Players. Thus, the Conciliation Body is composed of one representative nominated by the player, one representative nominated by the club, and a third neutral and independent person nominated jointly by both parties. The Conciliation Body is supposed to bring about a cost-effective, fast, confidential and informal solution to the dispute, and help the parties to avoid legal proceedings before a labour court. Yet, in practice the services of the Conciliation Body have only been used rarely.

Beyond these clauses encouraging an amicable solution of conflicts between clubs and players, the standard contract also contains provisions on possible proceedings before FIFA or CAS. In this respect, the standard contract aims to ensure that proceedings before FIFA or CAS will be conducted under conditions comparable to the ones that would be applicable before German state courts. Hence, the standard clauses stipulate that the applicable law for such proceedings between a player and a club shall exclusively be the law of the Federal Republic of Germany, the language for the proceedings shall be German and – in the event of CAS proceedings – the parties shall, from the list of arbitrators of CAS, only

[78] Section 2, ArbGG.
[79] Sections 4, 101ff. ArbGG.

appoint persons as arbitrators who hold the general qualification for a position of a judge in the Federal Republic of Germany.

7.3 Disputes regarding national training compensation mechanisms

In case of disputes regarding compensation payments for the training of youth players according to the "Agreement on the protection and promotion of the training in the youth academies",[80] the multilateral agreement between the clubs stipulates a mediation mechanism. The Youth Academy Commission, which is a board consisting of club representatives and experts from DFL and DFB, shall hear the two clubs involved and render a decision to resolve the conflict.

Regarding, on the other hand, potential disputes relating to compensation payments from the solidarity pool,[81] the statutes do not provide specialised provisions on the competent judicial body. Thus, the general rules apply and disputes between clubs from Bundesliga or Bundesliga 2 and DFL fall within the competence of the Permanent Court of Arbitration of the Professional Football Leagues, whereas disputes between amateur clubs and DFL can only be decided by an arbitral tribunal if the parties conclude a corresponding ad hoc arbitration agreement.

8. Conclusions

To successfully handle (national) transfers of football players in Germany, it is essential to keep in mind the statutory regulations of DFL and DFB as well as the provisions of applicable state law, and to continuously follow the development of these sets of rules.

With respect to the transfer agreement itself, the German legal framework is quite comparable to the international principles and rules implemented by FIFA RSTP; the statutory provisions primarily intend to specify these principles with regard to national transfers where the FIFA rules leave margin to the national regulations. Insofar, the regulations on training compensation for out of contract youth players as well as the solidarity pool for the promotion of young players are good examples how the German regulations adopt principles known from FIFA's provisions while adapting them to the needs and circumstances in Germany.

Concerning employment contracts of football players, mandatory German labour law as well as DFL's statutory provisions leave much less room for manoeuvre to the parties involved. Even with the player's consent, the parties of the employment contract cannot effectively deviate from the player's legal rights to a minimum of vacation days or the continued payment of salaries for a minimum duration in the event of illness. These material employees' rights are procedurally secured by the mandatory competence of state labour courts in case of disputes arising from the employment contract. Regarding the statutory provisions on

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[80] See above, section 6.1.

[81] See above, section 6.2.

players' employment contracts, the most remarkable specificity of the German framework is the clubs' obligation to ensure that their players grant the club their "commercialisation rights" which considerably narrows the parties' freedom to negotiate the players' image and personality rights.

In order to avoid errors in the legal assessment (which might result in the invalidity of certain contractual clauses), it is highly advisable to be familiar with German labour law or to involve lawyers who are, especially if there is not yet a settled jurisprudence. While, for example, the fundamental question of the admissibility of fixed-term employment contracts has lately been confirmed in the *Müller* case, other questions as for example the possibility to send a player to training with the second team or the admissibility of an "no playing" clause in a loan agreement have not yet been (definitely) decided by jurisprudence Yet, in the field of employment contracts, there are different standard contracts provided to the clubs by DFL and DFB that are regularly updated and take into consideration statutory and state law equally.

NATIONAL TRANSFERS IN ITALY

by *Luca Tettamanti*[*] and *Michele Spadini*[**]

1. The national framework

1.1 Introduction

In the year 2019, Italy was the third-highest spender among the Big 5 associations (England, France, Germany, Italy and Spain) according to the *FIFA Big 5 Transfer Window Analysis Summer 2019*.[1] Italian clubs combined for an outlay of USD 701 million on transfer fees and completed 247 incoming transfers and 264 outgoing transfers.

Therefore, despite all the problems and loss of competitiveness that the Italian professional leagues have faced in the past years compared to the other "Big Four" European football leagues, Italy still remains one of the most important football markets worldwide.

In the following paragraphs the authors will briefly outline the national regulatory framework of Italian football, highlighting the complex interactions among the different sources of law that regulate the sector – which is composed of an intricate interrelation of state laws, collective bargaining agreements and various regulations/official communications issued by the Italian Football Association – with an emphasis on the labour relationship between clubs and players and on players' transfers.[2]

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[1] FIFA Big 5 Transfer Window Analysis Summer 2019 is available at: www.fifatms.com/wp-content/uploads/dlm_uploads/2019/09/Big5_Summer2019_20190911.pdf (last visited on 30 September 2019).

[2] Terms referring to natural persons are applicable to both genders. Any term in the singular applies to the plural and vice-versa.

1.2 The Italian Football Association

The "*Federazione Italiana Giuoco Calcio*" (hereinafter, "*FIGC*") is the national governing body of football in Italy. It was founded in 1898, recognised by FIFA in 1905 and was a founding member of UEFA in 1954.

The FIGC includes professional and amateur clubs and sports associations that pursue the aim of organising and playing football in Italy, and it is responsible for promoting and regulating Italian football and all its related aspects. In this context, it also regulates intermediary/football agents' activity at domestic level.[3]

The FIGC, in accordance with its Statutes, retains regulatory and control functions but delegates[4] its powers to organise professional and amateur competitions (i.e. three professional tiers, "*Serie A*", "*Serie B*" and "*Serie C*" and a further six amateur tiers) to four Leagues, which form part of the FIGC, namely the National Professional Serie A League ("*Lega Nazionale Professionisti Serie A*", hereinafter "*LNPA*"), the National Professional Serie B League ("*Lega Nazionale Professionisti Serie B*", hereinafter "*LNPB*") and the Professional Football Italian League ("*Lega Italiana Calcio Professionistico*", hereinafter "*Lega PRO*"), which are professional Leagues, and the Amateur National League ("*Lega Nazionale Dilettanti*", hereinafter "*LND*"), which is the only amateur League.

In addition to the Leagues, the following entities are part of the FIGC: the Italian Association of Referees ("*AIA*"), which designates the referees and their assistants for the various FIGC competitions; the Technical Components (i.e. the Italian Footballers Association "*AIC*" and the Italian Football Coaches Association "*AIAC*"); the Technical Sector, which is a FIGC service body that, in

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[3] On 17 April 2019, the FIGC, with its official communication n. 102/A, issued the new Intermediary Regulations ("*Regolamento Agenti Sportivi*") in the context of an overall reformation of the system that started with the enactment of the specific legal provisions under art. 1, para. 373 of the Law 27 December 2017, n. 205, D.P.C.M. 23 March.2018 on the creation of a national register of sports intermediaries and the resolution n. 1596 of the CONI National Council dated 10 July 2018 which introduced the CONI Regulations on sports intermediaries (hereinafter, "CONI Regulations"). The new Intermediary Regulations are meant to replace the previous "*Regolamento per i servizi di procuratore sportivo*" in force as from 1 April 2015. Such new FIGC Intermediary Regulations were then amended on 16 May and, more extensively, on 10 June 2019 to fully comply with the CONI Regulations. Lastly, on 23 July 2019, the FIGC issued another Intermediary Regulations ("*Regolamento Agenti Temporanei*") to regulate the activity of the intermediaries who gained the qualification to operate within the FIGC in the period between 31 March 2015 and 31 December 2017 and also created an *ad-hoc* register. Such Temporary Regulations will remain in force until 31 December 2019. The official communication by the FIGC regarding the amended FIGC Intermediary Regulations and the FIGC Temporary Regulations as well as the respective regulations are available at: www.figc.it/media/94295/137-modifica-regolamento-agenti-sportivi.pdf; www.figc.it/media/94297/137-all-a-modifica-regolamento-agenti-sportivi.pdf and www.figc.it/media/97891/33-registro-agenti-temporanei.pdf (all of them last visited on 24 September 2019).

[4] In accordance with art. 9, para. 3 of the FIGC Statutes, which is available at: www.figc.it/media/55704/titolo_1_statuto_2014_comm_ad_acta_04-08-2014.pdf (last visited on 2 May 2019).

accordance with art. 14 of its Statutes, carries out studies for the promotion and improvement of football technique, and the Youth and Scholastic Sector ("*Settore Tecnico e Scolastico*"), which promotes, regulates and manages the football activities of youngsters between 5 (five) and 16 (sixteen) years old.

1.3 The structure of the Italian Football Pyramid

1.3.1 The professional leagues

As mentioned above, there are three professional tiers in Italian football – Serie A, the top category, Serie B, the second division, and Serie C, the third and last professional league – which are organised by three different Leagues, in accordance with the FIGC Statutes.

The LNPA and the LNPB are private associations, while the Lega PRO is a non-profit entity. The professional Leagues respectively include all the clubs participating in Serie A, Serie B and Serie C, which employ professional football players.

In particular, the LNPA organises Serie A and other various domestic competitions (the League Supercup, "*Supercoppa di Lega*", the youth championship, "*Campionato Primavera 1*", and the youth Supercup, "*Supercoppa Primavera*")[5] and also autonomously[6] organises the Italian national cup ("*Coppa Italia*") and the youth national cup ("*Coppa Italia Primavera*").

There are currently 20 clubs competing in Serie A.[7]

Similarly, the LNPB organises the Serie B tournament and cooperates with other leagues, if necessary, in the organisation of competitions involving more than one league.[8]

On 30 January 2019, the FIGC Executive Committee set the number of clubs participating in the Serie B tournament to 22, although it also introduced a transitional rule stating that only 20 clubs would participate in the 2018/2019 competition.[9]

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[5] According to art. 1, para. 3, let. b) of its Statutes, available at: www.legaseriea.it/assets/legaseriea/pdf/LEGA_STATUTO_REGOLAMENTO_VIGENTE_20180319.pdf (last visited on 2 May 2019).

[6] According to art. 1, para. 3, let. c) of its Statutes.

[7] Pursuant to art. 49 NOIF FIGC, although the Executive Committee of the FIGC on 30 January 2019 reduced the minimum number of teams for the future down to 18 (eighteen). The press release is available at: www.figc.it/it/federazione/news/il-consiglio-federale-d%C3%A0-il-via-alla-riforma-dei-campionati-dal-201920-la-serie-b-a-20-squadre/ (last visited on 7 July 2019).

[8] According to art. 1, para. 1.3, point 1.3.b) of its Statutes, available at: https://s3-eu-west-1.amazonaws.com/legaseriebcontent/wp-content/uploads/2018/11/14121519/90-Allegato-al-CU-Statuto-LNPB.pdf (last visited on 2 May 2019).

[9] As decided by the Executive Committee of the FIGC on 30.01.2019 that amended art. 49 of the FIGC NOIF. The press release is available at: www.figc.it/media/77333/49-modifica-art-49-noif.pdf?sfns=mo.

Lastly, the Lega PRO organises the Serie C tournament and other competitions involving its associated clubs.[10]

By way of the same above-mentioned decision, the FIGC Executive Committee also established that 60 clubs would participate in the Serie C competition divided into three groups, the composition of which would be decided by the Lega PRO Executive Board.

1.3.2 The amateur leagues

Underneath the three above-mentioned professional tiers sit six amateur leagues (one interregional division, the "*Campionato Nazionale Serie D*", four regional divisions, "*Eccellenza*", "*Promozione*", "*Prima Categoria*", "*Seconda Categoria*" and one county league "*Terza Categoria*").

Amateur football is managed by the LND, which is a private non-profit association to which any club affiliated to the FIGC taking part in the national, regional and county championships by fielding only amateur players must be affiliated.[11]

The particularity of this amateur status in Italy is that, unlike in almost all other countries worldwide, pursuant to art. 32 of FIGC internal rules[12] (hereinafter, "*FIGC NOIF*"), the amateur players registered with clubs affiliated to the LND are bound to their respective clubs until the end of the season of their 25th birthday (the so-called "*vincolo sportivo*"). On the other hand, the same players are prevented from entering into employment contracts with their clubs, as they are not professional either.

It is however allowed for Serie D clubs (the highest amateur league) to sign Economic Agreements ("*Accordi Economici*") under which players can receive lump-sum reimbursements, match prizes and travel allowances or, in the alternative, a total annual gross amount up to EUR 30,658.00 (thirty thousand six hundred and fifty-eight euros) to be paid in ten monthly instalments.[13]

Whilst in the past these Economic Agreements could last for one season only, as of the sporting season 2018/2019 it is also possible for Serie D clubs to enter into multiannual Economic Agreements (for a maximum period of three years) according to which players may be entitled to receive additional amounts.[14]

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[10] According to art. 1, para. 3, let. b) of its Statutes, available at: www.lega-pro.com/pdf/Statuto_Lega_Pro.pdf (last visited on 2 May 2019).

[11] According to art. 1 of its Statutes, available at: www.lnd.it/it/la-lnd/norme-e-regolamenti/621-regolamento-della-lnd/file (last visited on 7 March 2019).

[12] The FIGC internal rules are available at: www.figc.it/it/federazione/norme/norme-organizzative-interne/ (last visited on 27 June 2019).

[13] According to art. 94ter FIGC NOIF.

[14] The standard form of the Economic Agreement between Serie D clubs and players is available at: www.assocalciatori.it/sites/default/files/attachment/pagina/Accordo%20Economico%20serie%20D%202018-19.pdf (last visited on 2 May 2019).

It is interesting to recall that, when FIFA was faced in the past with these Economic Agreements, it considered the relevant players as professionals from an international perspective, considering that according to art. 2 of FIFA RSTP their amounts exceeded the actual expenses the same players incurred for their footballing activities. A typical consequence of such different interpretation of status at international level is that Italian clubs of Serie D may be requested to pay training compensation to foreign clubs when registering players who, at national level, are considered purely amateurs[15] or, conversely, may lose entitlement to training compensation if they do not offer their players a renewal of their Economic Agreements 60 days before their expiry, in compliance with art. 6, p. 3 of Annexe 4 FIFA RSTP.[16]

The LND establishes its internal organisation in divisions, departments and delegations at regional and county level, and is entitled to coordinate, direct and develop the sporting activities of its affiliated clubs and sports associations.

In the sporting season 2016/2017, 13,024 clubs were affiliated to the LND, for a total number of 70,479 teams and 1,050,708 amateur players.[17]

1.4 The Regulatory framework

One of the peculiarities of the Italian football system is that, as well as other sectors in Italy, it is highly regulated and, as such, not easy to understand. The main legal sources of Italian football law are the following:

a) Law 23 March 1981, n. 91, which is a state law regulating the relationship between clubs and professional football players (hereinafter, "*Law 91/81*");[18]
b) the three collective bargaining agreements stipulated, pursuant to art. 4 of the Law 91/81, by the FIGC, each of the three Italian professional leagues (LNPA, LNPB and Lega PRO) and the Italian Players' Union (AIC). In recent years, the Lega PRO was the first league to renew its collective bargaining agreement on 1 July 2012,[19] followed by the LNPA on 7 August 2012[20] and the LNPB on

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[15] FIFA DRC Decision, no. 191126 on 9 January 2009, TS Dubnica, Slovakia v. SS Manfredonia Calcio 1932.

[16] FIFA DRC Decision, no. 96268b on 28 September 2006.

[17] Information available at: www.lnd.it/it/la-lnd/i-numeri-del-calcio-dilettantistico (last visited on 7 March 2019).

[18] The Law 23 March 1981, n. 91 is available at: www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=1981-03-27&atto.codiceRedazionale=081U0091&elenco30giorni=false (last visited on 13 May 2019).

[19] The CBA Lega PRO is available at: www.assocalciatori.it/sites/default/files/attachment/pagina/Accordo%20Collettivo%20AIC%20-%20Lega%20Pro_0.pdf (last visited on 27 June 2019).

[20] The CBA Serie A is available at: www.assocalciatori.it/sites/default/files/attachment/pagina/Accordo%20collettivo%20AIC%20-%20Lega%20Serie%20A.pdf (last visited on 7 May 2019). On 6 July 2018, it was extended until 30 June 2019.

[21] The CBA Serie B is available at: www.assocalciatori.it/sites/default/files/attachment/pagina/Accordo%20Collettivo%20AIC%20-%20Lega%20Serie%20B.pdf (last visited on 7 May 2019).

18 July 2014.[21] For the purpose of the present article, the authors will address only the provisions of the Serie A CBA, highlighting the differences with the other CBAs when necessary. Thus, hereinafter the Serie A CBA will simply be referred to as the CBA;

c) the FIGC Statutes and its various regulations[22] as well as the FIGC NOIF,[23] which contains heterogeneous provisions on several matters such as the organisation of the FIGC itself, clubs, leagues, referees' association, players (in particular with regards to their registration and legal protection), organisation of championships and matches, rules of the game, provisions on national teams, management controls of clubs, and relationship between clubs and players;

d) the FIGC official communications (hereinafter, "*C.U. FIGC*"), which further specify a number of aspects of the activities linked to football (for instance, the annual calendar and conditions of players' transfer and registration with clubs; detailed provisions on clubs' licensing; official communications regarding sanctions imposed on players, clubs and other subjects registered with the FIGC; communications regarding intermediaries and so on) and, from time to time, officially inform the stakeholders about amendments to the FIGC regulations.

A first look at the list above suggests that, given the number of sources of law, and their different origins, scope and reciprocal interactions, it is not always easy to immediately and clearly ascertain how a certain issue is regulated in Italian football.

It is obvious that an overproduction of rules may also lead to difficulties in their interpretation, inconsistencies, coordination problems and, ultimately, to an always increasing number of disputes which, if on one side can be an interesting opportunity for sports lawyers, on the other side, causes difficulties and can affect the daily work of all football stakeholders.

2. Registration and transfer rules

2.1 Registration of players

In Italy, a professional football player is registered with a club or, more specifically, with the FIGC through his club, according to a written employment contract (the "*Contract*"), the content of which will be analysed in the following section of this article.

The player's registration procedure begins with the filing of the Contract. According to art. 4, para. 2 of the Law 91/81, it is a precise duty of any club to file the employment contracts of its players with the national football association to receive its approval.

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[22] For example, the regulations on intermediaries mentioned above.

[23] The FIGC NOIF are available at: www.figc.it/it/federazione/norme/norme-organizzative-interne/ (last visited on 27 June 2019).

However, the FIGC has introduced a two-step procedure, empowering the professional Leagues to receive the Contracts filed by their associated clubs and process them first, while retaining the right to grant its final approval in compliance with the above-mentioned provision.

In particular, during the two annual transfer windows, clubs must file with the LNPA the Contracts signed with their players within 10 (ten) days of their conclusion. Then the LNPA, after running the controls under its responsibility, takes care of their onward transmission to the FIGC for its approval. Clubs must also inform their players of such deposit.[24]

In case a club does not fulfil its obligation to file a Contract within the granted time-limit, the player shall be entitled to file it within 60 (sixty) days of its signing, giving notice to the club.[25]

The timely filing of the Contract with the LNPA is a condition for its approval by the FIGC.[26]

Then, in the absence of an express denial by the FIGC within 30 days of the filing of the Contract, the latter is considered approved.

In the event that the Contract is not approved by the FIGC for reasons not attributable to the player or his agent, the player is entitled to receive a fair indemnity from the club, which, in turn, may exercise its right of redress against any other subject who is deemed liable for such lack of approval.

Upon request from the player, the amount of such indemnity is established by an Arbitration Panel ("*Collegio Arbitrale*"), taking into consideration the Contract's total value and length, and whether the player has meanwhile entered into another Contract (with a professional club) or an Economic Agreement (with a LND club).

As a last remark, the parties are also free to agree in writing, as a condition to avoid its nullity, on the amount of such indemnity to be paid to the player, but only after the FIGC has denied its approval of the employment contract.[27] This condition has been introduced to prevent clubs (i.e. usually the stronger party to the labour contract) from imposing on players, during the negotiations leading to the conclusion of their Contracts, to accept a low indemnity in case of eventual denial of its approval by the FIGC.

2.2 Transfer rules

Provisions on domestic transfers of players are included in the Law n. 91/81 as well as in some articles of the FIGC NOIF and in several C.U. FIGC. In practice, clubs manage transfer operations and players' registrations through a number of compulsory forms issued by their relevant Leagues (Divisions and Committees).

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[24] According to art. 3.1 of the CBA.
[25] According to art. 3.2 of the CBA.
[26] According to art. 3.3 of the CBA.
[27] According to art. 3.6 of the CBA.

In the following two paragraphs, the authors will briefly comment on the transfer rules before analysing the most important *standard forms* issued by the professional Leagues.

2.2.1 The rules

The transfer of professional football players[28] among Italian clubs is expressly regulated by art. 5, para. 2 of the Law n. 91/81, according to which a club is permitted to assign a player's Contract to another football club provided that the other party (i.e. the same player) agrees to such assignment and that the relevant procedures adopted by the national sporting associations are complied with.[29]

In this regard, the FIGC sets out the general rules on the transfer of players and on the assignment of their Contracts under art. 95 FIGC NOIF.

For the sake of clarity, under the Italian regulations, the terms "*transfer agreement*" and "*transfer of player*" are used in respect of amateur players only, while the term "[temporary or definitive] *assignment of employment contracts*" is used for professionals. Although the Legislator uses this formal difference, in concrete terms the two concepts operate in the same way.

Considering the material scope of the present article and for ease of reference, the authors will use all the afore-mentioned terms as synonyms and, unless clearly specified otherwise, with reference to professional football players.

Before analysing the sporting regulations, it needs to be emphasised that, from a pure theoretical perspective, Italian jurisprudence and doctrine historically followed three different theories to define the assignment of Contract in the context of transfers.[30] A first theory, mainly followed before the entering into force of art. 5 of Law n. 91/81, excludes the "assignment of contract" legal scheme from applying in football transfers because the player and his new club usually signs a new Contract. The transfer is considered more similar to the "assignment of a credit" legal scheme insofar as the debtor/player uses it to change the creditor/club of his services, against the payment of a consideration from the new to the old creditor.[31] A second theory, formulated by tax attorneys, excludes the applicability

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[28] In Italy, unlike in other countries and differently from the provision of art. 2 of the FIFA RSTP, under art. 27 FIGC NOIF players are divided into three categories: "*professionals*" (art. 28 FIGC NOIF), "*non-professionals*" (art. 29 FIGC NOIF) and "*young*" players (art. 31 FIGC NOIF). Then "*young*" players are further divided into "*young amateurs*" (art. 32 FIGC NOIF) and "*youth players*" (the so-called "giovani di serie", hereinafter, "*Youth Players*"), being the players aged 14-19 registered for professional clubs. The transfer of "*non-professionals*", "*young amateurs*" and "*Youth Players*", either on a definitive or temporary basis, are regulated under art. 100 and art. 101 FIGC NOIF.

[29] This is in line with art. 1406 of the Italian Civil Code whereby every party can substitute a third party in bilateral agreements provided that the relevant obligations are yet to be performed and the second party gives its consent.

[30] In civil law, provisions on assignment of contract are established in art. 1406 ff. of the Italian Civil Code.

[31] Trib. Milano, 10 March 1955; Cass. Civ. No. 2085 on 4 July 1953.

of the "assignment of contract" legal scheme and bases the transfer on a union of three different agreements: a contract between the two clubs whereby the former one obliges itself to mutually terminate the Contract with the player against a payment of a fee – which is therefore the "price" of such early termination – and then the mutual termination of the Contract between former club and player, and the signature of the new Contract between the player and the new club.[32] The third and most prevalent theory considers that transfers can be identified within the context of an "assignment of contract" legal scheme considering that, albeit a new Contract is usually signed between the player and the new club, this specificity is not outside the construction of an assignment of contract if the new Contract does not modify the previous Contract in its cause or nature.[33]

Going back to the nature of "transfers" of players, the underlying principle of the Italian system[34] is that transfer agreements must be made in writing, as a condition to avoid their nullity, through the specific standard forms prepared by the competent Leagues.[35]

This may be seen as further proof of the FIGC's over-formalistic approach to the football industry, aimed at regulating the movement of players as well as all the other administrative activities (such as, for example, the registration of players with the FIGC via their clubs) through uniform documents.

In particular, under art. 95, para. 3 NOIF FIGC, in case a player is transferred between amateur clubs or between clubs belonging to the Women's Football Division, it is mandatory to use a standard form named Transfer List ("*lista di trasferimento*"). The same Transfer List must be used in case of transfer of players from a club affiliated with a professional League to a LND club, unless the relevant transfer agreement provides for particular clauses. In such case, the parties are obliged to use the form prepared by the League of the transferor club (the professional one), while they can and need to autonomously and directly regulate between them the economic terms of the transfer.

In all other cases, transfers are formalised via the standard forms adopted by the professional Leagues at stake, which will briefly be analysed in the following paragraphs.

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[32] Luschi e Stancati, *Aspetti fiscali della "cessione dei calciatori" con particolare riguardo al regime IRAP*, in *Rassegna Tributaria*, 1999, 1742; Trib. Monza, n. 1507 on 9 May 2007.

[33] Cantamessa, *La Cessione di Contratto dei Calciatori Professionisti*, in *Lineamenti di Diritto Sportivo*, Giuffrè Editore, 2008, 227 ff.; Galgano, *La Compravendita dei Calciatori,* in *Contratto e Impresa*, 2001, 1 ff.

[34] It is important to underline that, according to art. 95, para. 11 FIGC NOIF, the provisions regulating this system are of mandatory nature so that any clause found to be in contrast with them is null and void.

[35] According to art. 95, para. 1 FIGC NOIF. Then, under its para. 2 and in compliance with art. 5, para. 3 FIFA RSTP, it is specified that in the same sporting season, players may be registered, either on a definitive basis or loan, with a maximum of three different clubs but, during such period, they will be eligible to play official games for only two of such three clubs.

Moreover, transfer agreements – at amateur level[36] – must be completed, signed[37] and then sent by registered letter or filed with the League (or Division or relevant Committee of the transferee club) within five days of their signature and in any case before the end of the transfer period.

Similarly, transfer agreements or agreements on the assignment of Contracts – at professional level – must be duly completed, signed[38] and received by or filed with the League of the transferee club within five days of their conclusion and in any case no later than the final term established by the FIGC for transfers of assignment of contracts. Their registration in the roll of the authority (League, Division or Committee) is the only proof of the date of their filing.[39]

It is striking to note that a player cannot be successfully transferred and registered with a new club unless all the aforementioned provisions are fully complied with (i.e. the transfer agreement or the agreement on the assignment of his professional employment contract is properly drafted, signed and filed with the above-mentioned bodies). Any clause and condition which is not inserted in such documents is null and void and may lead to the imposition of disciplinary and economic sanctions on the infringer.[40]

Furthermore, as a more extensive implementation of art. 18, para. 4 FIFA RSTP,[41] it is also specified that the validity of a transfer agreement or of an agreement on the assignment of a Contract cannot be made subject to a successful medical examination and/or the granting of a work permit. However, in case of a national transfer, it is a common and constant practice for clubs interested in signing a professional to request (and obtain) from his current club the authorisation for the player to undertake medicals before signing a transfer agreement.

Then, once all these formalities are fulfilled, the Leagues, Divisions and Committees are responsible for issuing the Formal Approval (the so-called "*visto di esecutività*") of transfer agreements and assignment of Contracts.[42] Against

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[36] Including LND, Youth Sector and Women's Football Division.

[37] According to art. 95, para. 8 FIGC NOIF, transfer agreements must be signed on one side by players and, in case they are under age, by a person exercising parental authority or legal guardianship and, on the other side by the clubs represented by those who are vested with the power to represent them at sporting/federal level.

[38] Art. 95, para. 8 FIGC NOIF applies.

[39] According to art. 95, para. 5 FIGC NOIF.

[40] According to art. 95, para. 6 FIGC NOIF.

[41] This provision goes beyond the scope of art. 18, para. 4 FIFA RSTP, which reads as follows: "*The validity of a contract may not be made subject to a successful medical examination and/or the grant of a work permit*". The sanction of invalidity does not apply to transfer agreements.

[42] According to art. 95, para. 13 FIGC NOIF, such bodies, in practice, keep one original copy of the above-mentioned agreements and take care of the registration variation. Under art. 95, para. 10 FIGC NOIF, it is also clarified that, in case of assignment of employment contracts, any provision regarding sporting seasons following the one in which the agreement is signed must be expressly inserted in the agreement as "*particular clauses*" and that Leagues, Divisions and Committees are instructed to evaluate the relevant economic terms at the beginning of each season for the purpose of issuing the Formal Approval.

the decision of such bodies, the parties may file an appeal with the National Federal Tribunal – Registration Division within 30 days of its communication.[43] In addition, in case a player's Contract does not receive the Formal Approval due to his club's financial difficulties, he is entitled to request a fair indemnification.[44]

In case of disputes on a player's transfer or assignment of Contract, from the time the dispute arises until the issuance of a final and binding decision by the competent deciding body, the selling club must continue to comply with its financial obligations towards the player, reserving its right of redress against the buying club.[45]

Other provisions on transfer of players – more specifically on the relationship between clubs and players – can be found under art. 95bis FIGC NOIF. For instance, in case a player is registered with a club under a multiannual Contract which is not due to expire at the end of the sporting season: (i) only such club can decide whether to assign the player's Contract to another club, with the player's consent; (ii) contact and/or negotiations between the player and other clubs - both direct and indirect through third persons, irrespective of whether such third persons are registered or not with the FIGC - are expressly forbidden unless the club holding the player's registration issues a prior written authorisation.[46] In other words, any club interested in the services of a player who is registered with another club must contact the latter and obtain written permission before even approaching the player.

Instead, in case a player is registered with a club under a Contract which is due to expire at the end of the sporting season: (i) contact with third clubs and (direct and indirect) negotiations between such player and third clubs are forbidden only until 31 December; (ii) as of 1 January not only are contact and negotiations allowed, but even the signing of preliminary agreements, albeit in predetermined time-frames established by the FIGC, as it will be clarified *infra* in the relevant chapters. Nevertheless, a club wishing to employ a player has the obligation to inform his current club in writing before starting any negotiation.[47]

In case of breach, the FIGC Federal Prosecutor undertakes a disciplinary action against players, clubs' officials and/or clubs accused of committing such violation, which may lead to the imposition of the sanctions therein indicated.[48]

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[43] According to art. 95, para. 13 FIGC NOIF.

[44] According to art. 95, para. 15 FIGC NOIF. Pursuant to Italian law, whilst a "compensation" is the payment to the damaged party of an amount to restore the damages suffered from an illegitimate conduct or from an extra-contractual liability, an "indemnification" restores the position of the damaged party from a conduct which is authorised or not illegitimate. The practical consequences is that the amount paid to the damaged party is less than the total amount of damages suffered.

[45] According to art. 95, para. 14 FIGC NOIF.

[46] According to art. 95bis, para. 1 FIGC NOIF.

[47] According to art. 95bis, para. 2 FIGC NOIF.

[48] The inhibition and ban under art. 14 Code of sport Justice and a fine under art. 13 Code of Sport Justice.

To conclude this general overview, after establishing general rules, the FIGC draws up particular provisions on the assignment of Contracts, either on a definitive basis (under art. 102 FIGC NOIF)[49] or on a temporary basis (under art. 103 FIGC NOIF), on mutual termination of temporary transfers and assignment of Contracts (under art. 103bis FIGC NOIF) and, lastly, on preliminary agreements (under art. 105 FIGC NOIF).

2.2.2 The standard forms

The most relevant standard forms issued by the professional Leagues are the following:

(i) a form for the registration of a player with a professional football club (the so-called "*variazione di tesseramento*", hereinafter, the "*Registration Variation Form*") together with another document containing the economic terms of the transfer (the so-called "*accordo in bollo*", hereinafter, the "*Stamped Agreement Form*"), that may also include reference to other forms depending on the nature of the transfer;

(ii) the form to exercise the right of option/counter-option (the so-called "*modulo per l'esercizio del diritto di opzione o controopzione con efficacia nella stagione sportiva [...]*", hereinafter, the "*Option/Counter-option Form*");

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[49] According to the former version of art. 102, para. 3bis FIGC NOIF, in a player's definitive transfer agreement the clubs were free to insert clauses providing for "*performance bonuses*" to be granted to selling clubs in addition to the transfer fee. The provision further mentioned the need for the parties to specify the *criteria* for calculating such bonus.
An interesting case arose on the interpretation of the "performance bonus" clause included in the transfer agreement (i.e. in the *Registration Variation Form*) of the player Adem Ljajic entered into by ACF Fiorentina S.p.A. ("*Fiorentina*") and AS Roma S.p.A. ("*Roma*"). As per such clause, Roma committed to pay Fiorentina the amount of EUR 1,000,000 upon the club ending the season in such a position in the Serie A table (or through the Italian Cup) enabling it to participate to the Group Stage of the Europa League. At the end of the 2015/2016 sporting season, Roma ranked third in the League, thus qualifying for the UEFA Champions League. After it was knocked out of the competition at the end of the preliminary round against FC Porto, in accordance with the relevant UEFA Regulations, it took part to the Group Stage of the UEFA Europa League. In view of the above-mentioned contractual clause, Fiorentina then requested the payment of the agreed "performance bonus" to Roma, which refused to make it, objecting that, as Roma had qualified to the UEFA Europa League only thanks to a defeat in the UEFA Champions League, the condition of the "performance bonus" clause was not met. The *Federal Tribunal* (C.U. n. 22/TFN-SVE on 31.03.2017 and C.U. n. 23/TFN-SVE on 05.05.2017), the *Federal Court of Appeal* (C.U. n. 146/CFA on 23.06.2017, C.U. n. 010/CFA on 06.07.2017 and C.U. n. 47/CFA on 09.10.2017) and, in the last instance, the *CONI Sport Guarantee Committee* (with its decision n. 3/2018 on 18.12.2017/12.01.2018) established that Fiorentina was entitled to receive the payment of the performance bonus as the will of the Parties was to make the payment subject to the result of the participation of Roma to the UEFA Europa League (*Federal Tribunal*'s opinion) or just considering the final ranking of the Italian championship (*Federal Court of Appeal*'s opinion). These decisions are worth-mentioning as they clarified the concept of "performance bonus" (not strictly linked to a player's sporting performance) and reaffirmed major legal principles on how to construe contractual provisions according to Italian law.

(iii) the form to transform a loan transfer into a definitive transfer (the so-called "*trasformazione della cessione temporanea/trasferimento temporaneo in cessione definitiva/trasferimento definitivo*", hereinafter, the "*Transformation Form*");

(iv) the form for the mutual termination of a loan agreement (the so-called "*risoluzione consensuale dei trasferimenti e delle cessioni a titolo temporaneo*", hereinafter, the "*Loan Mutual Termination Form*");

(v) the form to exercise the right to withdraw from a loan agreement (the so-called "*modulo per l'esercizio di recesso del trasferimento temporaneo/ cessione temporanea di contratto*", hereinafter, the "*Loan Withdrawal Form*"); and

(vi) the form for preliminary contracts, including employment or transfer contracts (the "*Preliminary Contract Form*").

All these standard forms are not publicly available and can be obtained only by officials of the clubs involved in the transfers via their relevant Leagues.

2.2.2.1 The Registration Variation Form

The *Registration Variation Form* is a two-page document whereby the parties file a request with the FIGC for the registration of either a professional player or a Youth Player with the new club.[50]

It includes data on the registering club,[51] the player[52] and the transferor club,[53] if any. In case the player is a *professional*, the parties are required to tick the appropriate box, indicating whether the request for registration with the FIGC concerns a player coming from a foreign football association, whether the player is transferred on a definitive basis (in this case, it must also be specified if the transferor club is granted a right of counter-option as previously defined) or on loan (in such case, the parties, in addition to indicating the length of the loan period – annual or biennial at most – shall also specify their rights/obligations: as to the borrowing club, whether it has a right of option to buy the player on a definitive basis at the end of the loan or the obligation to do so and whether it has the possibility to prolong the annual loan for a second sporting season; as to the loaning club, whether it is granted a right of counter-option to retain the player in case the borrowing club exercises its right of option to buy him and if it has the right to withdraw from the loan agreement against the payment in favour of the borrowing

[50] The Registration Variation forms issued by the LNPA is basically identical to the one issued by the LNPB.

[51] Its full name, identification number, legal seat, indication whether it was assisted by an intermediary and, in the affirmative, his name, surname and registration number.

[52] His name, surname, residence, address, citizenship, registration number and indication whether it was assisted by an intermediary and, in the affirmative, his name, surname and registration number.

[53] The same information of the transferee club.

club of an amount). In case the player is a Youth Player, there is a specific box to be completed on the second page.[54]

The form is signed by the player (in case he is under the age of 18, by a person exercising parental authority or legal guardianship), by the legal representative of the registering club and, only in case of transfer, by the legal representative of the transferor club.

By signing it, the parties undertake to accept the jurisdiction of the FIGC (and its decisions) with reference to the activities covered by the FIGC rules and regulations and, in particular, to accept the arbitration clause under art. 30 of the FIGC Statutes.[55]

The player declares having read, understood and accepted all the state laws on workers' health protection, the regulations against doping issued by WADA, CONI and FIGC, and authorises the club to process his personal data for the purpose of his football activity. He also declares being aware that his participation in sporting activities is subject to the issuance of a medical certificate and declares being informed of the insurance guarantees that the registration implies.

Conversely, the legal representative of the registering club declares, under his personal responsibility, that the player is in possession of a medical certificate which allows him to play football and undertakes to permit him to participate in sporting activities only with a valid medical certificate.

By signing the form, the parties also authorise the League to inform the public of its filing.

Due to the high standardisation of administrative formalities required to perform a transfer as well as the need for the ratification by the competent League, domestic sport litigation is pretty much limited to the economic consequences of a transfer while it is highly unlikely that the validity of the same transfer is challenged.[56]

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[54] There are fewer options to tick: the parties shall indicate whether the transfer is on a definitive basis or on loan. In the second case, it must be specified whether the borrowing club has a right of option, if the loaning club has a right of counter-option and the right to withdraw from the loan agreement.

[55] Whose main limitation is the so called "(sporting) justice restriction" ("vincolo di giustizia (sportiva)") according to which a member of FIGC can open a case before the ordinary tribunals, either civil or criminal, only for serious reasons and after having received a formal authorisation from Federal Council of the same FIGC. Any violation to such compulsory precondition leads the offending party to be disciplinary sanctioned by FIGC.

[56] As an example of a case concerning the domestic transfer of a player, we can quote the one brought by ACF Fiorentina S.p.A. ("*Fiorentina*") against AC Perugia Calcio S.r.l. ("*Perugia*") and Atalanta BC S.p.A. ("*Atalanta*") regarding the transfer of the player Gianluca Mancini. After Fiorentina transferred Mr Mancini to Perugia on a definitive basis - agreeing on a sell-on clause for the 50% on any amount Perugia would have received by a third club for the future transfer of the player - Perugia transferred the player to Atalanta for a total consideration of EUR 200,000 and paid half of such amount to Fiorentina. However, the latter claimed that Perugia and Atalanta mutually agreed to set the player's transfer fee to an alleged very low and unrealistic amount for the purpose of limiting the impact on Perugia of the sell-on and to conclude in the same registration period a transfer of another player, namely Mr Santopadre, whose value was, on the contrary,

2.2.2.2 The Stamped Agreement Form

The *Stamped Agreement Form* is to be completed in case of assignment of a player's Contract to a new club. It is again a two-page agreement between the transferor and the transferee club whereby the parties specify the total consideration of the transfer of the player, its payment terms,[57] some "specific clauses", depending on the status of the player, and two short and unamendable clauses on medicals and insurance guarantees.

With regard to professional players, in case of a definitive transfer, the parties shall indicate whether they agreed on transfer fees or bonuses in favour of the transferor club and/or the transferee club as well as on the right of counter-option in favour of the transferor club to buy back the player. In case of a loan, they shall state whether the transferee club is granted the right of option to acquire the sporting services of the player on a definitive basis (and its economic consideration), if the transferor club has a counter-option right (and its economic consideration), if the parties foresee bonuses, whether the transferee club has the obligation to buy the player at the end of the loan period, if the transferor club has the right to withdraw from the loan agreement (and its economic consideration) and, lastly, if the transferee club is allowed to prolong the loan of the player for a further season (and its economic consideration).[58] As a last remark, the transferee club undertakes to comply with the applicable regulations on mandatory medical exams[59] and declares being aware that, by signing the form, it is assigned any rights and obligations towards the player and the insurance companies with reference to the relevant guarantees.

Interestingly, contrary to the Variation Registration Form, there is no need for the player's signature on this complimentary Stamped Agreement Form. This technically precludes the player, and his representatives, from being aware of the transfer fee agreed between the two clubs, or of any particular remuneration, in case the two clubs do not voluntarily inform the player about such content.

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established at an extremely high amount. Although, according to the federal deciding bodies, Fiorentina filed plenty of proof of such alleged simulation of transfer fee, it failed to convince both the *Federal Tribunal* and the *Federal Court of Appeal*, which dismissed its claim by raising the difficulty for a judging body to assess the "real value" of a player at a determined date (reference is made, respectively, to the C.U. 10/TFN-SVE on 18.12.2018, C.U. n. 15/TFN-SVE on 6 March 2019 and C.U. n. 88/CFA on 11.04.2019, C.U. n. 98/CFA on 08.05.2019). After the filing of an appeal with the *CONI Sport Guarantee Committee*, the Parties signed a settlement agreement, which was acknowledged in the relevant decision (n. 55/2019 on 23 July 2019).

[57] The transfer fee may be paid in instalments within a maximum period of five sporting seasons for LNPA clubs and of three seasons for LNPB clubs.

[58] As to *Youth Players*, there are less options compared to the ones commented above: in case of a definitive transfer, it is not possible to grant to the transferor any right of option, while, in case of temporary transfer, there is no room for both an obligation on the transferee club to acquire the sporting services of the player on a definitive basis and for its right to prolong the duration of the loan.

[59] In particular, under D.M. 18 February 1992, n. 7, art. 7 Law 91/81 and D.M. 13 March 1995.

Finally, it has to be pointed out that payment of the consideration for the player's transfer has to be made in a maximum of five yearly instalments for transfers involving LNPA clubs, a maximum of three yearly instalments in case of transfers involving LNPB clubs, and a maximum of two yearly instalments between Lega Pro clubs.

In Italian football, the Leagues operate with a "clearing house" method, setting off credit-debt positions derived from the transfer transactions of their affiliated clubs. Every yearly instalment is divided into sub-monthly quotes and must be guaranteed by the respective clubs with bank sureties issued by Italian banks or insurance warranties issued by insurance companies listed in the IVASS Registry and with a minimum rating of A3 – Moody's / Fitch or A- by Standards & Poors.[60]

2.2.2.3 The Option/Counter-Option Form

The Option/Counter-Option Form is a one-page document whereby a club – which had previously entered into a transfer agreement with another club with reference to a certain player – exercises one of the two above-mentioned rights in order to acquire the player's sporting services on a definitive basis.

It contains the name and registration number of the selling club and it is addressed to both the club that is exercising the option and the League to which the latter belongs. It also contains the name and registration number of the player, the number of the *Stamped Agreement* or of the *Agreement regarding the option right*, in case the payment is agreed in instalments, the non-amendable declaration of the club on the exercise of the right (of option or counter-option), which has to be made in the periods established by the FIGC Federal Council, the date and the signature of the selling club's legal representative.

This Form has practically substituted the previous forms related to a system named "co-ownership" ("comproprietà"), which was a particular instrument established under article 102bis NOIF FIGC, permanently repealed in 2015,[61] whereby a club could sell a player to another club and then immediately buy back 50% of his economic rights.[62]

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[60] For what concerns the season 2019/2020, these rules are fully explained in the C.U. FIGC n. 117/A on 16 May 2019 from its page 9 onwards, which is available at: www.figc.it/media/88473/117-termini-e-disposizioni-regolamentari-tesseramento-professionisti-2018-2019.pdf (last visited on 29 June 2019).

[61] The season 2014/2015 was the last one when "co-ownership" agreements were in place. The relevant communication on the ending of "co-ownerships" and the amendment of art. 102bis NOIF FIGC is available at: www.figc.it/figclegacyassets/assets/contentresources_2/contenutogenerico/90/c_2_contenutogenerico_2524401_strillocomunicatoufficiale_lstallegati_0_upfallegato.pdf (last visited on 30 June 2019).

[62] This instrument caused interesting consequences when faced with international rules. For instance, in the matter enrolled as *CAS 2014/A/3701 Genoa Cricket and Football Club S.p.A. v. AC Sparta Praha*, the Panel decided to grant a foreign club its sell-on fee on 50% of the Player's overall value

The concept of a "counter-option" has formalised a mechanism known as a "*clause of recompra*", which has been used by Italian clubs during recent seasons in definitive transfer contracts. Borrowed from the Spanish leagues, this legal instrument has been recently formalised into the Italian football regulations by the C.U. FIGC n. 58 on 1 June 2018, amending article 102, para. 4 of the NOIF FIGC.

Legally speaking the "recompra" is an option given to the selling club granting it the right to acquire back the same player from the buying club within a determined period. It is normally used in cases of a promising youngster being sold by a higher level club to a developing club, with the former keeping an eye on the possible positive developments of the player.

As usual, the Italian legal system enacted this right of "recompra" with several boundaries: (i) in the agreement the parties must specify the consideration for having granted the option and the amount to be paid to possibly exercise it; (ii) as a condition for its validity, the option must be signed by the player as well and (iii) the selling club must conclude with the player an employment contract starting from the second season after the one when the sale occurred, whilst the buying club needs to conclude an employment contract of at least three seasons.

Finally, in the first version of the regulation issued in 2018, the buying club could loan the player to a third club, albeit with the option of the selling club still in place, and the option could be exercised from the first or the second season after the first definitive transfer. These possibilities were amended in the new version pursuant to C.U. FIGC n. 98/A on 17 April 2019, recently integrated by C.U. FIGC n. 155/A on 27 June 2019, whereby the FIGC cancelled the possibility to loan an optioned player and obliged the selling club to only exercise its option on the first day of the transfer window of the second season after the first definitive transfer to the buying club.

2.2.2.4 The Transformation Form

By means of the Transformation Form, the loaning club and the borrowing club – with the express consent of the interested player – agree to transform a loan into a definitive transfer.

This is a very simple standard form in which the parties (the two clubs and the player) simply need to insert their names and registration numbers in the relevant spaces and sign it.[63] The relevant Stamped Agreement is annexed to the Transformation Form.

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when the latter was federatively transferred using a "co-ownership", although the same Player always physically remained at the selling club. This award is available at: https://jurisprudence.tas-cas.org/Shared%20Documents/3701.pdf (last visited on 29 June 2019).

[63] Stamps of the clubs and signature of their legal representatives, on the one side, the signature of the player or, if he is under age, of his parents or legal guardians, on the other.

2.2.2.5 The Loan Mutual Termination Form and its Annex

The Loan Mutual Termination Form consists of a one-page main document and may include a one-page annex.

In the main document, the loaning club and the borrowing club insert their usual information (name, registration number, legal seat, name of the legal representative and his/her capacity), the name and matriculation number of the player, the number of his Registration Variation Form, the specification of whether it refers to a transfer of a professional or a Youth Player[64] and the unamendable declaration that the employment relationship between the loaning club and the player is restored.

Just before adding their signatures, the two clubs are required to tick a box to indicate whether they have established any amount as consideration for the mutual termination.

In such case, they also need to complete and sign the annex, detailing the total amount and the terms of such payment obligation.[65]

2.2.2.6 The Loan Withdrawal Form

The Loan Withdrawal Form is a one-page document whereby the loaning club may exercise its right to withdraw from the loan agreement against the payment of a certain amount in favour of the borrowing club.[66]

The form is a mere declaration – indicating the number of the player's Registration Variation Form, the Stamped Agreement, Withdrawal Agreement, the name of the player, his matriculation number and the economic consideration – whereby the loaning club informs the borrowing club and the latter's League about its intention to exercise its right of withdrawal. Thus, it is signed by the loaning club only.

As a final remark regarding all of these Forms, it needs to be pointed out that every season the FIGC establishes specific periods during which these Forms can be concluded and deposited for their validity. Failure to operate during these specific time-frames can lead to disciplinary sanctions against the parties involved and the nullity of the respective transaction.[67]

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[64] See art. 103bis, para. 1 and 2 FIGC NOIF. As recalled above, according to the Italian regulations, in the first case, reference is made to the "assignment of a [professional] employment contract" while in the second case the reference is to the mere "transfer of a Youth Player".

[65] The payment can be in favour of either the loaning club or the borrowing club. See art. 103bis, para. 2 FIGC NOIF.

[66] See art. 103bis, para. 3 and 4 FIGC NOIF.

[67] For what concerns the season 2019/2020, FIGC issued the C.U. FIGC n. 117/A on 16 May 2019 by which, for instance, Options – Counter-Options could be only exercised between 17-19 June 2019 for Options and 20-22 June 2019 for Counter-Options and Loan Withdrawals Forms could be filed only from 1 July 2019 until 16 August 2019. All documents are available at: www.figc.it/media/88473/117-termini-e-disposizioni-regolamentari-tesseramento-professionisti-2018-2019.pdf (last visited 29 June 2019).

2.2.2.7 The Preliminary Contract Form

The *Preliminary Contract Form* is a form which, apart from the title, encompasses exactly the same content as the relevant definitive contract it refers to.[68]

This Form can be used to agree in advance on transfers, assignment of contracts, new employment contracts or renewal of existing employment contracts, with the juridical effects of the transaction entering into force at a later date.[69]

For its validity, a Preliminary Contract Form related to a transfer (i) can only be concluded during specific periods set forth every year by the FIGC, (ii) cannot involve clubs and players competing in the same championship when these are still ongoing and (iii) must be deposited with the relevant League within 20 (twenty) days of signing.[70]

3. Employment contracts (standard contract and main clauses)

In Italy, the relationship between professional clubs and professional football players is regulated by three standard Contracts, depending on the league to which a club belongs.[71]

Such standard Contracts are brief agreements (a four-page contract for Serie A players, a three-page contract for both Serie B and Serie C players) as they entirely recall the provisions of the respective collective bargaining agreements to which they are annexed.

The CBAs share the same basic and fundamental provisions although some clauses differ. Such differences are thus reflected in the standard employment contracts. This is due to the different degree of professionalism of the three leagues, which require adjustments.

For practical reasons, the authors shall analyse hereinafter only the Serie A standard employment contract,[72] highlighting, when necessary, the differences with the others.

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[68] See art. 105 FIGC NOIF. Pursuant to art. 1351 of the Italian Civil Code, a preliminary contract is null and void if not concluded in the same legal form of the definitive ones to which they pertain. According to art. 2932 of the Italian Civil Code, if a party does not fulfil its obligation to conclude a definitive contract, the non-defaulting party can obtain a decision producing the same effects of the non-concluded definitive contract but, if the preliminary contract relates to creation or assignment of a right, the non-defaulting party also needs to perform its counter obligation or to offer to perform it to the defaulting party.

[69] Pursuant to art. 105, para. 1 FIGC NOIF.

[70] Pursuant to art. 105, para. 2 FIGC NOIF

[71] According to art. 4 of the CBA, employment contracts must be made in writing under penalty of nullity.

[72] Available on the website of the Italian Players' Union "AIC" at the following link: www.assocalciatori.it/sites/default/files/attachment/pagina/Contratto%20Tipo%20Lega%20Serie%20A.pdf (last visited 29 June 2019).

3.1 Overview

The standard Contract between a professional player and a Serie A club consists of a four-page agreement, comprising a two-page main contract and a two-page addendum (the so-called "*Altre Scritture*", hereinafter, the "*Addendum*").

The Contract firstly provides information on the signing parties and contains six articles.

In the first two, the parties shall only complete blank spaces by inserting the duration of the employment relationship (clause 1) and the player's salary (clause 2).

The last four articles (from clauses 3 to 6) are, instead, standard and unamendable provisions that the parties are simply required to accept in full. Their content will briefly be addressed hereinafter.

The Addendum is a separate agreement – that however forms an integral and indivisible part of the Contract – in which the parties may amend or integrate the Contract provisions. The existence and content of the Addendum is specifically provided for under art. 3.5 of the CBA and it is subject to the same rules that regulate the Contract.[73]

3.2 Parties and length of Contract

At the outset of the Contract, the club is required to insert its full name, legal seat, VAT number, name, surname and qualification of its legal representative and to specify whether it was assisted by an intermediary and, in the affirmative, to insert its name, surname and registration number.

The player shall insert his name and surname, date and place of birth, personal address for the purposes of any communication under the CBA, tax code, matriculation number and, if assisted by an intermediary, his name, surname and registration number.

Then, the parties shall indicate the duration of their employment relationship and the date of commencement of the player's activities. According to art. 28 of the FIGC NOIF, the duration of a professional employment contract cannot exceed five sporting seasons if the player is over 18, and three sporting seasons if the player is under 18.[74]

It needs to be mentioned that option rights in favour of both clubs and players are allowed on condition that they are inserted against a consideration and that the overall duration of the Contract does not exceed the maximum

[73] In particular, art. 2.1 and 2.2 – regarding the form of the Contract and clauses restricting the freedom of the player after the termination of his employment contract with a club – and art. 3.1 and 3.4 – on the obligation for clubs to file Contracts with the LNPA for its onward transmission to the FIGC to obtain the latter's authorisation – apply.

[74] According to art. 5, para. 1, second part of the Law 91/81, clubs and players are allowed to enter into subsequent employment contracts (i.e. they can renew the contract, sign new ones etc.).

afore-mentioned length.[75] Conversely, the same provision prohibits pre-emption rights in the Contract.

Considering that in Italy the sporting season runs from 1 July to 30 June, the typical contract follows such timeframe. However, it is also possible for a club to sign a player for a period shorter than one sporting season provided that the contract ends on 30 June.

3.3 Remuneration

The salary of the player is inserted in the blank spaces under clause 2 of the standard Contract.

The parties may agree on wages as a fixed amount (clause 2, lit. a) of the Contract)[76] or composed of a fixed and a variable part (clause 2, lit. b) of the Contract).[77]

In the latter case, the variable part of a player's remuneration can be linked to sporting results, either achieved by the player and/or by the team, or to non-sporting individual objectives agreed upon by the parties. The variable part, where applicable: (i) cannot exceed, for each sporting season of the duration of the Contract, separately considered, 100% of the fixed part where the latter is agreed up to the gross amount of EUR 400,000 (four hundred thousand euros); (ii) shall have no limit whatsoever, for each sporting season of the duration of the Contract, where the fixed annual part exceeds EUR 400,000 (four hundred thousand euros); (iii) shall have no limit whatsoever in the event of conclusion of the first Contract as a professional player.[78]

In Italy, as in many other countries, clubs usually grant their players individual and team bonuses in order to encourage them to perform well and reach teams' targets. Individual bonuses, for instance, may be set upon the player making a certain number of appearances[79] in official competitions (*Serie A TIM*, *TIM Cup*, the Italian national cup, *UEFA Europa League* and *UEFA Champions League*), assists and/or goals scored. It is usually specified whether such bonuses are cumulative or not or, if achieved, they then form part of the fixed amount for the next seasons.

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[75] Pursuant to art. 2, para. 2 of the CBA.

[76] At the bottom of the first page of the Contract, under the fixed part of the remuneration, the parties shall also indicate the gross amount the player is entitled to receive for his participation in the club's advertising initiatives. The parties usually consider such amount included in the fixed gross amount. If not, clubs and players are free to sign separate agreements regarding the players' image rights.

[77] According to art. 4.1 of the CBA.

[78] Lower amounts are provided for under art. 4.1 of the CBA Serie B and art. 6.6 of the CBA Serie C.

[79] In such case, it is common for clubs to specify the meaning of "appearance", i.e. to establish a minimum period of time (for example 45 minutes) that the Player has to play for the purpose of considering that game participation as an official appearance.

Team bonuses, for instance, may be paid upon the first team of the club not being relegated to the lower division (this is a typical provision for newly promoted clubs or clubs that know they are going to fight to remain in the league) and/or upon qualification for international competitions (*UEFA Europa League* or *UEFA Champions League*), winning the league and/or other competitions (*Coppa Italia*, *Supercoppa Italiana*, the national Supercup, *EUFA Europa League*, *UEFA Champions League*, *UEFA Supercup*, *FIFA Club World Cup*). Team and individual bonuses may be cumulative. Clubs also usually specify the time-limit when individual and team bonuses are paid to players.

The player's salary must be indicated as a gross amount and, in case of a multiannual agreement, for each sporting season, preferably for each championship in case of promotion/relegation of the club.[80]

As players usually demand to receive a net salary, clubs make use of a practical table prepared by the AIC (the Italian Players' Union) to calculate the corresponding gross amount to be inserted in the Contract (the so-called "*Tabella Lordo/Netto*").[81]

The player's salary may be set at a different amount depending on the championship and/or international competition in which the club participates or will participate[82] but, in any event, cannot be lower than the minimum amount established in the table agreed upon by the contracting parties to the CBA.[83]

The player's salary is inclusive, unless provided otherwise in the Contract or in the Addendum, of all emoluments, indemnities or allowances to which the player is entitled as remuneration also for travel, night matches and training camps as well as of any other further indemnity due under the Contract and/or Italian law but without prejudice to the special mandatory contribution to be paid by the club to the FIGC for the player's future retirement.[84]

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[80] According to art. 4.2 of the CBA. The same applies also to Serie B players (as per art. 4.2 of the CBA Serie B) and Serie C players (as per art. 6.2 and 6.3 of the CBA Serie C). However, during the summer transfer window 2019, several Italian clubs also specified the amount of the net salary of the player next to the gross sum. This is because the so-called "Decreto Crescita" (Law 28 June 2019, n. 58) introduced important tax benefits for players who moved to Italy after having been resident abroad in the previous two tax periods; as the application of such beneficial tax regime was subject to conditions, clubs and players wished to avoid any misunderstanding about the equivalence between gross and net amounts.

[81] Actually, there are 4 different tables covering all the 20 Italian regions in view of the different amount of local (regional and municipal) taxes to be added to the net salary of the player. The tables are available at: www.assocalciatori.it/normativa/professionisti (last visited on 29 June 2019).

[82] According art. 4.6 of the CBA. The same applies also to Serie B players (as per art. 4.2 of the CBA Serie B) while, under art. 6.6 of the CBA Serie C, only the fixed part of the player's salary may vary depending of the championship/competition to which the club participates.

[83] According to art. 4.6 and 4.7 of the CBA. The relevant table is available at: www.assocalciatori.it/sites/default/files/attachment/pagina/Tabella%20minimi%20Serie%20A.pdf (last visited on 29 June 2019).

[84] According to art. 5.1 of the CBA. The same provision applies to Serie B players (as per art. 5.1 of the CBA Serie B) and to Serie C players (as per art. 7.1 of the CBA Serie C although the provision is shorter and less specific).

The player's salary must be paid in equal monthly instalments by bank transfer. Its fixed part, which cannot be reduced or suspended, is paid no later than the twentieth day of the next calendar month; its variable part is paid in accordance with the Contract or the Addendum.[85]

Nonetheless, as the FIGC annually establishes the mandatory terms of payment of players' salaries in the context of the national club licensing system, clubs usually fulfil their financial obligations accordingly.[86] During recent seasons, this lead to clubs paying the salaries of the first trimester (July – September) by 16 November, the salaries of the second trimester (October – December) by 16 February, the salaries of the third trimester (January – March) by 30 May, the salaries of April and May by 24 June, and the salaries of June of the previous season no later than 30 September of the new season.

3.4 Other provisions

As recalled above, the last four clauses (from art. 3 to art. 6) of the Serie A standard Contract are unamendable provisions that the parties are simply required to accept in full. They serve the purpose of making the parties aware that they belong to the Italian sporting system and are thus obliged to comply with all the relevant regulations.

In particular, under clause 3, the parties undertake to comply with the CBA and all the provisions listed therein.[87]

Under clause 4, the parties obligate themselves to refer any disputes concerning the interpretation, execution or termination of the Contract or Addendum

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[85] According to art. 5.2 of the CBA Serie B, in the absence of any particular provision in the Contract or the Addendum, the variable part fell due to the player within the first round shall be paid with the first monthly instalment following the end of such round; the variable part fell due to the player after the end of such round shall be paid with the monthly instalment of June.

[86] For the sporting season 2019/2020 the FIGC established such terms in the club licensing system in the C.U. n. 29/A dated 18 December 2018, recently amended by the C.U. n. 86/A dated 2 April 2019, which are available at: www.figc.it/media/73159/1-manuale-licenze-nazionali_serie-a-2019-2020.pdf and www.figc.it/media/84374/86-integrazione-manuale-licenze-nazionali_serie-a.pdf.

[87] Clause 2.2 (limits to option agreement), clause 3.1. – 3.5. (obligation to file the Contract and the Addendum); clause 3.4. and 3.6. (need for approval of the Contract and the Addendum; consequences and indemnity in case of failure); clause 5.1. (all-inclusive nature of salary); clause 8.1. and 8.2. (prohibition of performance of other sports activities or different activities, if incompatible); clause 9.2. ("*Clubs and players are required to strictly comply with the provisions of state laws, CONI and FIGC regulations on health protection and the fight against doping. The Player must undertake periodical and/or preventive medical tests and checks, including blood/urine tests arranged by the club, CONI and FIGC for the implementation of anti-doping tests and the best protection of their health*"); clause 11.1. – 11.7. (breach, penalty clauses, warning, fine, salary reduction, exclusion from training sessions and camps, termination); clause 13.7 – 13.9 (consequences of termination on temporary transfers and co-ownerships); clause 15.1. – 15.7. (incapacity, unfitness, duration, effects and causes); clause 16.4 (waiver by the insured player of any claim for damages against the club due to injury); clause 16.6. – 16-7. (obligations of communication and denunciation); clause 16.8 (obligation to undergo official medical examination). In addition, the parties also undertake to comply with future collective bargaining agreements.

as well as any other disputes in any way linked to the relationship between the club and the player to the Arbitration Panel, which issues its decisions according to the procedural rules annexed to the CBA.[88]

Furthermore, pursuant to clause 5, the parties undertake to comply with the FIGC Statutes and various regulations and to accept any decision issued by the FIGC, its bodies and delegated subjects, as well as by the Arbitration Panel pursuant to the arbitration clause under art. 30 of the FIGC Statutes.

The last clause 6 regards the domicile of the parties and precedes their signatures. They are required to sign the Contract twice (with their second signature, they declare having read and specifically accepted clauses 3, 4, 5 and 6) and the Addendum only once.[89]

Finally, it is specified that the Contract and the Addendum must be filed with the competent League within 10 (ten) days of their signature.[90]

4. Transfer agreements

One of the particularities of Italian football is that, in principle, in case of a domestic transfer, there is no need for the parties involved (i.e. the releasing club, the engaging club and the player) to enter into a proper transfer agreement. This is because a transfer is completed when the player is registered with the new club upon receipt by the League of his new employment *Contract* and the *Registration Variation Form* with the *Stamped Agreement Form* in which the parties have previously clarified all the terms and the conditions of the transfer.

The labour relationship between the Player and his former club is thus deemed to have been terminated on the last day that he was registered with it. Consequently, from that day on, the Player simply becomes an employee of the new club.

5. Termination of contracts

The termination of employment contracts is expressly regulated under several provisions of both FIGC NOIF and the CBA. It may be the result of a mutual

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[88] In the case enrolled as *CAS 2015/A/4352-4353 Mauro Matías Zarate & Club Átletico Velez Sarsfield v. S.S. Lazio S.p.A*. the Panel was faced with an interesting interaction between two decisions respectively issued after a procedure firstly opened at Italian level before the Arbitration Panel provided by the Contract and after a parallel procedure recently opened before FIFA DRC. The Panel acknowledged that the decision issued by the domestic Arbitration Panel had already established the (non) validity of the termination of the Contract by the player.

[89] This duty to sign specific clauses of the Contract twice derives from art. 1341, para. 2 of the Italian Civil Codes whereby particular clauses of general conditions drafted by one of the parties have no effect if not specifically approved. In this case, if the player is under 18, both his parents or a person exercising parental authority or legal guardianship need to sign the Contract and the Addendum.

[90] In accordance with art. 3.1 of the CBA.

agreement between the parties or the most severe sanction to be imposed on the breaching party – be it the club or the player – for the violation of contractual obligations at the end of internal arbitration proceedings, or, more generally, just the legal consequence of the player's unfitness or inability to provide his sporting services, which may be either linked to his fault or negligence but also to events beyond his control. In such last case, the club's right to terminate the player's Contract does not derive from the player's breach.

It has to be pointed out that the Italian system differentiates from international practice deriving from the provisions of chapter IV of FIFA RSTP ("*IV. Maintenance of contractual stability between professionals and club*s") and particularly art. 17 FIFA RSTP. In Italian football, only the competent Arbitration Panel set up according to the relevant CBA can establish whether a club or a player has just cause[91] to terminate the Contract and, as a consequence, can declare the relevant Contract terminated. The termination is not effective until the issuance of such award and, therefore, the two parties continue to be bound to each other until such time although, for instance, a player might have left the respective club in the meantime. This means that, players terminating their Contracts with an Italian club in order to join another Italian club, would not receive the Formal Approval by the competent League to be registered with the latter until the Arbitration Panel has issued its award.

This is also the case because, pursuant to article 117 NOIF FIGC, the termination entails the cancellation of the player's registration on the date on which the competent bodies of the FIGC acknowledge it.

Only when a professional club is relegated to amateur leagues, being from Serie D downwards, is the Contract automatically terminated and the registration stays with the club.

Hereinafter, the authors will briefly address the afore-mentioned relevant provisions on this topic, distinguishing the various cases of termination, before briefly analysing the procedure to be opened before the Arbitration Panel to seek for such relief.

5.1 Mutual termination of contracts

As recalled under paragraph 4 above, unlike in some other countries, when a club wishes to transfer a player domestically there is no need for the clubs involved to enter into a proper transfer agreement. As the employment contract between the player and his former club is automatically terminated when the player is registered with the new club, the parties (i.e. the player and the releasing club) do not have to take care of such aspect in case of a transfer.

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[91] The concept of just cause is intended by art. 2119 of the Italian Civil Code as any cause which does not allow further the continuation of the relationship between the parties.

Nonetheless, it is not uncommon that a player and a club mutually agree to terminate their labour relationship before its natural expiry without a view to a transfer of the player (for instance, in case the player wishes/is forced to stop playing football or in case the parties, for whatever reason, simply believe that such termination is in their best interest) or, if in the context of a transfer, with the need to solve some pending issues amongst them.

In such cases the releasing club and the player usually enter into an agreement whereby they regulate the various legal and financial aspects linked to the end of their relationship. Typically, they establish the date of the termination, the possible payments to be made in favour of the player (for instance, as salary, bonus, or early leave incentive[92]) as well as waivers to their respective rights. In particular, clubs usually require players to waive or settle any claim towards them regarding the employment contract (for example, the employees' right to claim for further amounts as salary, bonus, compensation, damages, expenses, reimbursement of costs etc.). Then, the parties generally accept to waive their right to contest the validity of the settlement agreement and to renounce to file any claim whatsoever against each other before any sporting and/or judicial bodies, save for the fulfilment of the settlement agreement itself.

According to Italian labour legislation,[93] waivers and settlement agreements agreed upon between employers and employees concerning the rights of employees deriving from mandatory provisions of law and collective bargaining agreements are not valid and can be appealed within 6 (six) months of the date of termination of the employment relationship or from the date of the waiver/settlement agreement, if it occurred after the termination.

However, this provision does not apply to waivers/settlement agreements signed in the context of a special procedure to be carried out before a "*conciliator*" belonging to a trade union organisation, or before a state office named "*labour territorial organisation*" (the so-called "*direzione territoriale del lavoro*"), which has the precise duty to provide assistance to employees for the best protection of their rights.

Typically, clubs and players agree on the terms of a settlement and afterwards appear for a meeting before the conciliator or the labour territorial organisation, which are entrusted with the task of establishing whether the agreements – and in particular the waivers by the employees – who are always seen as the weaker party in the employment relationship – are fair and protective. In the affirmative, the conciliator or the labour territorial organisation executes the settlement agreement, sometimes even by simply attaching the document previously signed between the parties to the minutes of the meeting.

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[92] The so-called "*incentivo all'esodo*", which is an amount offered by the employer whose scope is to "convince" the employee to mutually terminate the employment relationship. The employer's advantage is that social charges do not accrue on these amounts and their taxation is also reduced in comparison with standard remunerations.

[93] Reference is made to art. 2113 of the Italian Civil Code.

Once the settlement agreement is formalised in such fashion, it cannot be subject to any challenge or appeal by the parties. That is why, the Leagues nowadays only accept written termination agreements together with the minutes of the meeting at the above-mentioned offices. This latter practice has recently been formalised into art. 117, para 3. FIGC NOIF by means of a reference to the necessity for mutual terminations to comply with the provisions of Legislative Decree n. 151/2015.[94] According to the same provision, mutual terminations are valid and effective only if registered within 5 (five) days with the relevant League.

Finally, it has to be noted that, under art. 4 of Law n. 91/81 ("rules regarding relationships between companies and professional sportsmen), the Contract cannot provide for non-competition clauses operating after its termination or, in general, limiting the freedom of the sportsman after the ending of the employment relationship.

5.2 Termination of contracts by clubs (due to players' breach)

According to art. 11, para. 1 of the CBA, any player who fails to fulfil his contractual obligations towards his club may have sanctions imposed against him of increasing severity depending on the seriousness of the breach. Needless to say that the premature termination of a Contract is the heaviest[95] sanction available to the non-breaching party as it puts an end to the relationship and must be therefore seen as an *ultima ratio*. Thus, only in case the player's breach is so severe that it is not reasonable to expect the club to maintain the labour relationship, the latter may request the issuance of such sanction.

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[94] Article 117 FIGC NOIF has been amended by the C.U. FIGC n. 155/A on 27.06.2019, which is available at: www.figc.it/media/96611/155-modifiche-noif-artt-101-102-103-103bis-105-110-117.pdf.

[95] The other sanctions are (from the most lenient to the most severe): *written warning*, *fine*, *salary reduction* and *temporary exclusion from training sessions or pre-season preparation with the first team*. According to art. 11.2 of the CBA, a *written warning* is a formal notice to the player requesting him to refrain from the same contested conduct. As per art. 11.3 of the CBA, a *fine* is a contractual penalty the amount of which is proportional to the seriousness of the infringement and in any case cannot exceed 25% (twenty-five percent) of the player's gross monthly salary. In the event of multiple infringement in the same month, the fine cannot exceed 50% (fifty percent) of his gross monthly salary. The club may directly impose on the player a *written warning* and a *fine* (if the amount is not higher than 5% of one-twelfth of the fix part of his salary) within the mandatory period of 20 (twenty) days from knowledge of the infringement and provided that it gives a written notice to the player, granting him the right to be heard in the following 5 (five) days. In case of direct application of the sanction by the club, the player may file an appeal against such decision within 15 (fifteen) days of its communication. The Club may also directly impose on the player a temporary exclusion from trainings/preparation by way of a provisional order provided that it simultaneously open a procedure before the Arbitration Panel to have such order scrutinized by the Panel. In the context of such procedure, the player can also ask for his reintegration within the club's first team or the termination of his employment contract. Lastly, according to art. 11.4 of the CBA, it is specified that the salary reduction has the function to compensate damages incurred by the club and to restore the balance of the contractual relationship. Provisions on its quantification and limits are set forth under art. 11.4, point (i), (ii), (iii) and (iv).

In addition to the above-mentioned cases, a club may also obtain the termination of a player's Contract if the latter is convicted, in Italy or abroad, to a period of imprisonment for a criminal offence intentionally committed, according to a definitive judgement.[96] This is not strictly speaking a breach of contract by the player but the consequences are the same as the player is prevented from rendering his sporting services due to his intentional infringement of criminal law.

As to the procedure,[97] a club wishing to terminate a player's Contract must notify its claim (containing the request for termination) to both the player and the Arbitration Panel within the mandatory term of 20 (twenty) days from knowledge of the player's breach or from the date the latter was definitively disqualified. The player is obviously granted the right to be heard in the context of the disciplinary procedure, at the end of which the Panel issues its decision.

As to the legal consequences of the termination of the Contract,[98] it is established that it implies the automatic termination of its possible Addendum, while the Panel shall apply the general legal principles of Italian civil law to establish the effects of the termination with regards to the agreements between the parties under art. 4, para. 3 of the CBA (i.e. the separate remuneration the player is possibly entitled to receive for his participation in the club's advertising campaigns).

In case the termination decision is delivered against a player on loan, the loaning club has the right to request that the original employment relationship is restored as from the date of the termination until the expiry of the original Contract. The loaning club must exercise its right by notifying the player, the League and the FIGC of its intention to resume its relationship with said player,[99] within 15 (fifteen) days from the time it was informed of the termination of the player's Contract with the borrowing club.

5.3 Termination of contracts by players (due to clubs' breach)

As a general principle, a player has the right to file a claim with the Arbitration Panel requesting compensation and/or the termination of his Contract whenever his club has breached its contractual obligations towards him.[100] As mentioned above, the Arbitration Panel shall only issue this kind of sanction for breaches of a certain severity.

For instance, if a club fails to comply with its obligations under art. 7, para. 1 of the CBA (i.e. to provide the player with suitable equipment, an environment compatible with his professional status, allowing him to take part to training sessions and pre-season preparation with the first team with the exclusion

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[96] Pursuant to the second part of art. 11, para. 5 of the CBA.
[97] According to the last paragraph of art. 11, para. 1 of the CBA.
[98] Pursuant to the first part of art. 11, para. 5 of the CBA.
[99] The Player has the obligation to notify the loaning club of the termination.
[100] According to art. 12, para. 1 of the CBA.

of the specific cases under art. 11 of the same CBA),[101] the Player may put the Club on notice, in writing, to fulfil its obligations. Should the Club not comply with the Player's request within the mandatory term of 3 (three) days from receipt of the notice, the latter may submit the case to the Arbitration Panel asking for his reintegration with the club's first team or the termination of his Contract. In both cases, the Player is also entitled to receive compensation for the damages suffered due to the illicit conduct of the club in an amount of at least 20% (twenty per cent) of the fixed part of his annual gross salary.[102-103]

If, at the end of the arbitration proceedings, the Arbitration Panel decides to uphold the player's request for reintegration, the club must comply with such award within 5 (five) days of receipt of the findings of such decision. Should the club fail to reintegrate the player, the player has the right to request and obtain from the same Arbitration Panel another decision terminating his employment contract in addition to compensation to be quantified in the amount corresponding to the residual value of his contract until the end of the relevant sporting season.[104-105]

The termination of a Contract – irrespective of whether it is made by a player or a club – leads to the same legal consequences with regards to the Addendum and the agreements between the parties under art. 4, para. 3 of the CBA (i.e. the separate remuneration the player is possibly entitled to receive for his participation in the club's advertising campaigns): the Addendum is immediately and automatically terminated as well while the Arbitration Panel decides the consequences on the agreement in compliance with the general principles of Italian civil law.[106]

The most important violation of Contract by a club, which may lead to its termination by way of a decision of the Arbitration Panel, is probably the non-payment of a player's salary.

This is such a sensitive issue that one entire article of the CBA is dedicated to it and, in particular, defines the concept of "*late payment*", the steps a player needs to take in order to obtain the dissolution of the employment relationship with the defaulting club, and the amount of compensation due.

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[101] The reference is to art. 11.1, which explicitly provides for the disciplinary sanction of the temporary exclusion from training sessions or pre-championship preparation with the first team in case of breach by the Player of his obligations towards the Club.

[102] According to art. 12, para. 2 of the CBA.

[103] Amongst leading cases regarding this type of violation: Goran Pandev / SS Lazio SpA, Arbitration Panel award dated 23 December 2009 (termination of Contract); Christian Manfredini / SS Lazio SpA, Arbitration Panel award dated 9 April 2010 (reintegration of the player within the first team).

[104] Pursuant to art. 12, para. 4 of the CBA.

[105] This occurred in a recent case opposing the player Michelangelo Albertazzi to the club Hellas Verona FC, Arbitration Panel award dated 4 January 2018.

[106] In this sense, the provision under art. 12, para. 7 of the CBA is a mere repetition of the first para. of art. 11, para. 5 of the CBA.

A player has cause to request the termination of his Contract in the following two cases: first, if his club has not paid him the fixed part of his monthly salary within 20 (twenty) days of the expiry of the term under art. 5, pars. 2 of the CBA, i.e. on the twentieth day of the next calendar month; second, if the club failed to pay him the variable part of his salary within the same afore-mentioned term. In both cases, the termination is subject to the player putting the club on notice, after the expiry of said deadline, by registered letter with return receipt, and a copy sent to the League in the same way.[107]

In case the player is registered on loan with the defaulting club, he must also send the notice under art. 13, para.1 above to the loaning club.

The Club can prevent the player from obtaining the termination of his Contract by paying him, by wire transfer, the outstanding amounts within 20 (twenty) days of receipt of the above-mentioned notice by registered letter.

Once the time-limit has elapsed, the player may file a claim with the Arbitration Panel no later than the 20th of June of the sporting season underway at the time of the filing of the request for termination. The club has the right to take part in the subsequent proceedings in compliance with the regulations of the Arbitration Panel ("*Arbitration Regulations*").[108]

If the Arbitration Panel declares the termination of the Contract, the Player shall have the right to receive from the club compensation for damages in an amount equal to the fixed part of the salary still outstanding until the natural end of the Contract or until the date of signing (and entering into force) of a new employment contract or of an economic agreement with an LND club, if this occurs before the natural expiry of the Contract. In addition, the player shall be granted a further amount, to be determined at the Arbitration Panel's discretion, upon request from the player, which takes into account the potential variable part of the player's remuneration and collective bonuses, if already due and payable.[109]

Unlike in the case regulated by art. 11, para. 6 of the CBA, the termination of an employment contract of a player on loan entails the resumption of the original employment relationship with the loaning club only if the latter pays to the Player, within the mandatory term of 20 (twenty) days from the receipt of the decision, all the outstanding amounts due from the borrowing club. In addition, until the end of the ongoing sporting season, the loaning club shall have to pay the Player the potentially higher fixed part of the salary he was entitled to receive from the borrowing club under the terminated Contract. The loaning club shall then have the right of redress towards the borrowing club up to the amount paid to the player.[110]

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[107] Pursuant to art. 13, para. 1 of the CBA.
[108] Pursuant to art. 13.4 and 13.5 of the CBA.
[109] According to art. 13.6 of the CBA.
[110] Pursuant to art. 13, para. 6 of the CBA.

5.4 Termination of contracts in case of players' unfitness or incapacity

The CBA defines a player's unfitness and incapacity, which may also lead to Contract termination.[111] They are both medical conditions that either render completely impossible the provision of sporting services by the player on a temporary or permanent basis – *incapacity* – or, although not implying such complete impossibility, does not permit the player to take part in training sessions other than functional recovery sessions – *unfitness*.

While *incapacity* must be certified by the competent Italian public health authorities, it is for the Arbitration Panel, upon a club's request, to appoint a sports doctor or a sports medical centre to certify the *unfitness* condition of one of its players.

The legal consequences of these conditions on the player's Contract depend on what caused them: player's negligence or fault, or events beyond his control.

In particular, where *incapacity* or *unfitness* is due to the player's gross negligence, the Italian general rules and principles on breach of contract apply and, therefore, the club may request the reduction of his salary or, in more serious cases, the termination of the player's Contract.[112]

In any case, when the player's *unfitness* due to illness or injury or his incapacity lasts for more than 6 (six) months, the club may submit the case to the Arbitration Panel to obtain the termination of the player's Contract or the reduction of his salary by half from the date of the application until the end of the condition (and in any case not after the natural expiration of the same Contract). However, subject to the loss of such right, the application for contract termination or reduction of salary must be submitted while the condition is still ongoing.[113]

Lastly, should the *illness* or the *injury* cause the permanent *incapacity* of the player, the club shall have the right to immediately request to the Arbitration Panel the termination of the contract.[114]

6. National training compensation and solidarity mechanism

The FIGC provides for a domestic system of training compensation,[115] which comprises a Preparation Bonus ("*Premio di Preparazione*") under art. 96 FIGC NOIF, a Training and Technical Formation Bonus ("*Premio di addestramento e formazione tecnica*") under art. 99 FIGC NOIF and a Career Bonus ("*Premio alla carriera*") under art. 99bis FIGC NOIF.

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[111] Under art. 15, para. 1, let. a) and b) of the CBA.
[112] According to art. 15, para. 7 of the CBA.
[113] According to art. 15, para. 4 of the CBA.
[114] As per art. 15, para. 6 of the CBA.
[115] Training compensation at international level is regulated under art. 20 and Annex 4 of the FIFA RSTP.

The common rationale behind the three different bonuses is to compensate training clubs for their efforts in the training and development of a player.

In addition, a very recent reform adopted by the FIGC Executive Committee on 18.12.2018 has created an internal solidarity contribution of up to 5% of the transfer fee to be paid in case of national definitive transfers by professional clubs to the player's former training clubs.[116]

6.1 The Preparation Bonus

According to art. 96, para. 1 FIGC NOIF, clubs requesting the registration of a (male or female) player as a *Youth Player*, *young amateur* or *non-professional* who in the previous sporting season was registered with a one-year registration bond as a *youngster,* shall pay the Preparation Bonus ("*Premio di Preparazione*") to the *training club/clubs* in an amount calculated on the basis of a "*parameter*"[117] – to be doubled in case of registration for clubs affiliated with the professional leagues – according to the specific coefficients indicated in a table included in the subsequent para. 5.

It is then specified that, for the purpose of the right to receive such bonus, only the last three clubs of amateur level (LND) or Serie C with which the player was registered in the previous five years are considered *training clubs*.[118] Each training club is able to request 1/5 of the entire Preparation Bonus. In cases where only one club held the player's registration for the entire period (five years), such club can claim the Preparation Bonus in full. The player's registration for one entire sporting season is an essential condition for the training club(s) to be granted the Preparation Bonus.

Among other peculiarities, it is also worth noting that clubs belonging to the LNPA and the LNPB are not entitled to the Preparation Bonus unless the request relates to clubs belonging to the same leagues. This also applies to women's clubs belonging to or controlled by LNPA and LNPB clubs.

In the event that the parties do not directly settle the matter of the payment of the Bonus among them, they can seek redress before the FIGC Bonus

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[116] This solidarity contribution shall need to be drafted, approved and finally inserted as a new provision of article 102 of the NOIF FIGC but, so far, it has not been implemented yet. The press release in this regard is available at: https://figc.it/media/72720/cf_stampa-18-dicembre-2018.pdf (last visited on 7 July 2019).

[117] The FIGC establishes that such parameter be updated at the end of each sporting season. According to the C.U. FIGC n. 20 of 19 July 2018, as of 1 July 2018, it amounts to EUR 553.00 (five hundred and fifty-three euros). Said C.U. is available at: www.figc.it/figclegacyassets/assets/contentresources_2/contenutogenerico/680/c_2_contenutogenerico_2543091_strillocomunicatoufficiale_lstallegati_0_upfallegato.pdf (last visited on 7 July 2019).

[118] This is the result of a recent reform pursuant to C.U. FIGC n. 152/A on 24 June 2019. Previously, only the last two clubs in the previous three years had the right to receive such compensation as training clubs.

Commission ("*Commissione Premi*"),[119] which, if the claim is accepted, also condemns the debtor club to pay a fine to the FIGC in an amount of up to half of the unpaid Preparation Bonus. Such decision may be appealed against before the FIGC National Federal Tribunal – Economic Matters Division ("*Tribunale Federale a livello nazionale – sezione vertenze economiche*").

As a last remark,[120] it must be noted that the right to Preparation Bonus is subject to a short statute of limitation as it expires at the end of the next sporting season in which said Preparation Bonus fell due.

6.2 The Training and Technical Formation Bonus

The second bonus provided for by the FIGC NOIF is the Training and Technical Formation Bonus ("*Premio di Addestramento e Formazione Tecnica*").

Any time a *non-professional* player, i.e. a player registered for an amateur club, signs his first professional Contract, the club acquiring his sporting services is liable to pay such Bonus to the player's last amateur club unless he was no longer registered with the latter at the time of the signing of such first Contract.[121]

In the event that a club belonging to LND is promoted to the professional Lega Pro (Serie C) championship and does not exercise its right to sign a professional Contract with one of its registered players, such club is nonetheless entitled to receive the Training and Technical Formation Bonus only if the same player signs his first professional Contract with another club before 30 September of the same sporting season.

The amount of the Training and Technical Formation Bonus cannot exceed what is indicated in the table named "Table B" provided by the same article.[122] However, the professional and amateur clubs involved may agree on a reduced amount, provided that such agreement is drafted in written form and is filed with the FIGC Bonus Commission ("*Commissione Premi*") within 90 (ninety) days of its conclusion.[123]

The relevant payment is then made via the professional League with which the registering club is affiliated according to the terms and methods established by the FIGC Federal Council ("*Consiglio Federale*").[124]

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[119] The rules of the procedure before the FIGC Bonus Commission are described under art. 96, para. 3 FIGC NOIF.

[120] According to art. 99, para. 4 FIGC NOIF.

[121] According to art. 99, para. 1 in conjunction with the subsequent para.1bis FIGC NOIF.

[122] For instance, the Bonus is EUR 93,000 for under 21 players from Serie D being registered with Serie A clubs and EUR 62,000 in case the same players are registered for Serie B clubs whilst, for players between 22 and 25 years old, it amounts to EUR 83,000 and EUR 41,500 for Serie A and B clubs respectively.

[123] According to art. 99, para. 2 FIGC NOIF.

[124] Pursuant to art. 99, para. 3 FIGC NOIF.

Lastly, any dispute regarding the Training and Technical Formation Bonus is referred to the FIGC National Federal Tribunal – Economic Matters Division ("*Tribunale Federale a livello nazionale – sezione vertenze economiche*").[125]

6.3 The Career Bonus

The Career Bonus ("*Premio alla Carriera*") is addressed by art. 99bis FIGC NOIF for men's football and by art. 99ter for women's football.[126]

As to the men's bonus,[127] clubs affiliated to the LND and/or pure grassroots clubs are entitled to receive a lump sum equal to EUR 18,000 (eighteen thousand euros) for every year of training given to players registered as *young* or *young amateurs* upon the occurrence of one of the following alternative conditions: a) when a player is fielded for the first time in a Serie A match, or; b) when a player is fielded, as a *professional*, in an official match with the (Italian)[128] National A team or Under 21 national team.

The Bonus is due only upon the condition that the player was registered with clubs affiliated to the LND and/or pure grassroots clubs for at least the sporting season that started in the year in which he turned 12 or in the following seasons and must be paid by the club with which the player is registered when one of the conditions under let. a) or b) above occurs or, if the player is loaned, from the loaning club. The Bonus must be paid to the training clubs before the end of the sporting season in which it fell due. In the event that the amateur club and/or grassroots club has already received from a professional club the Preparation Bonus or the Training and Technical Formation Bonus or a transfer fee, the relevant amounts shall be deducted from the total amount of the Career Bonus.

Upon request of the interested club, the amount of the Career Bonus is certified by the FIGC Bonus Commission. The payment of the Training and Technical Formation Bonus is also made via the League to which the debtor club is affiliated. Any dispute regarding its payment is referred to the FIGC National Federal Tribunal – Economic Matters Division ("*Tribunale Federale a livello nazionale – sezione vertenze economiche*").

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[125] Under art. 99, para. 5 FIGC NOIF.

[126] Compared to the *male* Bonus, the main differences of the *female* bonus are the following: i) the lump-sum is set at EUR 2,000 (two thousand euros) per year of training; ii) the only condition for women's clubs to receive said Bonus is that the player is fielded for the first time in an official match of the Women's Italian National A team; iii) women's clubs are not entitled to the Bonus if they are affiliated with the LNPA or LNPB, unless the request regards clubs belonging to the same league.

[127] According to art. 99bis, para. 1 FIGC NOIF.

7. Judicial bodies

7.1 The FIGC Judicial bodies

In Italy, every federation has to bring its Statute and justice regulations into line with the Code of Sports Justice of the CONI (the Italian Olympic Committee).[129]

To comply with such mandatory provision, the FIGC adopted its Statute and Code of Sports Justice with the decree dated 30 July 2014, adopted by an *ad acta* commissioner and approved with the resolution of the President of CONI n. 112/52 on 31 July 2014.[130]

The FIGC Code of Sports Justice has been recently amended and this update has also been approved by CONI, pursuant to its resolution n. 258 on 11 June 2019.[131]

The FIGC legal system (and more generally the Italian sports legal system, which is designed upon the above-mentioned CONI Code of Sports Justice) is inspired by and must comply with the principles of fair trial, equality of the parties, impartiality of the judges, reasonable duration of proceedings and the right to adversarial proceedings.[132]

As to the structure of the FIGC internal justice, the FIGC Code of Sports Justice provides for three categories of sports deciding bodies: *sports bodies*, which are competent to decide matters directly related to football, *disciplinary bodies*, that, instead, are competent to hear disciplinary cases in a broad sense and *economic bodies*, which rule upon economic matters between members.

In particular, on the one hand, the *Sports Judges* (both at territorial and national level) and the *Sports Court of Appeal* (both at territorial and national level) fall within the first category.[133]

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[128] By its decision n. 36/2018 in the case "*Delfino Pescara 1936 S.p.A. v. FIGC & U.S.D. Canaletto Sepor*", the CONI Sport Guarantee Committee ("Collegio di Garanzia dello Sport CONI"), eventually clarified that the reference should be made exclusively to the Italian national teams and to Italian Serie A championship.

[129] According to art. 64, para. 2 of the CONI Code of Sports Justice.

[130] The FIGC Statutes and Code of Sports Justice were attached to the C.U. FIGC n. 36/A dated 1 August 2014, available at: www.figc.it/figclegacyassets/assets/contentresources_2/contenutogenerico/98/c_2_contenutogenerico_2525086_strillocomunicatoufficiale_ lstallegati_0_upfallegato.pdf (last visited on 7 July 2019).

[131] The updated text is available at: www.figc.it/it/federazione/norme/codice-di-giustizia-sportiva/ (last visited 7 July 2019).

[132] In this sense, reference is made to both art. 33 of the FIGC Statutes and art. 44 of the FIGC Code of Sports Justice.

[133] Under art. art. 64 of the FIGC Code of Sports Justice, the National Sports Judges are competent for national championships and competitions and sporting activities organized by the LND while the Territorial Sports Judges assess cases regarding territorial competitions and under art. 69 of the FIGC Code of Sports Justice the Sports Court of Appeal is their second instance body.

The Sports Judges have jurisdiction over facts occurring during championships and competitions organised by the Leagues and the Youth and Scholastic Sector as well as over the regularity of matches with the express exclusion of facts relating to technical or disciplinary decisions adopted on the pitch by the referee or in any way reserved to the latter's discretionary decision.[134] The Sports Court of Appeal is the second instance body that decides over appeals against decisions passed by both Territorial and National Sports Judges.

On the other hand, the *Federal Tribunal* (both at territorial and national level), and the *Federal Court of Appeal* fall within the second and third category.

The Federal Tribunals are first instance bodies entitled to hear cases, started by way of an *act of referral* by the Federal Prosecutor or by a claim of an interested party, on all facts of relevancy for the sports legal order that do not fall within the jurisdiction of the Sports Judges.[135] In particular, the National Federal Tribunal decides, amongst others, on cases involving national competitions, resolutions issued by general assemblies of the FIGC, officials, referees, transfers, registration of players, economic disputes between clubs, Training and Formation Bonuses and Career Bonuses. It is divided into three divisions (Disciplinary Division, Registration Division and Economic Matters Division). Decisions issued by the Federal Tribunals can be appealed to the Federal Court of Appeal, which also has jurisdiction – amongst others – on cases of challenge of members of the Federal Tribunals and revocations as well as on requests of interpretation of Statutory and federal provisions.[136]

Both the Federal Tribunal and the Federal Court of Appeal can also issue provisional measures in cases where a party is able to demonstrate the risk of a severe and irreparable harm during the necessary period of time to reach a decision by each body.[137] It is also possible to appeal before the Federal Court of Appeal against interim or procedural orders issued by the Federal Tribunal.

As a further remark, one of the peculiarities of the Italian sports legal system is the existence of the Federal Prosecutor Office, which is a body that performs investigating and prosecuting functions (with the exception of doping-related cases assigned to the CONI Antidoping Prosecutor Office) and is divided into national and three further interregional divisions.[138]

To conclude this general overview on the FIGC deciding bodies, it is worth noting that, once all the internal remedies are exhausted, under certain circumstances,[139] it is possible to file an appeal against the final decision issued by

[134] According to art. 65 of the FIGC Code of Sports Justice.
[135] According to art. 79 ff. of the FIGC Code of Sports Justice.
[136] According to art. 98 of the FIGC Code of Sports Justice.
[137] According to art. 96-97 and 107-108 of the FIGC Code of Sports Justice.
[138] According to art. 116 of the FIGC Code of Sports Justice.
[139] According to art. 54 of the CONI Code of Sports Justice, decisions on doping matters as well as decisions that lead to sporting sanctions with a duration of less than 90 (ninety) days or economic sanctions until the amount of EUR 10.000 (ten thousand euros) are not subject to such final appeal. Appeals can be filed only against violations related to rules of law (i.e. not on the pure merits of the case) or for lack of insufficient explanation on a decisive part of the dispute.

an FIGC body with the CONI Sport Guarantee Committee (the so-called "*Collegio di Garanzia dello Sport CONI*"), which delivers an arbitral "*informal*" award.[140]

7.2 The Arbitration Panels: legal background

In cases of contractual disputes between players and clubs, the parties must submit the case to the Arbitration Panels (the so-called "*Collegi Arbitrali*"), which, although they are not proper FIGC dispute resolution bodies and are set up and managed by the Leagues instead, may be included in the present chapter due to their relevance.

Indeed, considering the great impact and huge numbers of employment-related disputes between clubs and players, the authors will briefly address hereinafter the arbitration procedure before the Serie A Arbitration Panel (hereinafter, the "*Panel*").

According to art. 4, para. 5 of the Law 91/81, a player's Contract may include an arbitration clause referring any dispute regarding its execution to an arbitration panel. Such clause may also specify the number of the arbitrators and the method of their appointment.

In application of such provision, pursuant to art. 21.1 of the CBA, a player's Contract must contain an arbitration clause referring any dispute concerning its interpretation, implementation or termination, as well as any other matter in any way linked to the relevant employment relationship, to the Panel, which shall render an *informal* award.

Consequently, by signing the Contract, the parties undertake to definitively accept the jurisdiction of the Panel and its decisions in view of their common belonging to the sports legal system, in consideration of the obligations undertaken as a direct consequence of their registration (for players) and affiliation (for clubs) to the FIGC as well as in view of the special nature of the applicable regulations.[141]

In addition, the CBA provides for the minimum content of the regulations on the procedures before the Panel.[142-143]

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[140] In the Italian legal system, there are two types of arbitrations: a "*formal*" and an "*informal*" arbitration. The most important differences between formal and informal arbitration concerns the effects and the enforceability of the relevant awards as well as ways, reasons and procedures to appeal them. For instance, according to art. 824bis of the Italian Civil Procedural Code the award issued at the end of a *formal* arbitration has the same legal effects of a decision issued by the state authority. Therefore, the parties may open the procedure under the following art. 825 to render it executive within the territory of Italy and to enforce it. Conversely, the parties may also opt for an "*informal*" arbitration at the end of which the award shall have the same effects of a contract between them.

[141] Pursuant to art. 21.2 of the CBA.

[142] Under art. 21.3 of the CBA.

[143] Such regulations outline the methods of referring disputes and the relevant time-limits, the procedure for the appointment of the arbitrators and the chairman, the procedural formalities regarding measures of inquiry, filing of documents and submissions, the time-limit within which the

In accordance with both the Law 91/1981 and the CBA, the employment contract of a Serie A player specifically recalls under its clause 4 the arbitration clause set forth by art. 21.2 of the CBA, while, under clause 5, it imposes on the parties the obligation to accept and comply with the FIGC Statutes and regulations and, in particular, with the arbitration clause under art. 30 FIGC Statutes as well as with any decision issued by the FIGC bodies and the Panel.

7.3 The Serie A Arbitration Panel: brief analysis of its regulations

The "*Regulations for the arbitration panels provided by the AIC-LNPA-FIGC Collective Bargaining Agreement concluded on 5 September 2011*" signed in Rome on 23 March 2012 (hereinafter, the "*Regulations*" or "*AR*") regulates the procedure before the Panels.[144] The Regulations is composed of 9 (nine) articles, which include general, simple and effective procedural provisions.

The Panels are constituted in compliance with the provisions of art. 806, para. 2 of the Italian Civil Procedural Code (hereinafter, "*CPC*"), art. 4, para. 5 of the Law 91/81, and the Law 280/2003, as well as the CBA of which the Regulations form an integral part. Pursuant to art. 1.2 of the AR, the parties may substitute the Panel with a Sole Arbitrator to be jointly appointed.

The Panels perform dispute resolution functions and have jurisdiction over any disputes between clubs participating in Serie A and their contracted professional football players – including those related to the assessment and awarding of compensation for breach of contract – having exclusive regard to the relationships regulated by the CBA or the individual labour contract.[145]
It is then specified that the Panels have jurisdiction to decide the above-mentioned disputes only if, by the time the claim is filed, the club – which is a necessary party to the proceedings – is affiliated to the LNPA. Then, once the claim is filed, the relevant Panel remains entitled to hear the matter even if the club involved in the dispute does not take part in Serie A anymore.[146]

award shall be issued, possible extension of such time-limit and its communication to the parties and, lastly, the criteria to calculate the arbitrator's fees, where provided in the regulations.

[144] If a professional player plays in Serie B by the time the dispute arises, the regulations for the arbitration panels Serie B apply. Such regulations are available at: www.assocalciatori.it/sites/default/files/attachment/pagina/Regolamento%20CA%20AIC%20-%20Lega%20Serie%20B.pdf (last visited on 7 July 2019). The main difference is that the arbitrators appointed by the parties can only be lawyers or retired judges whilst the president of the arbitration panel of Serie B can be chosen only from a "closed list" composed of 4 (four) names jointly indicated by the League and the Players' Union.
If a professional player plays in Serie C by the time the dispute arises, the regulations for the arbitration panels Serie C apply. Such regulations are available at: www.assocalciatori.it/sites/default/files/attachment/pagina/Regolamento%20CA%20AIC%20-%20Lega%20Pro.pdf (last visited on 7 July 2019). In these cases, the Panel are composed only by arbitrators listed in a "closed list" created by the League and the Player's Union.

[145] According to art. 1.3 of the AR.

[146] Pursuant to art. 1.4 of the AR.

The proceedings before the Panels and their awards have an *informal* nature[147] as per art. 808ter CPC.[148] They are regulated not only by the Regulations and the CBA but, in order to fill any gaps, also by the provisions under Title VIII of Book IV of the CPC insofar as such provisions are compatible with the *informal* nature of the arbitration proceedings.

The Panels consist of three members, two of whom are appointed by the Parties in their respective submissions (Claim and Answer) while the third member, who acts as chairman, is appointed by the other two appointed arbitrators. Unlike in the past, when arbitrators and the president were chosen from a "closed list" created by the League and the Players' Union, nowadays the parties have free choice on their appointment.

A Panel must be constituted upon acceptance of all its members within 15 (fifteen) days of receipt of the Response or the expiry of the deadline under art. 4.4 of the AR, i.e. 10 (ten) days from the receipt of the Response.

In case of lack of appointment or acceptance by the arbitrators, they are appointed, upon request of the most diligent party, by the State Judicial Authority in accordance with art. 810 CPC. The arbitrators so appointed must accept the task within 10 (ten) days of the decision of the State Judicial Authority by sending a communication to the parties.

By accepting the appointment, the arbitrators undertake to keep any information regarding the disputes confidential, including the issues at stake and the parties themselves. The arbitrators also have the obligation to refuse their appointment or withdraw from a case when there are reasons – arising out of any subjective, objective, employment or professional connection whatsoever to one of the parties or their counsels – that affect their independency or impartiality, or if a violation is ascertained, even in other arbitral proceedings, of their obligations under the Regulations, or in any cases that fall under art. 51 CPC.[149]

The parties also have the right to challenge arbitrators in the following three cases: (i) in cases provided for by art. 815 CPC;[150] (ii) in case of violation by the arbitrators of the Deontological Code under art. 3.6[151] of the AR and (iii) if the arbitrators refrained from refusing their appointment or withdrawing from a case, despite being obliged to do so under art. 3.2 of the AR.

As to the submissions of the parties,[1] the Request of the Claimant and the Answer of the Respondent basically have the same content (personal and fiscal data of the parties, their domicile, the appointment of one or more attorneys,

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[147] As recalled by art. 1.5 of the AR.

[148] The difference between *formal* and *informal* arbitrations will be addressed below.

[149] This article provides for some special circumstances at the occurrence of which a state court judge must refrain from deciding a case. It is thus used in an analogic way with regards to arbitrators.

[150] This article provides for some other circumstances at the occurrence of which an arbitrator may be challenged by a party in the context of a *formal* arbitration procedure.

[151] These are further criteria to make sure that the arbitrators are professional, independent, impartial and conduct themselves with the utmost transparency and confidentiality.

[152] According to art. 4 of the AR.

the appointment of the arbitrators, the express and unconditioned acceptance of the Regulations, a brief statement of facts and legal arguments, the indication of evidentiary measures and documents, the prayers for relief and the signature of the parties), while potential counterclaims may be included only in the Answer.[153] It is noteworthy to mention that, failure to appoint the arbitrator, accept the AR, produce evidence and/or to personally sign the submission (or, in case of legal counsel, to provide him with a power of attorney specifically containing the right to appoint the arbitrator) shall cause the inadmissibility of the Request, while the lack of the complete personal data of the party, the appointment of a legal counsel via a special power of attorney and/or the explanation on the object of the dispute shall mean that the arbitration cannot proceed any further.

The Request, along with the relevant documents, shall be simultaneously sent to the Respondent at its/his address indicated in the employment contract by registered letter or similar means. Likewise, the Respondent shall communicate its Answer, within 10 (ten) days of receipt of the Request, to the Claimant in the same form.

Moreover, there are two types of procedures before the Panel: the ordinary and the expedited procedure.

As to the ordinary one,[154] it is specified that the Panel may freely conduct the proceedings having regard to the parties' right to be heard and right of defence. The procedure is in Italian language and must be concluded by way of an award to be issued within 60 days of the constitution of the Panel unless the parties require, under justified grounds of urgency, a reduction of such time-limit. It is also possible for the Panel to issue partial awards on specific matters. The Panel must preliminarily proceed to try to find an amicable solution to the dispute.

The expedited procedure[155] implies that any time-limits provided by the Regulations are reduced by half. Such procedure is applied, upon request of one of the parties included in the Claim or in the Response, in case of disputes under art. 11 of the CBA (on breach of contract and penalty clauses) regarding: (a) an appeal against fines issued directly by a club; (b) the imposition of a fine in an amount higher than 5% of one twelfth of a player's annual gross salary; (c) the temporary exclusion from training sessions issued directly by a club and (d) the procedure of reduction of the player's salary under art. 11.4 of the CBA.

The expedited procedure is also applied, upon request of one of the parties included in the Claim or in the Response, in cases of disputes under art. 8.3, 12.2 and 13.4 of the CBA, as well as any other disputes in which the Panel, upon request of a party, discretionally finds the existence of a serious harm to one or both parties.

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[153] In such case, the Claimant has the right to file its Response to counterclaim within a further 10 (ten) days from the notification of the Answer containing the counterclaim.

[154] Under art. 5 of the AR.

[155] Under art. 6 of the AR.

Lastly, the Regulations also provide for the fees of the arbitrators and costs of the proceedings and establish that, when deciding the disputes, the Panel must firstly apply the Contract, the CBA and the sporting rules, and – only on a subsidiary basis – the Italian Civil Code and the other state laws of Italy.[156] It also clarifies that the award is immediately binding upon the parties from the date of its notification.

8. Conclusions

As noted by the authors in this article, transfers in Italy are over regulated. The yearly – if not monthly – layering of laws, provisions and their amendments does not facilitate the daily work of football stakeholders.

Unfortunately, some peculiar and positive aspects of the Italian system, such as the implementation of the Federal Prosecutor investigating on possible violations of the rules, or the full publication on the official FIGC website of all the regulations and their constant updates as well as all of the decisions issued by its sporting justice bodies with the respective grounds, risks being smothered by this web of complicated solutions.

In relation to transfers, the Leagues decided to implement standard Forms to regulate the market in a uniform way and for the equal treatment of all the parties. Some critics however consider that such bureaucratisation prevents the creativity of clubs and players in finding appropriate solutions to their needs, or prevents the flexibility that the market requires in some particular circumstances.

As to the Judicial Bodies, it is surely positive that there is division between the FIGC and the Leagues, with the former being competent to decide on disciplinary, economic and regulatory issues and the latter being set up as an efficient alternative system of dispute resolution providing its main members (clubs and players) with quick arbitration procedures via its Arbitration Panels. This separation of jurisdiction and further division by competence is certainly necessary in Italy, where the number of football disputes continues to be very high considering that, only from publicly available sources, it is possible to ascertain that during the season 2018/2019 the National Federal Tribunal – Disciplinary Division ruled upon around 250 cases, the National Federal Tribunal – Economic Matters Division decided around 180 matters and the two Courts of Appeals at national level (Federal Court of Appeal and Sports Court of Appeal) respectively issued 125 and 170 official communications containing an average of 2/3 awards each. A large number of them either directly arose from, or were connected to, transfer matters.

In this regard, the CBAs of each League provide undisputed high-level guidance and protection to the interests of all parties involved (including players transferring from abroad) as they are extensively negotiated every few years by the respective unions.

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[156] According to art. 7 and 8 of the AR.

In light of the above, it is highly recommended that foreign professionals on their way to Italy are advised by counsels who are experts and are aware of the ongoing changes, in order to avoid running into any unexpected issues when trying to finalise their deal, and to protect their deal for future years.

NATIONAL TRANSFERS IN PORTUGAL

by *João Leal*[*]

1. The National Framework

1.1 The Structure of the Portuguese Football Pyramid

1.1.1 Background

The Portuguese Football Federation (FPF) was founded on 31st of March 1914 by the Football Associations of Lisbon, Portalegre and Oporto, for an indefinite period, under the name of the União Portuguesa de Futebol (FPF). It is a non-profit-organisation with public interest. FPF is a private-law association comprising twenty-two regional associations, a professional league, associations of sports agents, clubs or sports companies, players, coaches and referees, which are all registered or affiliated under its statutes.

FPF is a Member of FIFA and UEFA, and it manages 44 non-professional competitions and 23 national teams.

FPF holds the public sport utility status, pursuant to order no. 5331/2013 of 22 April emanated from the Portuguese State.

FPF's main objective is to promote, regulate and direct, at national level, the coaching and practice of football, in all its variants and competitions.

The Portuguese Professional Football League is a private non-profit association that manages the 1St and 2nd professional competitions, which are currently composed of 18 clubs in the 1st league and 18th clubs in the 2nd league.

The 1st league is the top football competition in Portugal.

The Portuguese Professional Football League was founded on February 3, 1978, named "Liga Portuguesa de Clubes de Futebol Profissional" (LPFP).

LPFP is responsible for regulating the professional competitions regarding disciplinary, refereeing and organisational matters. The disciplinary and referee regulations must be ratified by the general meeting of FPF.

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LPFP started the organisation of the professional competitions from the sporting season of 1995/1996.

2. *The Legal Framework*

The legal framework of the FPF, and indeed all the Federations with sport public utility status, i.e., the federations recognised by the state as those with the power to regulate sport and represent Portugal, are laid down in the public sports law (Law n. 5/2007, of 16th of January 2007) and in the Decree-Law n. 93/2014 of 23rd of June 2014. When registering contracts, the legal regime of the contract of employment of sports players, sports training contracts and contracts of representation or intermediation [Law n. 54/2017 of 14th of July 2017] must also be taken into consideration.

In relation to the registration of players, the Decree-Law n. 93/2014 of 23 of June 2014 states in article 41 n. 2 paragraph a) that it is within the competence of the federation's board to approve all the required regulations. In regard to defining competence, Law 54/2017 of 14th July 2017 stipulates in article 7th (Registration) that participation of players in competitions, promoted by a federation, is dependent on the previous registration of the player's employment contract with the corresponding federation, and such contract must be based on the terms that are established by the regulations of the federation.

In combination with the legal framework that imposes rules on the Federations from a legal point of view, and the obligations set out in the FIFA Regulations on the Status and Transfer of Players that oblige Associations to apply mandatory rules at domestic level, the Portuguese Football Federation approved the "Regulamento do estatuto, da categoria, da inscrição e transferência de jogadores", which are the regulations that contain all the provisions for the registration of players.

A special remark must also be made in relation to the set of rules that are contained in the regulations of competitions of the Portuguese professional league. In fact, in accordance with Portuguese Law, the relationship between the Federation and the league is established by means of a contract (provided by the Decree-Law n. 93/2014 of 23 of June 2014). In this contract the parties must agree, among other things, on the number of clubs that participate in the professional sporting competition, the access between non-professional and professional sports competitions, the organisation of the activity of the national teams, and the support for the non-professional sporting activity. This contract also covers, in article 6th, the registration of players, stating that the Portuguese league is competent to deal with the registration of players who will take part in professional competitions. However, such registration is always subject to the final approval of the Portuguese Federation and all documentation must be exchanged electronically. The mentioned contract also states that the Portuguese Federation is competent to settle registration fees, and that the league compensates the Federation with 5% of the registration

fees for players, while 10% of the registration fee is due for an international transfer of the player's registration.

3. Registration and transfer rules

Due to the FPF's affiliation with FIFA, the Portuguese regulations regarding the registration and transfer of players include, without any amendments, articles 2-8, 10, 11, 12bis, 18, 18bis, 18ter, 19 and 19bis of the FIFA Regulations on the Status and Transfer of Players.[1]

There are however, a few rules in the Portuguese football regulations regarding the registration and transfer of players which may vary from FIFA rules or the standard international practice. In this section, we will address the following issues regarding registration and transfer rules:

a) Transfer windows;
b) Registering new players;
c) Third Party Ownership;
d) Loans;
e) Approaching players.

3.1 Transfer windows

Portugal has two transfer periods / windows per season – in summer and winter.

The two periods are different for professional and non-professional (amateur) competitions and are also different for international and domestic transfers.

For professional competitions, comprising international and domestic registration of players:

– the 1st window opens on the 1st of July, formally the first day of the sports season, and ends on the 31st of August.
– The 2nd window opens on the 1st of January (non-working day) and ends on the 31st of January.

For non-professional competitions:

– the 1st window opens on the 1st of July, formally the first day of the sports season, and ends, usually, on the 14th of September.
– The 2nd window opens on the 1st of January (non-working day) and ends on the 31st of January.
– The domestic registration of players is from the 1st of July up to the 28th of February.
– The first registration of players U-6, U-7, U-8, U-9, U-10, U-11 and U-12 to U-19, except for international transfers and those relating to players in need of FIFA pre-approval, is until the 31st of May.

[1] Available at https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-2018-2925437.pdf?cloudid=c83ynehmkp62h5vgwg9g.

3.2 Registering Players

The players who participate in organised football competitions can be registered with amateur or professional status. However, to play in professional competitions the player must have professional status and/or have a training contract registered with the FPF. Due attention must be paid to the fact that a player with a sports training contract may be registered with amateur status but nonetheless be eligible to play in professional competitions.

A player must be registered for a club to take part in organised competitions and, for professional competitions, the player must be part of the club squad list because there is a limit of player registrations per club. Regarding non-professional competitions, the regulations do not provide a limit of player registrations.

To register a player, clubs must send to LPFP (professional competitions) or to their Regional Association (non-professional competitions) all the documents relating to the registration – the player's contract, identification document of the player and professional insurance. Regarding amateur players, they must send an application form, identification document of the player, and insurance and medical exam documents.

It must be noted that, for professional players, there is no need to present medical exam documentation because this mandatory requirement is, according to the collective bargaining agreement signed between LPFP (in representation of the employers) and the players union, included in the labour contract.

Regarding mandatory insurance for amateur players, FPF offers clubs personal accident insurance for players when they are registered for the season. However, according to public law, players are exempt from joining FPF's insurance if they have another identical insurance policy.

According to Portuguese rules, players can only be registered for one club at a time, which means that if a player wishes to play eleven-a-side and Futsal they must be registered with the same club. An exception to this rule applies to satellite clubs. In this case, a club has an agreement with another club from a lower division with the aim of sharing players. The list of players must be sent to FPF 10 days before the beginning of the competition of the lower division club. These players do not change their registration but are eligible to play for both clubs up to a limit of 10 matches, i.e. when a player reaches 10 appearances for one of the clubs, whether it is the sponsor club or the sponsored club, he loses the eligibility to play for the other club.

3.3 Work permits

A foreign player can only be registered if he has a regular legal status in Portugal, which is proven by the delivery to the LPFP or the relevant Regional Association of a certified copy of identification documents and the documents required by law regarding entry and residence in the national territory.

In practical terms, the player must have a work visa, a visa for the practice of amateur sport, residence permit or manifestation of interest with the services of foreigners and borders (SEF).

Due to the specificity of football, which involves time limits for registration and the need to travel to other countries to participate in international competitions, the league and SEF made an agreement to speed up the procedure regarding the legal residence of a player in Portugal. This agreement only applies to players in professional competitions.

Foreign players (amateur or professional) in non-professional competitions may only be registered if they present one of the following documents:

a) Certificate of registration of citizens of the European Union;
b) Temporary stay visa (type D visa);
c) Residence visa;
d) Residence authorisation; or
e) Expression of interest presented under the terms and for the purposes of article 88 (Residence permit for the pursuit of subordinate professional activity) or in the terms and effects of article 123 (Exceptional Regime), both of Law n. 23/2007, of July 4 in its updated version, documents accompanying them and proof of their entry into SEF.[2]

3.4 Third Party Ownership

Portugal follows the decision of FIFA in terms of the prohibition of third party ownership. Therefore, no club can conclude an agreement with a third party to partake, in whole or in part, in compensation to be paid in relation to a future transfer of a player from a club to another, or whereby rights are granted to them relating to a future transfer or transfer compensation. This was a very hot topic for Portuguese clubs that for several years benefited from third party investors (TPI); this third party was seen as a person or company that loans money to a club to invest in players but does not have a direct or indirect interference in the transfer of the players nor in the policy of hiring players. The third-party investor was in fact a way for Portuguese clubs to finance their sporting activity when the banks were unable to finance clubs. Nevertheless, FIFA regulations prohibited the use of this financial solution, which had contributed significantly to the performance of Portuguese clubs in international competitions.

3.5 Loans

The loaning of players is addressed in the legal regime relating to employment contracts of sports players, sports training contracts, and contracts of representation or intermediation – Law n. 54/2017 of 14 of July[3] – as well as in the collective

[2] Available at https://dre.pt/pesquisa/-/search/635814/details/maximized.
[3] Available at https://dre.pt/home/-/dre/107692694/details/maximized.

agreement signed by the players' union and the league of clubs, and in the regulations of the Portuguese Professional Football League and FPF.

During the term of a sports employment contract, the parties can agree on the loan of a player to another club but maintain the initial contractual link with the parent club.

The clubs involved in the loan are jointly and severally liable for the payment of the remuneration of the player during the period in which the loan is effective.

In case of non-payment of the remuneration, the player must inform the non-defaulting club, within 45 days of the date of payment, the lack of communication from the player will free the non-defoulting club from the payment due.

3.5.1 Registration

Loans can be registered during the transfer windows and a loan is concluded by submitting completed and signed copies of the loan agreement. A professional player can be transferred on loan to another club upon the conclusion of a written contract between the player and the clubs involved. If the loan agreement has all the minimum requirements of a contract of employment, namely: the period, the salary and the responsibility to pay the salary and labour insurance, this document is registered as an employment contract. If the parties agree that the insurance is covered by the transferee club, the insurance certificate must be part of the application.

The minimum period of a loan is the period between 2 registration periods, subject to the period of the initial contract. The transferee club cannot transfer the player in question to a third club without the written authorisation from the transferring club and the player himself.

3.5.2 Restrictions on loans

Only professional competition regulations have restrictions on loans from other professional competition clubs:

- In the same sporting season, the transferring club may not loan more than six players in total to other clubs of the same league, and no more than one player to each club in the same league.
- In the same sporting season, the transferee club may not receive in total more than three players from other clubs of the same league, and no more than one player from each club of the same league.
- In the event of a temporary sub-loan of a player from one club to another, the transferring club is to be considered as the parent club and not the sub-transferring club, and will be subject to the limitations mentioned above.

– The provisions of the preceding paragraph shall apply to all cases of temporary sub-assignment, even if the sub-assignor club does not participate in the competitions organised by the league, provided that the parent club and the sub-assignee club participate in those competitions.
– The minimum duration of a contract for the temporary transfer of a player corresponds to the period of time between the conclusion of that contract (or its entry into force) and the end of the sporting season in which it begins to take effect, except in the case of the early termination of the temporary assignment agreement by mutual agreement of the parties in order for the player to be definitively transferred from the transferring club to a third club, in each case – for that purpose only – the player may be re-enrolled, at the same time, by the transferring club.

Regarding the non-professional competitions, no restrictions apply.

3.5.3 Players who are on loan playing against their parent clubs

Regarding the non-professional competitions, no restrictions apply.

Regarding professional competitions, the regulations stipulate that during the loan period, it is forbidden to use players that were transferred on a loan basis in the matches played between the parent club and the transferring club, with only the parent club being considered in the case of sub-transfer.

However, attention must be paid to the non-professional competitions, National Cup and Super Cup, where clubs of the professional competitions can play against each other. In these cases, because the regulations are different from the regulations of the professional competitions, there is not, for the moment, a restriction on the use of loan players in the match played between clubs involved in a loan transfer. Therefore, in the National Cup or Super Cup, clubs are free to use players that are on loan against their parent clubs.

3.5.4 Recalls from loan

The minimum duration of a temporary transfer contract shall be the period between the conclusion of that contract (or its entry into force) and the end of the sports season in which it begins to take effect, except in the case of early termination of the contract.

The loan player may only be reappointed and represent the parent club in cases of termination by the transferee club of the transfer contract due to his definitive non-performance. In such cases, the termination must have been with just cause and duly recognised by the competent authority.

The player may only be re-registered by a third club in the same season in the following situations:

a) sub-loan agreement resulting in the express agreement of the player and the transferring club;

b) unilateral termination of the contract by the player duly acknowledged by the Joint Arbitration Commission established in the collective bargaining agreement of professional football players, under an employment agreement with the transferring club.

In either of the situations mentioned above, the periods of registration must be respected, as well as the limitation that a player that may only participate in official matches for two clubs.

3.6 Approaching Players

As a rule, a player can only conclude an employment contract if he is not bound to another club or if he is only 6 months away from the expiry of the contract in force.

3.6.1 Out of contract Players

Out of contract players (and their intermediaries) can negotiate with clubs and can be approached by clubs at any time with the aim of signing a contract.

3.6.2 Players with expiring contracts

For professional competitions, in the case of a domestic transfer when the player's contract is due to expire at the end of the season, if the player concludes a contract of employment with another club by 31st of May, the new club shall communicate to the current club the conclusion of the contract within five days of the date of signature of the contract, except in cases where there is a written transfer agreement between the current club and the new club.[4]

Regarding non-professional competitions, FPF shall refuse the registration of the new contract if this is concluded more than 6 months from the expiry of the contract that is in force.

3.7 Payment of transfer fees/transfer agreements

Transfer agreements are not regulated in Portuguese Regulations nor in the Portuguese sporting law. This means that it is up to the clubs to, in accordance with civil law, agree on the conditions of said agreements. These agreements are not, for the moment, subject to registration. Therefore, a club that wishes to register a player only needs to consider if the termination of the contract with the previous club has already been registered. The termination of the contract is usually registered by submitting the relevant termination agreement. This has a significant impact on domestic solidarity mechanism because, from a practical point of view, it is only

[4] Art. 75 n. 7 para. b) of the professional competitions regulation - https://ligaportugal.pt/media/20960/regulamento-das-competicoes-2019-20.pdf.

possible to see the movement of a player from one club to another in the relevant player passport, and it is necessary to look for other evidence that shows the existence of a transfer agreement. For example, the annual publication of the relevant club's accounts, or any communication made to CMVM – Comissão do Mercado de Valores Mobiliários – the Portuguese authority that regulates the stock exchange market.

4. Employment contracts (standard contract and main clauses)

The specificity of sport and football requires special laws and regulations.

Therefore, in Portugal there is a legal regime applicable to sports employment contracts, sports training contracts, and contracts of representation or intermediation (Law n. 54/2017 from the14th of July), as well as a collective bargaining agreement that is applicable to employment and training contracts of players.[5]

The collective bargaining agreement provides a standard contract template with certain minimum requirements.

The sports employment contract is only valid if it is signed in writing by both parties.

The sports employment contract must include:

a) The identification of the parties, including the nationality and date of birth of the player;
b) The identification of the sports intermediary who has intervened in the contract, with an indication of the party that was represented, or the express mention that the contract was concluded without the intervention of a sport intermediary;
c) The sporting activity that the player undertakes to provide;
d) The amount and due date of the payment of the remuneration, as well as any reference to instalments if applicable;
e) The date on which the contract takes effect;
f) The term of validity of the contract;
g) The express mention of the existence of a trial period, when stipulated by the parties;
h) The date of conclusion.

The contract must also have the recognition of the signatures on the copy for FPF and must be accompanied by an application signed by the Club and the Player, in which the registration of the contract is requested.

The parties are free to add more clauses, provided that such clauses respect the law. For example, the law considers null and void clauses that limit the freedom of work of the player after the termination of the contractual relationship.

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[5] Available at www.ligaportugal.pt/media/15779/cct-liga-portugal-sjpf.pdf.

4.1 Remuneration and Bonuses

The collective bargaining agreement include the provision of a minimum basic salary.

In the current season, clubs and players must respect the following sums:

A professional player who enters into a sports employment contract for the sports seasons 2019/2020 and 2020/2021, is entitled to receive, in the 2019/2020 sports season, the following minimum monthly remuneration, for the competitions in which he takes part:

a) 1st national division (Liga NOS): 3 times the minimum monthly guaranteed salary (RMMG - = EUR650,00) established by the Government for general workers;
b) 2nd national division (LEDMAN LigaPro): 1.75 times the RMMG;
c) Portuguese Championship: 1.5 times the RMMG;
d) 3rd Division: 1.25 times the RMMG;
e) Training classes, U-23 Championship, and other competitions not expressly mentioned: RMMG.

A professional player of up to 23 years of age who is a locally trained player, who signs his first sports employment contract in the 2019/2020 or 2020/2021 sports season, is entitled to the RMMG for the first two years of the contract.

4.2 Length of contract

As defined in the legal regime applicable to sports employment contracts, sports training contracts, and contracts of representation or intermediation (Law 54/2017 of 14th of July), a sports employment contract must have a duration of at least one sporting season, and the maximum duration is five seasons.

However, it is also stated that a sports employment contract may have a duration of less than one season in the following situations:

a) sports employment contracts concluded after the start of a sports season to run until the end of the season;
b) sports employment contracts for which the player is hired to take part in a competition or in a certain number of sports events that are distinguishable within the scope of their sporting role (not applicable to football).

4.3 Disciplinary

As a rule, clubs can impose on their players the following penalties:

a) Recorded reprimand;
b) Penalty;
c) Suspension of work with loss of remuneration;
d) Dismissal with good cause.

Penalties imposed on a player for infractions on the same day may not exceed half of the daily remuneration and, in each season, the remuneration corresponding to 30 days.

The suspension of work cannot exceed, for each infraction, 10 days and, in each season, a total of 30 days.

The imposition of disciplinary sanctions must be preceded by a disciplinary procedure in which the defendant is entitled to adequate means of defence.

Disciplinary sanctions must be proportionate to the seriousness of the infraction and the culpability of the perpetrator, and no more than one penalty can be applied for the same infraction.

Disciplinary procedures shall expire after 180 days from the date it is established when, within that period, the athlete is not notified of the final decision.

4.4 What rights does a Club have to exploit a Player's image rights?

Every player has the right to use his or her public image linked to sports practice and to prohibit others from using it for commercial exploitation or for other economic purposes, without prejudice to the possibility of contractual transmission of the respective commercial exploitation.

Portuguese law allows the clubs and the players' union to, within the scope of the collective agreement, agree on rules regarding the collective image of the players. As a result, it was agreed that the right to use and exploit the player's image belongs to the individual only, and the player may assign these rights to his employer club during the term of his contract. The clubs have the right to use the collective image of the players of the same team/club.

On the other hand, the commercial exploitation of the image of professional football players, for example Panini cards, is the responsibility of the players' union (SJPF).

The exploitation of the image rights of professional players, when used in a free-to-air or cable television broadcast (excluding, in particular, transmission on the Internet) of a national championship match, gives the players' union the right to receive a portion of the fee payable by the home club to the professional league, within 30 days of the effective receipt, in the following amounts (these amounts are paid by the professional league to the players' union):

a) EUR 1,000.00 per game of the I League broadcast on an free-to-air channel;
b) EUR 600.00 per game of the I League broadcast on a cable channel; and
c) EUR 187.50 per game of the II League broadcast on cable channel.

Clubs and the professional league allowed the players' union to photograph the players of its main squad, with their official equipment, until the 31st of August, to use exclusively in the production of the season's book of trading cards.

4.5 Discrimination Clauses

The sports employment contract law is a special labour law, which means that the parties must also comply with the legal principles of the Portuguese general labour law, such as equality of treatment and non-discrimination.

4.6 Player Pension and Player Social Solidarity Fund

General labour law also provides for contributions to be made to social security. This is an obligation of the club and does not need to be included in the contract. The contributions owed by professional players and employers are equal to 11% and 17.5% of the remuneration included in the reserve base, respectively (Decree-Law no. 300/89 of 4 September).

In addition, clubs and the players' union agreed in the collective agreement that the professional league will provide the players' union with a monthly contribution to the budget of the Football Player Social Solidarity Fund, corresponding to 15% of the total amount of disciplinary fines received by the league during the previous month. This fund is not part of, or linked to, the players' pensions. Instead, it is used in situations of repeated non-payment of salary by clubs.

Furthermore, the Ordinance No. 50/2013 from 05.02.2013 stipulates, as a condition for recognising professional competitions, the need to have a Football Player Social Solidarity Fund based on 20% of the minimum wage limit for professional players, which must be defined in the collective agreement between the professional league and the players' union.

4.7 Illness Injury

Portuguese Law has a special Law that applies to the situation of injury and partial or total incapacity of the player. Decree-Law no. 10/2009 of January12[6] stipulates that all players, coaches and club officials must be covered by a personal accident insurance when they are registered with the Federation.

The above-mention insurance has the following limits:

i) Hospital care – EUR 15,000;
ii) Ambulatory care – EUR 1,500;
iii) Absolute permanent disability – EUR 50,000;
iv) Partial permanent disability – EUR 50,000.

Regarding professional players, according to general Portuguese labour law, all workers benefit from professional insurance that must be provided by the employer. Therefore, in the case of professional players, the personal accident insurance is complementary to the mandatory professional insurance for workers. In general terms, the professional insurance is more comprehensive and does not have limits. The professional insurance is purchased by the club from insurers

[6] Available at https://dre.pt/pesquisa/-/search/397323/details/maximized.

operating in the market and the insurance fee can be more than 8% of the salary.

4.8 Buy-out clauses

The collective agreement grants the right to the player to unilaterally and unjustifiably terminate the contract by paying the club an indemnity fixed for that purpose in the clauses of the sports employment contract.

The amount of the compensation must be determined based on criteria established for that purpose.

The effectiveness of the resolution depends on the actual payment of the fixed amount. The player can deposit the amount with the professional league in order to terminate the contract.

5. Transfer agreements

Transfer agreements are not governed in the Regulations nor in the Portuguese sporting Law. This means that it is up to the clubs, in accordance with civil law, to establish the conditions of the said agreement with other clubs and players. These agreements are not, for the moment, subject to registration. Therefore, a club that wishes to register a player who is transferring from another club by way of a transfer agreement, only needs to consider if the termination of the player's contract with the previous club has already been registered with the Federation. The termination of the contract is usually registered by submitting the relevant termination agreement.

This is a topic that will change in the near future because FIFA is introducing a worldwide clearance house for training compensation and solidarity mechanism, and in order to comply with this new system it will be necessary to register domestic transfer agreements.

6. Termination of contracts

6.1 Termination of Playing Contracts

According to Portuguese law and the collective bargaining agreement signed between the league of clubs and the players' union, the sports employment contract may cease by:

a) Agreement;
b) Expiry;
c) Dismissal of the player by the employer with just cause;
d) Termination by the player with just cause;
e) Contractually agreed termination by the player without just cause;
f) Termination by either party during the trial period;
g) Collective dismissal;
h) Abandonment of work.

Special attention must be paid to article 27º (Notice of termination of contract) of the Law 54/2017 of 14th of July – Legal regime of sports employment contracts, sports training contracts, and contracts of representation or intermediation.

This article implemented in Portugal the so called Brazilian "Lei Pelé" and states that the sporting bond is supplementary to the labour contract and is terminated by way of the communication of such termination to the club, federation, league and players' union. Following this communication, the player is free to sign a new contract and request his new registration in the national sports register. However, parties are free to request in court, depending of the circumstances, compensation for the termination of the contract.

We must add that the collective agreement in force is dated before the new labour sports law, and such agreement still provides for an arbitral commission – CAP (Comissão Arbitral Paritária) – to deal with disputes regarding the termination of contracts. The Portuguese Arbitral Sports Court[7] has already decided that the CAP[8] is not competent to intervene in such matters. However, taking into consideration the current legal framework, until the collective agreement is reviewed we understand that the CAP must intervene in disputes involving termination by the player due to non-payment of wages when such player wishes to register for a new club in the same season. The CAP's intervention is however of a mere administrative nature because it only has to verify whether or not the communication of the termination was performed correctly.

6.1.1 Expiry of contracts

The employment contract expires in the cases established in the collective bargaining agreement or in the general terms of law, namely:

a) Expiration of the term stipulated therein;
b) If there is a supervening impossibility, which is absolute and definitive, and the player is unable to provide his service or the employer is unable to receive it;
c) The club is dissolved or bankrupt;
d) If the termination of the contract is agreed in the event of the relegation of the club to a lower division or if a certain amount is offered by another club to acquire the services of the player.

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[7] Available at www.tribunalarbitraldesporto.pt/files/Lei_74-2013.pdf.

[8] File n. 9/2017 Varzim FC, Futebol SDUQ, LDA Vs Keaton Parks. A dispute regarding the unilateral termination of the contract, TAD clearly states that the competence to rule this dispute belongs to TAD according article 7º of the Law n. 74/2013 from 6 of September. The referred article states that TAD is competent to deal with labour contract disputes between athletes or coaches and agents or sports bodies and can decide regarding the procedure and the lawfulness of the dismissal. Paragraph 2 of the mentioned article even states that is assign to TAD the competences of the commissions of arbitration, provided for in Law no. 28/98 of 26 June, (now Law 54/2017 of 14th of July.

6.1.2 Mutual agreement

It is always possible for the parties to terminate an employment contract by mutual agreement at any time during its term.

Such termination must always be established in the form of a document signed by both parties, each one retaining a copy, which must expressly state the date of conclusion of the termination agreement and the date on which the termination takes effect.

If the termination agreement provides for a total amount of compensation to be paid to the player, it is understood, in the absence of any stipulation to the contrary, that such compensation includes any outstanding amounts due to the player at the date of termination.

6.1.3 Player termination

A player can terminate his contract with just cause in the following situations:

a) If the club fails to pay his remuneration for a period of more than 30 days, provided that the player sends a written notice to the club giving it a period of three working days to pay;
b) If the club fails to indicate the date of the payment of the remuneration for a period of 60 days, or when the club, at the request of the player, declares in writing the prediction of non-payment of the remuneration until the expiration of such 60-day period.
c) If the club fails to comply with the following obligations:
   i) To respect the player;
   ii) To pay him the agreed remuneration on time;
   iii) To provide good working conditions, and the technical and human resources necessary for the performance of the player's duties;
   iv) Respect the exercise of the player's trade union rights;
   v) Compensate him for losses resulting from accidents or illness at work, in accordance with the legislation in force;
   vi) Comply with all other obligations arising from the sports employment contract and the rules that govern it, as well as the rules of discipline and sports ethics.
d) If the club imposes abusive sanctions on the player;
e) If the club commits an offence to the physical integrity, honour or dignity of the player;
f) If the club intentionally conducts itself in a particular way in order to cause the player to terminate the contract.

If the player intends to terminate the contract due to lack of payment of remuneration for more than 30 days, he must declare his intention to terminate the contract by way of a registered letter to FPF, the league and the players' union, with acknowledgment of receipt.

6.1.4 Serious injury

If a player suffers illness or injury and he is not able to play, the club is obliged to pay him the total remuneration as per the employment agreement.

During the time of illness/injury, the player keeps his job and must be loyal to the club.

Said conditions shall begin to be observed even before the expiration of a period of one month from the moment when it is certain, or is predicted with certainty, that the injury will last longer than one month.

However, the contract shall lapse at the moment when it becomes certain that the injury is permanent.

If the player recovers from the injury or illness, he must report to the club to resume service within forty-eight hours.

If the club refuses the player's resumption of service, it must compensate the player.

The period of injury or illness does not prevent the expiration of the contract at the end of its term, nor does it affect the right of either party to terminate the contract if a just cause occurs.

6.1.5 Club termination

Clubs can terminate the contract with a player in the event of a serious breach of the player's duties.

The following situations can lead to a breach of the contract:

a) Unlawful disobedience to the orders of the club or its representatives;
b) Repeated non-observance of the rules of conduct related to his activity and the rules necessary for the maintenance of discipline at work;
c) Repeated provoking of conflicts with co-workers, superiors or members of the governing bodies of the club;
d) Jeopardising the club's pecuniary interests;
e) Practice of physical violence, injuries or other offenses against the honour and dignity of the club, hierarchical superiors, work associates and other persons who, by their functions, are related to the clubs' activities;
f) Repeated non-observance of the rules of sports discipline and ethics, against the interests of the club;
g) Offences that cause serious damage or risk to the club or sporting association or, regardless of any injury or risk, when the number of offences reaches a particular high number during the sporting season;
h) Repeated disinterest in the fulfilment, with due diligence, of the obligations inherent to the exercise of his activity;
i) False statements regarding the justification of absences.

6.1.6 Abandonment of work

Abandonment of work is the absence of the player from the service of the club, accompanied by facts that, in all probability, reveal an intention not to resume.

Abandonment of work is presumed to occur when the absence of the player lasts for at least 15 working days, without the employer being informed of the reason for the absence. This presumption may be refuted by the player on proof of the occurrence of force majeure that prevented the communication of absence.

The abandonment of work is considered as termination without just cause, thus producing the same effects as the unlawful termination of the contract, namely the obligation of the player to compensate the club.

The termination of the employment contract can only be invoked by the employer after notice by registered letter, with acknowledgment of receipt, to the last known address of the player.

7. National training compensation and solidarity mechanism

7.1 National training compensation

In relation to Portuguese training compensation, one must take note that there are two different systems. There is training compensation due for purely amateur players, and training compensation due to clubs that enter into a sports training contract with the player, which is provided for in the collective bargaining agreement.

As a general rule, the clubs which participate in the player's training shall be entitled to compensation when one of the following conditions is met:

a) The player concludes his first sports employment contract before the end of the season when he reaches 23 years old. In such cases, compensation is due for the period between 12 years old and the day when the player concludes his first employment contract.
b) The player reacquires professional status, 30 months after being considered as an amateur, but only if this situation occurs before the end of the season when the player reaches 23 years old. In such cases, training compensation shall be due for the period between the reacquisition of amateur status and the reacquisition of professional status.

If a player becomes a professional during the sports season, and is transferred to a club that participates in a higher competition than the one of the club with which he concluded his first sports employment contract, the new club must pay the applicable compensation to the clubs that have trained the player, after deducting the amount paid by the club with which the player became a professional for the first time.

FPF publishes on an annual basis the value that clubs must take into consideration for training proposes:

CLUBS	I LEAGUE	II LEAGUE	CAMPEONATO PORTUGAL	OTHERS
VALUE	EUR90.000,00	EUR40.000,00	EUR30,000,00	EUR10.000,00

Therefore, when a player concludes his first professional contract it is necessary to know to which competition the engaging club belongs to. The total amount of compensation is divided per season from the 12th birthday season to the 23rd birthday season. This will give the value per season, which is then multiplied by the number of seasons that the player was registered with the training club, in order to calculate the training value. It must be noted that the division of the total amount is always made for the total of 12 seasons, taking into consideration the percentages that are shown in the table below, even if the sports passport of the player only shows one or two seasons, i.e., one must calculate the training value for each specific season:

Season	Compensation percentage
12th anniversary	5%
13th anniversary	5%
14th anniversary	5%
15th anniversary	5%
16th anniversary	10%
17th anniversary	10%
18th anniversary	10%
19th anniversary	10%
20th anniversary	10%
21th anniversary	10%
22th anniversary	10%
23th anniversary	10%

Since the 2018/19 season, FPF has organised the U-23 competition – Liga Revelação. To ensure that training compensation for the young players who sign their first professional contract to take part in this competition is not set at unreasonably high levels and thus prevent the clubs from hiring young players, a special value calculation was implemented. As a result, clubs that conclude a first sports employment contract with a player for the participation in the national U-23 championship are obliged to pay, during the first two seasons of the contract, an amount corresponding to 15% of the training compensation that is due, unless, in the same sporting season, the player concerned plays for the first team in more than 5 official matches and for a minimum period of 45 minutes in each match.

We must also note that the training compensation is only due to clubs that have the title of a formative entity. However, the process of certification of clubs is only in its second year and there are still many clubs that don't apply for the certification. Therefore, because FPF did not want to leave any club out of the system of training compensation, clubs that are not certified are entitled, for the 2019/2020 season, to receive training compensation corresponding to 70% of the

total value. There will be a decrease of the percentage in the following season until the clubs that do not have FPF certification will be unable to claim any value for the training of players. This certification is a complex process of fulfilling requirements and providing evidence that the club has the conditions that FPF requires for the training of young players.

Players with sports training contracts are registered with amateur status, and training compensation also applies, but in accordance with the rules set out in the collective agreement.

The conclusion of a first professional contract by the player with a different club than the training club entitles the latter to receive, from the contracting club, compensation for training. This compensation shall only be payable if, cumulatively:

a) The training club sends notification to the player in writing, by May 31st of the year of the termination of the training contract, of its wish to conclude an employment contract;
b) The same club sends to the league and the players' union, before the following 11th of June, a copy of the proposal.

The compensation for the training will be in an amount not less than 20 times the annual salary of the proposed sports employment contract.

8. Judicial bodies

The registration of players is within the competence of the federation board so, according to the Statutes of FPF, the competence to assess the matter belongs to the appeals body – Conselho de Justiça. According to the rules governing the procedure before the Conselho de Justiça, the interested party has five working days, from the notification of the decision, to present an appeal. When submitting an appeal, one must take into consideration whether or not a fee is required. A club that has no professional players and participates in competitions where no professional players take part is exempt from paying appeals fees.

9. Conclusions

In conclusion, we may say that the submissions required for the registration of players seems to involve simple and straightforward tasks. One only needs to prepare a few documents: the contract (for professional players), the application form (for amateur players), the identification document of the player, the medical exam, and the insurance policy (labour insurance for professionals and personal accident insurance for amateur players). However, the system also presents a large array of issues that the club must take carefully into consideration when submitting the application, in order to get the right decision. On the other hand, the multiple regulations that apply are also demanding for those responsible for preparing the documents and submitting the applications. Registration of players is, in fact, a very serious issue where a small mistake can cause a huge problem and cost a lot of money.

NATIONAL TRANSFERS IN THE KINGDOM OF SPAIN

by *Miguel María García Caba*[*] and *Josep F. Vandellós Alamilla*[**]

1. The National Framework

1.1 The Legal Structure of Sport in Spain[1]

In Spain, as in most European countries, football is the most popular sport. It stirs passion and excites supporters into following their favourite team's doings closely, in person and through the media. The TV ratings are always very high for matches in which a Spanish football team plays; such matches are inevitably amongst the most widely watched events. The vast magnitude that the sport has attained in Spain has caused budgets in the sector, the prowess of players, and revenues to soar.[2]

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[1] On this topic, see A. Camps I Povill, *Las federaciones deportivas. Régimen jurídico*, Madrid, 1996.

[2] See S. Gómez, C. Martí and C. Bofarull, *Commercialisation and Transformation in Spanish Top Football*, in *The Organisation and Governance of Top Football Across Europe*. Routledge Research in Sport, Culture and Society, Taylor and Francis, 2011, 181-187.

The Legal Structure of Sport in Spanish Football is currently regulated in Spain through the Act on Sport of 1990. When the Act was passed, it revolutionised professional football by introducing a new model of legal and economic liability for clubs that operate on a professional basis: the sport corporation.[3]

Article 43.3 of the Spanish Constitution states that "*the public authorities will foster health education, physical education and sport*". It will likewise facilitate proper use of leisure time. All action the State is obliged to take in the realm of sport, belongs to and is exercised through the High Council of Sport, save where the Council delegates powers pursuant to the Act.

1.1.1 The High Council of Sport

The High Council of Sport is an autonomous administrative body which is granted a number of functions according to the 1990 Act. These include the following referring to professional sport:

- To authorise and on due grounds to revoke the creation of Spanish sport federations and to approve the articles of association and regulations of such federations;
- To approve definitively the articles of association and regulations of Spanish sport federations, professional leagues, and groupings of clubs, authorising their registration in the proper Register of Sport Associations;
- To suspend, on due grounds, and on a precautionary and provisional basis, the President and other members of the governing and supervisory bodies of Spanish sport federations and professional leagues, and to call meetings of said bodies in the events given in Article 43 (b) and (c) of the Act;
- To classify nationwide official competitions of professional nature; and
- To authorise the registration of sport corporations in the Register of Sport Associations.

In the organisation chart of Spanish sport, the tier immediately below the High Council of Sport is comprised by sport federations.

1.1.2 The Spanish Sport Federations

Sports federations in Spain have undergone a curious, wide-ranging process of transformation concerning their nature as instrumental entities for doing sports activities.[4] This was a lengthy process linked to the historical view about them in

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[3] This new type of corporation was created with the objective of straightening out the huge debts of sport clubs and regulating sport more restrictively, so as to clad all the mechanisms of professional sport with legal certainty.

[4] On this question, see the book by J.L. Salvador, *El deporte en Occidente*, Madrid, 2004. For a purely sporting perspective, see the book of G. Real Ferrer, *Derecho Público del deporte*. Ed. Civitas, Madrid, 1991.

relation to the international sports movement, which made them the holders in the Spanish state's territory of the exclusive competence for doing the sports activities within their area of competence.[5]

A notion of private agents having a public function was derived from this initial structure, which radically changed their initial regulation.[6] In this regard, it is possible to insist (state) that their evolution can been characterised as the transformation from being association entities conceived for the individual practice of sport to ones which have come to play a significant public role, in so far as they exercise public functions by delegation.[7]

Said sports federations cannot be strictly considered private associations subject to a general association regime. According to article 30(2) of the Act, they are entities which exercise public functions by delegation and are deemed as collaborating agencies of the administration. Having set out the above, it is not inconsistent to admit that the administration, as the ultimate guarantor of the general interest, may exercise legal control over the federation's articles of association.

Federations are defined in the Act on Sport as "*private entities with their own legal personality, whose realm of action encompasses the territory of the State as a whole, in the implementation of the competences belonging to them, made up of regional sport federations, sport clubs, athletes, technicians, referees, professional leagues, if any, and other stakeholder collectives that promote, engage in or contribute to the development of sport. In addition to their own attributes, federations exercise delegated public functions of an administrative nature, acting in this case as partners of the government*" [free translation].

This means that sport federations promote, engage in, and contribute to the development of sport, and interestingly, in assigning the following functions to federations, the Act on Sport makes them government partners:

- To rate and organise any nationwide official sporting activities and competitions;
- To act in coordination with regional federations for the general promotion of their sport throughout the State;
- To design, make, and carry out plans for preparing high-performance athletes in their sport, in cooperation with regional federations or otherwise, as the case may be;

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[5] This evolution is recounted in the article by R. Terol Gomez, *La intervención pública sobre el asociacionismo deportivo en España 1869-1978*, Revista Jurídica del Deporte, No.11, Navarre, 2004. For a contemporary legal standpoint, see Bielsa Tejedor, J. C. *Público y Privado en el deporte*. Ed. Bosch Barcelona. 2003.

[6] Regarding this issue, see J. Espartero Casado, *Deporte y Derecho de Asociación (Las Federaciones Deportivas)*, Ed. León University, 2000.

[7] On this relationship, see the book by L. Cazorla Prieto, *Deporte y Estado*, Labor-Politeia, Barcelona, 1979. Specifically, regarding the exercising of public functions, see the article by L. Osorio Iturmendi, *El ejercicio de funciones públicas por las federaciones deportivas españolas. Régimen applicable*, Revista Española de Derecho Deportivo. No. 4. Madrid. 1994.

– To cooperate with the national government and the governments of the autonomous communities (regions of Spain) in the training of sport technicians and in the prevention, monitoring and elimination of the use of prohibited classes of drugs and substances and nonregulation methods in sport;
– To organise or steer official international competitions held on Spanish soil;
– To exercise disciplinary powers as established in the Act on Sport and legislation implementing the Act on Sport; and
– To monitor any subsidies they assign to sport associations and entities, in the regulation fashion.

In addition, nationwide sport federations represent Spain at international sport activities and competitions. Each federation is responsible for choosing the athletes who are to make up the Spanish national side for such events. In federations where there is an official professional competition, professional leagues are created, whose membership is made up of all the clubs and sport corporations that participate in the competition in question.

1.1.3 The Professional leagues in Spain

Professional leagues, like their parent federations, have their own legal personality. While professional leagues largely depend on the sport federation to which they belong, they do have the autonomy to dictate the terms of their own internal organisational and operational rules.

The Statement of Reasons of Act 10/1990 of 15 October on Sport states that the organisation of professional sports is actually different when compared to the sports organised by the federation entities and has to be dealt with in a specific and particular way.

Hence, pursuant to articles 12 and 41, the aforementioned act sets up within the area of nation-wide sports associations the figure of professional leagues for the first time as entities holding responsibility for organising official national professional competitions in conjunction with the relevant federation of which they form part.

Official non-professional (or amateur) national competitions are therefore solely organised by the federation in question. Professional competitions, which are the ones classified as such by the administration,[8] are characterised by a specific legal framework determined by, among other matters:

(i) the setting up of professional leagues which must be solely comprised of all the clubs that take part in the competition; and
(ii) the obligatory transformation of the clubs wishing to take part in said competition into "sports corporations" (in Spanish, *Sociedades Anónimas Deportivas* or "SADs").

[8] Determining whether a competition is professional corresponds to the High Council of Sport's Steering Committee as provided by Art. 10(2)(f) of the LDE. Available at: www.boe.es/buscar/act.php?id=BOE-A-1990-25037. Consulted on 1 March 2020.

It is worth noting that at present only the football First and Second "A" Divisions and the basketball ACB League have been classified by the administration as official national professional competitions.

1.2 The Structure of the Spanish Football Pyramid

1.2.1 The Royal Spanish Football Federation

The Royal Spanish Football Federation (RFEF, hereafter Spanish FA) is Spain's governing authority in football. It is a private entity that performs public functions and its sphere of action covers the entire nation. All the 17 regional football federations, the clubs, the professional league, referee's organisation and so on make up the Federation Assembly.[9]

The Spanish FA is coordinated and steered by the High Council of Sport, which delegates to the FA functions such as representing Spanish football in different activities and sporting competitions and choosing the players for the Spanish national teams in all categories.

Finally, it is extremely important to note that in accordance with article 1.1 of its Statutes, the RFEF is "*a private associative entity, though of public interest, which is governed by Act 10/1990, dated 15 october, on Sports, by the Royal Decree 1835/1991, of 20 December, on Spanish Sports Associations, by the rest of the provisions which form the Spanish Law in force, by the present Statutes and its General Regulations and the rest of the internal rules which RFEF enacts on the exercise of its competences*".[10]

The RFEF is affiliated to the Fédération Internationale de Football Association (FIFA) and the Union des Associations Européennes de Football (UEFA), whose Statutes it accepts and undertakes to observe. It is also affiliated to the Spanish Olympic Committee (COE).[11]

The RFEF recognises the jurisdiction of the Court of Arbitration for Sport (CAS) exclusively for disputes arising between the RFEF and FIFA and/or UEFA. Consequently, the Spanish Football Association, its leagues, clubs, players, referees, coaches, managers and in general all other natural or legal persons that are part of it, undertake to:

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[9] The Spanish FA is the federation with the greatest number of sport licenses in Spain. As of June 30, 2018, it had 32.327 registered clubs and 1.063.090 federated football players. It was founded in 1909 and made its international debut in 1920 at the Antwerp Olympics. It is a member of FIFA, UEFA, and the Spanish Olympic Committee.

[10] The RFEF has its own legal personality, full capacity to act for the fulfilment of its purposes and jurisdiction in the matters of its competence. The RFEF has its own assets and it is a non-profit making entity. Art. 1 of the Spanish FA Statutes. See Art. 1 of the RFEF Statutes. Available at: https://rfef.es/normativas-sanciones/reglamentos. Consulted on 1 March 2020.

[11] The RFEF does not admit any kind of discrimination, either by itself or by its members, on the grounds of birth, race, sex, opinion or any other personal or social conditions or circumstances. Both the RFEF's bodies and its members undertake to observe the regulations and guidelines of international football bodies, including the FIFA Code of Ethics. Ibid.

a) To comply with the Laws of the Game promulgated by the International F.A. Board and the Futsal Laws of the Game promulgated by the FIFA Executive Committee.
b) To observe the principles of loyalty, integrity and fair play in accordance with the principles of fair play.
c) Maintain a neutral position on matters of religion and politics.

Regarding the members of the federative organization, article 2 of the Statutes states that, the RFEF is formed by the regional federations and of the clubs, footballers, referees, coaches and the National Professional Football League.[12]

The RFEF's scope of action in the development of its own competences extends to the whole territory of the State.[13]

The RFEF is responsible for the government, administration, management, organization and regulation of football in all its specialties, ex article 4 of the Statutes.[14] By virtue of this, it does the following:

a) Exercises the power of ordinance.
b) To control official state competitions, without prejudice to the powers of the National Professional Football League.
c) To represent FIFA and UEFA in Spain, as well as Spain in international activities and competitions held within and outside the territory of the State. To that end, the RFEF is responsible for selecting the players who are to play for any of the national teams.

In addition to those set out in the previous article 4 of the Statutes as activities of the RFEF, the RFEF exercises, under the coordination and supervision of the Supreme Sports Council, the following public administrative functions, ex article 5:

– Qualifying and organising appropriate official state-level activities and competitions. To this end, the organisation of such competitions is understood to refer to the regulation of the general framework of the same, as established in the corresponding federal regulations.
– To organise or supervise official competitions of an international nature held in the territory of the State.[15]

The acts carried out by the RFEF in the exercise of the functions referred to in the previous section may be appealed against before the High Council of Sports.

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[12] Also forming part of the federation are the directors and, in general, any natural or legal person or entity that promotes, practices or contributes to the development of the sport of football. The system for the creation, recognition and formalities of other groups that promote, practice or contribute to the development of football will be developed in accordance with the regulations.
Cf. Art. 2 of the RFEF Statutes. Available at: https://rfef.es/normativas-sanciones/reglamentos. Consulted on 1 March 2020.

[13] Cf. Art. 3 of the RFEF Statutes.

[14] Cf. Art. 4 of the RFEF Statutes.

[15] Cf. Art. 5 of the RFEF Statutes.

1.2.2 The Spanish Professional Football League

The beginning of Spanish football's National League Championship dates back to the 1928-1929 season. To determine which teams would participate in the league, the six winners and three runners-up that had by then emerged from the Copa del Rey competition were invited to join.[16]

The Spanish FA originally took charge of organising the competition and did this for a long time. As of the 1984-1985 season the Spanish Professional Football League was officially created as an independent organisation representing the top clubs and overseeing the professionalisation of football and the distribution of the competition's economic revenue.

At the initiative of the clubs that had been participating in the League Championship the LNFP now took over the organisation of the league competition in coordination with the RFEF.

At present LNFP is an independent organisation whose articles of association and regulations have been approved by the High Council of Sport on the basis of a report from the Spanish FA. The LNFP is delegated by the RFEF the following powers:

– To organise its own competitions, in coordination with the respective Spanish sport federation and in accordance with such criteria as the High Council of Sport may establish solely to secure national or international commitments;
– To perform the functions established in the Act of Sport as regards steering, monitoring, and supervising its members; and
– To exercise disciplinary powers as established in the Act on Sport and legislation implementing the Act on Sport.

The Spanish Professional Football League, (hereinafter referred to as LaLiga or LNFP), is a Sports Association under private law, which, in accordance with the provisions of Articles 12 and 41 of Law 10/1990, of 15 October, on Sport,[17] is integrated exclusively and compulsorily by all the Sports Corporations and Clubs that participate in official state and professional football competitions, and which is legally responsible for organising these competitions, in coordination with The Spanish Football Association.[18]

According to Article 2[19] of the Statutes, LaLiga is intended to organise, in coordination with The Spanish Football Association and in accordance with the criteria that exclusive guarantee of national or international commitments may be

[16] This cup competition was interrupted by the Spanish Civil War but resumed at the end of the war with the same teams as before.
[17] Vid. Art. 12 and 41 of the Spanish Sports Act (official version). Available at: www.boe.es/buscar/act.php?id=BOE-A-1990-25037. Consulted on 1 March 2020.
[18] It has its own legal personality and full capacity to act for the fulfilment of its purposes and enjoys autonomy for its internal organisation and operation with respect to The Spanish Football Association of which it forms part. Art. 1 LaLiga's Statutes. Available at: www.laliga.es. Consulted on 1 March 2020.
[19] Vid. Art. 2 LaLiga's Statutes.

established by the Supreme Sports Council, official football competitions of a professional nature and state scope.[20]

1.3 The Coordination between Professional Leagues and Sports Federations in the Spanish football

The relationship between the Spanish FA and LNFP is limited to an agreement signed by both parties in order to regulate those areas in which both the LNFP and the Spanish FA can interfere. This agreement, called the Coordination Agreement, is signed every four or five years.

The issues addressed in this agreement are such as the annual sports calendar, the promotions and relegations between professional and amateur competitions, and conditions to recruit, register, and field foreign players. The economic relations between the Spanish FA and LFP are also regulated by the agreement.[21]

In the LNFP each team is entitled to register 25 players per season. Of the 25, only 3 can be "non-EC", that is, nationals of countries that do not belong to the European Union. Before the non-EC player rule was made, foreign players were not allowed to participate in the Spanish League at all.[22]

The "native" rule was the source of a great deal of argument until in 1974 when it was abolished. It allowed each club to field two foreign players. This modification helped boost the quality and allure of the competition by sprinkling in top-flight foreign players.[23]

The Bosman ruling of 1995 opened the doors of the League to all Europeans, and therefore the non-EC slots were again reduced to three per club, to afford some sort of protection for the interests of Spanish players.[24]

In order to participate in competitions, clubs must belong to the LFP. Membership of sports clubs to the LFP is applied through a registration form to be delivered in July each year. Clubs must also pay a registration fee.

There is no doubt that one of the main problems in the relationships between sports federations and professional leagues is determined by the fact

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[20] Vid. Art. 3 LaLiga's Statutes.

[21] It sets out the items for which the LNFP has to pay a sum of money each year. In relation to la Copa del Rey and the Super Cup of Spain the LNFP will pay to the Spanish FA each year an amount agreed by the organisations and depending on the participation of the LNFP teams in the competition. LNFP must also pay a contribution for federation services and for the development of grassroots football.

[22] The only exception was "native" players (nationalised foreign citizens or foreign citizens of Spanish extraction).

[23] In 1990 the allowance was increased to three foreign players per team, and later it was expanded to four, but with the proviso that only three of the four non-EC players could be on the pitch at the same time.

[24] At present there is one Spanish club that refuses to sign up foreign players, Athletic Bilbao, and it does so because it adheres to a policy of signing up only Basques. This policy forms part of the club's philosophy, which has been upheld since the early 20th century.

that both the act 10/1990 of 15 October on Sport and the Royal Decree 1835/1991 of 20 December on Federations are lacking in so far a scheme to distribute functions dealing with professional competition is concerned regarding each sports association.

We are referring here to article 41(4)(a) of the act, which sets forth that it is the competence of the professional leagues to "*Organise their own competitions in coordination with the relevant Spanish sports federation in accordance with any criteria the High Council of Sport may set to exclusively guarantee national or international commitments*".[25]

Said coordination takes on special importance for the purposes analysed herein, in so far as the player registration and transfer rules for professional competitions require an agreement between the Royal Spanish Football Federation and La Liga, as will be set out in the following section.

2. Registration and Transfer Rules

2.1 Introduction

The first and sixth meanings of the word "licence" in the Dictionary of the Spanish Academy of the Language (*Real Academia Española de la Lengua*) respectively define it as "*permission to do something*" and as "*a resolution taken by the administration by means of which a certain activity is authorised*".[26]

Thus, Santiago Prados defines "licence" as "*a single, normal and untransferable document that enables one to take part in official events and competitions organised by either the sports federations* (we would add here the professional leagues) *or the public administrations in their capacity to issue administrative authorisations*".[27]

The prevailing Coordination Agreement entered into by LaLiga and the RFEF on 3 July 2019 establishes that "*The RFEF and LaLiga will respect the Registration Rules of players. No license will be granted without prior verification of compliance with these standards. The RFEF and LaLiga undertake to establish a single computerized mechanism for the registration of players in the professional competition, in which LaLiga must endorse the licenses of the Clubs and SADs members of LaLiga prior and essential to its final issuance by the RFEF. Until this is implemented, maximum efforts will be made to interconnect the RFEF and LaLiga systems. LaLiga is responsible for carrying out the material functions of verifying the economic and administrative requirements established by LaLiga regulations to be able to issue a professional license from a club belonging to LaLiga and to participate*

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[25] Cf. Art. 41.4 a) Spanish Sports Act. Available at: www.boe.es/buscar/act.php?id=BOE-A-1990-25037. Consulted on 1 March 2020.

[26] Vid. www.rae. Consulted on 1 March 2020.

[27] Cf. S. Prados Prados, *Las licencias deportivas*. Ed. Bosch, 2002, 131.

in First or Second Division competitions, which will be necessary for the issuance of the federal license by the RFEF".[28]

A study of the legislation which applies to professional football licences should start off by examining the legal framework established by the national lawmakers on sport in both Act 10/1990 of 15 October on Sport and Royal Decree 1835/1991 of 20 December on Spanish Sports Federations.[29]

Nevertheless, most of the regulations on the matter are evidently found in both the Coordination Agreement reached by the RFEF and LaLiga and in said entities' General Regulations, which are respectively known as the RFEF General Regulation and the LFP General Regulation. Obviously, special reference will be made to them throughout this section. It goes without saying that the interpretations of the aforementioned legal framework made by the Supreme Court, the High Council of Sport and the Council of State should not be forgotten.

As a preliminary matter, it is worth highlighting in this respect that one of the main characteristics of the legal framework on sport is determined by the principle of self-regulation.

Hence, within the general framework of Federation Law, each sports modality is a legal microcosm[30] in which each federation or professional league holds the power as the ultimate manifestation of their own autonomy and within their material scope of action to set forth an entire set of rules and regulations that are valid for all, which, in the words of the Supreme Court, are defined as provisions of very low regulatory importance.[31]

2.2 National Legislation

2.2.1 The Sports Act

Article 30(2) of the Sports Act sets forth that sports federations exercise public functions of an administrative nature, acting as the public administration's collaborating agents in this case.[32]

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[28] Cf. Clause XV of the aforementioned Coordination Agreement, official version. Available at: https://assets.laliga.com/assets/2019/12/12/originals/f21c346878a37e8484abfb54c739ece5.pdf. Consulted on 1 March 2020.

[29] Hereinafter "RDF" from the Spanish "*Real Decreto sobre federaciones deportivas*".

[30] The term was coined by Aguirreazkuénaga, I. in *Intervención pública en el deporte*. Editorial Civitas, Madrid, 1998, 107.

[31] As stated in the old judgment of the Social Chamber of 3 November 1972, the Rapporteur of which was the R.H. Mr Pedro Bellón Uriarte, on the Football Players Regulation approved on 14 June 1965 by the General Assembly of the then called Spanish Football Federation, which was subsequently ratified by the National Delegation of Physical Education and Sport on 27 July that same year.

[32] Vid. Art. 30 (2) of the Spanish Sports Act. Available at: www.boe.es/buscar/act.php?id=BOE-A-1990-25037. Consulted on 1 March 2020.

As far as the legal area of the licences to take part in professional competitions is concerned, article 32(4) of the aforementioned act states that in order to take part in official national sports competitions, being in possession of a sports licence issued by the relevant Spanish federation pursuant to the terms and requirements provided for by their regulations shall be necessary.[33]

2.2.2 The Royal Decree on Federations

Furthermore, article 7(1) of the aforementioned Royal Decree on Federations provides that it shall be necessary to be in possession of a licence issued by the relevant sports federation in order to take part in official national sports events or competitions according to certain minimum terms and conditions.

One of these minimum terms and conditions set forth in said article states that, in order to take part in professional competitions, the licences must be approved by the relevant professional league prior to their definitive issuance by the Federation.[34]

2.3 The Football Regulations

2.3.1 Coordination Agreement between RFEF and LaLiga

As has already been mentioned, Clause V[35] of the Coordination Agreement is dedicated to the material competences which the RFEF cedes to the LNFP during the term thereof. As in previous Agreements, this section has not undergone any change or amendment.

Hence, the following are deemed control and regulation competences that correspond to the LNFP during the time the Agreement is in force due to the RFEF's express wish, which it would maintain in the absence thereof:

1. Contents and ways of hiring players and professionals.
2. Processing, dispatching and provisional registration of professional players' licences.
3. Determining the registration periods for professional players' licences in accordance with the international rules that are in force.

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[33] For its part, Art. 25 of the Royal Decree on Federations states that "*Apart from any that may not be delegated, the competences of the relevant Spanish sports federation shall include the following: a) Organise their own competitions in conjunction with the relevant Spanish Sports Federation and in accordance with any criteria that may be set by the High Council of Sport solely to guarantee national and international commitments; and b) As regards their associates, perform the functions of protection, control and oversight set forth in this Act...*". Available at: www.boe.es/buscar/act.php?id=BOE-A-1991-30862. Consulted on 1 March 2020.

[34] *Ibid.*

[35] Vid. clause V. Available at: https://assets.laliga.com/assets/2019/12/12/originals/f21c346878a37e8484abfb54c739ece5.pdf. Consulted on 1 March 2020.

4. Lining up players in professional competitions and intermediating between clubs and their subsidiaries or dependants.[36]

The aforementioned Agreement sets forth a detailed regulation on the so-called "first professional licence". Thus, according to Clause XII, it is envisaged that the amount for Spanish professional players at first and second division clubs for each of the seasons this Agreement is in force shall be set at the following amounts:

– First Division: EUR54,692.62.
– Second Division: EUR23,908.73.

Said amounts shall be allocated to the clubs where the player was trained, as set forth in the RFEF General Regulation.

Furthermore, concerning the amount for processing the first professional licence in Spain of EU and non-EU players at first and second division clubs, the same amounts have been set as the ones for Spanish players mentioned above for each of the seasons in which the Agreement remains in force. Said amounts shall solely be allocated to grassroots football at a training category, expressly stating that they come from professional football.

2.3.2 The RFEF's Regulations

a) Background

Article 115 of the RFEF General Regulation provides that it shall be mandatory for the interested party to join the RFEF by following the system and procedure that may have been set in order to obtain a federation licence. Said affiliation shall be done once in the athlete's life and, once his proper affiliation has been checked, he may sign the licence according to the prevailing regulation.

Moreover, article 116 sets forth that footballers may not be in possession of any other kind of licences for other footballing activities.[37]

As a general rule, a footballer may be registered for a single team belonging to a club, without the possibility of being deregistered or registered by it during the course of the same season, except in cases of *force majeure* or a regulatory provision.[38]

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[36] In any event, any rules on such matters that may be set forth shall be sent to the RFEF for their inclusion in federation regulations.

[37] The exception to this is if they are also acting as trainers or technical staff of the dependant teams or subsidiaries of the club they belong to, in which case they may simultaneously hold both licences, provided they possess the relevant qualifications.

[38] Moreover, it is envisaged that a footballer may not be registered for or be lined up by more than three different clubs during the course of a season. As an exception to this, footballers who play five-a-side and eleven-a-side at the same club may be lined up indistinctly for both competitions, provided that the matches are played on different days, without the need to change licence, as long as they fulfil FIFA rules in this regard.

Section 3 of the aforementioned regulation states that no kind of footballers' licences shall be issued, nor shall their renewal be accepted for clubs that have outstanding debts with real or legal persons who form part of the organisation.

b) The licence of a footballer – Definition

In addition, article 114(2) of the RFEF General Regulation sets forth that: "*The licence of a footballer is the document issued by the RFEF which allows him to play said sport as a federated player and be lined up for official matches and competitions*".

In the case of clubs belonging to the LNFP, said document shall be issued by the aforementioned organisation on a provisional basis, ex article 114 (4).

As far as the so-called "professional licence" is concerned, article 139(2) of the RFEF General Regulation provides that "*The processing of licences for registration at teams belonging to professional categories shall be in accordance with the provisions of the Coordination Agreement entered into the RFEF and LNFP and, failing that, by generally applicable sports regulations*".

Thus, article 122 of the RFEF General Regulation classifies footballers on the basis of the remuneration they receive for the professional and non-professional (or amateur) activity.

In this regard, footballers who receive remuneration which exceeds the offsetting of the costs resulting from the footballing activity shall be deemed professionals and should apply for a type "P" licence, regardless of the category in which the team that registers the footballer belongs.

c) Transfer periods – Exceptions

Article 124 of the RFEF General Regulation is particularly important with regard to the so-called "licence application periods", since it provides that footballers may only formalise their registration for professional competitions during the annual periods set for such purpose.[39]

On an exceptional basis, cf. art. 124(2) footballers holding "P" licences whose contracts have expired before said periods have concluded may be registered and also where a footballer belonging to the squad is on sick leave or suffers an injury that involves a period of inactivity exceeding five months, provided the replacement footballer's registration does not require the issuance of an International Transfer Certificate (cf. art. 124(3)).

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[39] The first of these two periods shall be within the space of time that runs from the start of the season to the beginning of the national league championships of the relevant nationwide categories and its duration may never exceed twelve weeks. The second registration period shall be set in the middle of season and its duration may not exceed four weeks. *Ibid.*

Irrefutable notice of the occurrence of such an illness or injury as well as of the club's intention to apply for deregistration from the federation on the basis of it must be given to the player at least ten days before the application date for said deregistration, so he may file, if he so wishes, any allegations he deems appropriate.[40]

The power to grant authorisation shall reside in the LNFP at the request of the interested club once the proceedings have been conducted that prove the fact through a certification issued by a medical board comprised of at least two doctors from the *Mutualidad de Previsión Social de Futbolistas Españoles* (Spanish Footballers Social Provision Mutual Fund) Such authorisation, if it can be granted, shall be valid for fifteen days at most, after which it shall expire.[41]

According to article 126 of the RFEF General Regulation, footballers may obtain a licence and be lined up for another team other than the one of origin within the same season, provided the contract has been terminated or their commitment cancelled, depending on whether they are professionals or not. Said right shall be without any constraints whatsoever, where the team of origin or the new one belong to another division or even if they form part of the same division for professional categories.

d) Unilateral termination

In so far as unilateral termination is concerned, article 140 provides that any agreements reached by the LNFP and the AFE (Spanish Footballers Association), if any, shall apply concerning early contractual termination once they have been ratified by the RFEF.[42]

The requirements concerning foreign footballers are governed by article 141 of the Regulation, which sets forth that the documents set out below must be submitted to formalise the licence: "*a) An original copy or true and faithful copy of the contract entered into by the clubs involved; b) An authenticated copy of the footballer's passport; c) A work and residence permit which is in force*".

Lastly, it should be noted that professional football clubs may obtain up to a maximum of twenty-five footballer licences for their first team according to article 121 of the RFEF General Regulation.

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[40] In order to be able to register a footballer to replace an injured footballer once the registration deadline has expired, the injury that has come about must be proven by documents.

[41] Once the licence of another footballer has been obtained due to this reason, the replaced footballer may not re-join his club or be registered for any other, even if he has been deregistered, before the said five-month period has elapsed. After the five months have elapsed, the footballer may re-join his club, provided he submits a certificate from said Mutual Fund, there are free licences at the club, and he signs a new licence with the RFEF's authorisation.

[42] This issue has been analysed in my Art. entitled *El nuevo procedimiento abreviado de resolución contractual anticipada del futbol profesional español*: *principales características y esquemas prácticos* published in Revista jurídica de deporte y entretenimiento: deportes, juegos de azar, entretenimiento y música, Aranzadi, No. 34, 2012.

2.3.3 The LNFP's Regulations

a) Background

Article 3(2) (h) of the LNFP Articles of Association envisages the power to *"Process the provisional registration and licences of the footballers of the Corporations and Clubs which are members of the LIGA"* as its function and exclusive competence.

For such purpose, article 5(2) in Book V of the LNFP General Regulation states that "*The Liga Nacional de Fútbol Profesional shall provisionally process the licences of professional players. Any sports corporation or club wishing to register amateur players to take part in professional competitions shall submit the relevant application to the regional federation of which they are members and a favourable report from them to the Liga Nacional de Fútbol Professional shall be necessary as a prior step to its processing"*.

Said registration is extensively regulated in Books V and IX of the General Regulation, which will be analysed below.

b) Registration of professional players

Article 1, Book V of the LFP General Regulation sets forth that the registration of a professional player is "*the act through which a club or sports corporation registers a professional player for their discipline and organisation as a result of a contract entered into for such purpose and duly registered at the LFP*". The following documents should be attached to the registration application:

1. Professional contract of the applicant club or sports corporation, which should contain the minimum content set by the LFP.
2. Deposit of the relevant amounts, if it is the first professional registration.
3. Transfer or rights assignment contract or document proving that the player has not signed an undertaking to another club or sports corporation in a period coinciding either fully or partly with that of the applicant.
4. Deposit of the relevant amounts, in the case of a professional player registered in the training or promotion lists or in the waiver document of the club or sports corporation. .

In the case of foreign players, the following are also required:

(i) a certificate issued by the RFEF proving reception of the international transfer authorising registration;
(ii) an authenticated copy of the passport;
(iii) an assignment or transfer document on the players' federative rights;
(iv) a certificate issued by the Secretary of the Board of Directors or Management Board with the countersignature of the Chairman of the sports corporation or club stating that the contracting amount does not exceed twenty per cent of the budget;
(v) a document stating acceptance of FIFA rules on releasing players to the national team; and

(vi) an application to obtain a work and residence permit.[43]

Once the forms have been duly completed, the sports corporations or clubs shall submit them to the LFP, attaching thereto any documents required, as provided in article 3 of the LFP General Regulation.

In accordance with the RFEF's provisions mentioned above, no kind of players' licences shall be issued nor shall their renewal be accepted for clubs or sports corporations that have outstanding debts with physical or legal persons who form part of the organisation, as long as such debts have been recognised.[44]

Finally, if an application has been filed and a decision has not been taken, the amount of the application must be deposited.

2.3.4 Processing of professional players' licences

According to article 5, Book V of the LFP General Regulation, the LFP holds responsibility for issuing mandatory prior approval of the licences, which consists of conducting material checks on the requirements enabling players to take part in professional competitions.

Any affiliated entity is entitled to obtain prior approval of the licences of their players who are registered for the LFP in the periods set by its General Assembly, provided they do not exceed the maximum number of licences allowed, pay the economic fees set for prior approval and meet other requirements that the associates must satisfy due to their obligatory membership of the LFP.

The LFP shall grant prior approval to the licences of team delegates, managers, assistant managers, physical trainers, doctors, nurses, physiotherapists, people responsible for the team's kit or anybody else who might sit on the team bench at a match or take part in any sort of competition, article 5(3).

Likewise, article 19, Book V of the LFP General Regulation provides that a club/sports corporation is obliged to register as many documents as it may sign with other clubs or sports corporations and players on a temporary or permanent assignment or acquisition of a player's federative rights, or any other agreement signed with another club or sports corporations within fifteen days of the date they are signed.[45]

The registration of an agreement or contract within the time limit set shall give the club or sports corporation that registers it, preference over any others that intend to do so subsequently on the same matters, even if it is done after the aforementioned date and without it involving acceptance of its content.[46]

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[43] Cf. Art. 1. Available at: www.laliga.es. Consulted on 1 March 2020.

[44] In the way established in Art. 192 of the RFEF General Regulation and the LFP's rules pursuant to Art. 3, Book V of the LFP General Regulation.

[45] If the contracts entered into by a club or sports corporation with a player who has a contract in force with another and these are registered, the LFP shall give the club in question notice of said registration, provided the term of the former is different from term to the one in force.

[46] Any registration after the expiry of the time limit mentioned above shall lead to an economic penalty as set by the articles of Association.

The licences of players appearing on the list with a contract in force shall be approved for the following season without any further processing other than submitting the list to the LFP for forwarding after the observations corresponding to the RFEF have been made according to article 21, Book V of the LNFP General Regulation.[47]

c) Record book of charges on federative rights

For the purpose of recording the existence of any kind of charge or encumbrance on players' federative rights, the LFP keeps a record book on the charges and encumbrances of each club/sports corporation, which reflects any information, charges or encumbrances affecting said federative rights pursuant to article 22, Book V of the LNFP General Regulation.[48]

For the purpose of the relevant annotation in the Record Books, the entity which is the beneficiary or holder of the charges, guarantees or pledges on economic transfer rights or the amount of the contract's unilateral termination clause shall notify the LNFP of the scope and content of the rights thus encumbered and the authorisation of the sports corporation or club assigning the economic transfer right of the federative rights must appear in said notification without any provisos whatsoever according to article 25, Book V of the LFP General Regulation.[49]

Any sports corporation or club interested in acquiring federative rights must previously seek timely, individualised information thereof from the General Counsel's Office of the LFP, using the federative rights information form, which will be provided to it pursuant to article 26, Book V of the LNFP General Regulation.

If there is no record of any charge, encumbrance or annotation on the player's transfer rights, the sports corporation or club interested in acquiring them may proceed to their acquisition by signing documents with the selling club and

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[47] In the case of renewals agreed to by the parties or the entering into of another contract, the player in question must sign a new licence. Cf. Art. 21, official version: "*1.- Las licencias de los jugadores que figuren en la lista con contrato en vigor quedarán convalidadas para la temporada siguiente sin más trámite que la presentación de aquélla en la Liga Nacional de Fútbol Profesional para su remisión, previas las observaciones que correspondan a la Real Federación Española de Fútbol. 2.- Tratándose de prórrogas acordadas por las partes o de la suscripción, de otro contrato, el jugador interesado deberá suscribir nueva licencia*". Available at: www.laliga.es. Consulted on 1 March 2020.

[48] The LFP's Legal Department is in charge of keeping and maintaining the Record Books. It issues any informative notes and certifications requested by any sports corporation, club or entity having a legitimate interest in acquiring, selling, transferring or any other actions of disposing of or encumbering the aforementioned federative rights. Vid. Art. 22. Available at: www.laliga.es. Consulted on 1 March 2020.

[49] Said obligation not shall be necessary for any attachments or constraints sought by public entities or institutions (such as the courts and tribunals, the Tax Agency, local tax authorities, provincial governments, the Social Security, etc.), which shall be governed by the provisions set forth in the legislation which generally applies for such purpose. Vid. Art. 25. Available at: www.laliga.es. Consulted on 1 March 2020.

agreeing on the method of payment it deems suitable according to article 27, Book V of the LNFP General Regulation.[50]

d) Registration of players beyond the time limit

The rules on this matter arise from the LNFP Executive Committee meeting held on 18 December 2007, at which a resolution was taken to amend the rules applied to the registration of professional players in periods beyond the time limit due to a serious injury or illness affecting another player.

More specifically, Circular No. 9 of the 2007/2008 season states that the LFP may exceptionally authorise the registration of professional players beyond the registration time limit set, provided the applicant club/sports corporation proves that the application for registration is the result of another player's serious injury or illness, which has arisen beyond the time limit, and that its recuperation period will last at least five months. Both these circumstances must be proven prior to the application for registration through a medical certificate issued by the doctors of the club/sports corporation.[51]

Additionally, under no circumstances shall any applications for registration to take part in the National League Championship be accepted, after 48 hours before the first of the competition's last five matches are scheduled to be held and, in the case of the Spanish Championship/Copa del Rey, any applications submitted after 48 hours before the match day scheduled for said competition's quarter-finals.

The LNFP forwards the medical certificates attached thereto to its Medical Committee for it to issue the relevant report within 72 hours.[52]

Once the authorisation of a new player's registration is authorised, the club/sports corporation shall have fifteen days at most to submit the new player's documents.[53]

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[50] If the said information states that there are indeed charges or encumbrances on the ownership of federative rights, the processing of the licence in favour of the acquiring club shall not be carried out, unless it deposits the amount thus encumbered at the LFP in keeping with any instructions on the method of payment and other circumstances, which shall be reflected in the request for information note, or unless express authorisation is granted by the entity that had requested the charge's annotation stating that the licence's processing may proceed in favour of the acquiring club. Vid. Art. 27. Available at: www.laliga.es. Consulted on 1 March 2020.

[51] The LNFP must be in possession of said application within 20 days after the date on which the injury of the player who is to be replaced took place. Said time limit may exceptionally be extended upon request for another 10 days, should the circumstances surrounding the injury or illness so suggest.

[52] The applicant club shall attach to the application the medical documents required, such as medical reports and additional test results.

[53] Any player who, as a result of a serious injury or illness recognised by the relevant body of the LNFP, has enabled the registration of another player's licence beyond the time limit may not be lined up to play in an official competition during a five-month period, counting from the date on which the injury/illness took place.

Furthermore, Circular Number 12 of the 2005/06 season reflected the resolution adopted by the Liga's Executive Committee at its meeting held on 20 September 2005 on the exceptional situation concerning the processing of the licences of professional players for any clubs/sports corporations which suffered unilateral contract terminations by any of their players near the end of the registration period time limit.

Said rule envisaged a 48-hour time limit prior to the start of the League Championship due to the fact that, during that time, the start of the championship took place later than the end of the registration period, more specifically on the first weekend of September. This has changed in recent seasons and the League Championship usually starts before the end of the player registration period.

Due to all this, the LNFP's Executive Committee deemed that said rule's application should be extended "*until the date of the end of the player registration period*", so as not to hinder the ability to hire footballers to cover any vacancy or vacancies that could arise and ensure the true spirit of the rule prevailed, which is none other than mitigating any damages as much as possible caused by contract terminations.[54]

e) Temporary suspension of the processing of licences

As provided for by article 63 of the LNFP's Articles of Association, the sports corporations and clubs affiliated to the LFP may, according to article 60, give the LIGA's Legal Counsel notice of any other of its affiliates defaulting on the debts they may have with the affiliate, provided that such debts meet one of the following three conditions:

(i) that the debt is deemed payable in accordance with prevailing legislation and that it results from business documents like cheques, promissory notes and/or bills of exchange;

(ii) that the debt arises from the existence of an enforceable (provisional or definitive) court judgment or arbitration award sentencing the party to pay a due, liquid and payable amount

(iii) that the debt derives from the existence of a football player transfer contract, in which the payment terms are clearly established and provided that the amount owed has the expired, liquid and enforceable condition.[55]

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[54] As a result of this, a resolution taken by the LFP's Executive Committee on the aforementioned rule has been updated as follows: "*If a player should unilaterally terminate his contract in force with a club or sports corporation during the days between 15 August and the date set for the end of the player registration period, the club or sports corporation at which the player had been registered may be granted an exceptional time limit of 30 calendar days, counting from the date the termination came about, to register a new player pursuant to Royal Decree 1006/85. The same time limit shall exceptionally be granted to a club/sports corporation which suffers a unilateral contract termination at the player's will where said player is registered by a club/sports corporation that had been granted the exception set forth in the preceding paragraph*". Available at: www.laliga.es. Consulted on 1 March 2020.

[55] Cf. Art. 63. Available at: www.laliga.es. Consulted on 1 March 2020.

In view of such documents and after a hearing formality is held, any debtor affiliates' rights to the LFP's administrative services shall be suspended and more specifically to the processing of federation licences and immediate notice thereof shall be given to the Executive Committee. Notices may be served at any time during the season.

Notice of claims shall be given to the sports corporation/club affected which may submit any pleas it may deem fit within five days counting from the date such notice is served. Immediately following that, the Executive Committee shall ratify the suspension agreed upon by the Legal Counsel or the deputy, except where the documents attached to the notice do not meet with conditions envisaged.

Should the Executive Committee decide not to ratify the suspension, such decision shall solely take effect if it is accompanied by a favourable opinion issued by three attorneys with at least five years of professional experience, which shall be appointed by the Executive Committee in each case.[56]

Notice of the decision shall be given to the RFEF in order to attempt to attain the necessary coordination to ensure the effectiveness of said decision. Notice shall likewise be given to the RFEF of lifting of any suspension where it comes about in accordance with the provisions set forth in article 64 of the LFP's Articles of Association.

Said provision sets forth that this shall come about when the payment of the debt is sufficiently proven by the debtor or sufficiently recognised by the creditor, where the claim is withdrawn, the right amount owed is deposited into the LFP's own deposit and bond account or a joint and several bank guarantee at the beneficiary's first demand covering the principal and any possible interest is provided.[57]

f) Cancellation of registration

Pursuant to the provisions set forth in article 2(1), Book V, of the LFP General Regulation, the registration of a professional player in favour of a sports corporation/club shall be cancelled if any of the circumstances set out below apply.

If the request is made by the club/sports corporation holding the rights, it may request cancellation due to the following reasons:[58]

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[56] Should a month elapse from the date the Legal Counsel's decision on the suspension was taken and the Executive Committee has not issued any kind of resolution, it shall be construed that an implicit ratification of the suspension has been granted. If the debtor and/or creditor form part of the Executive Committee, it or they shall abstain from taking part in the deliberations and voting at the meetings in which they are an interested party.

[57] If fifteen days should elapse from the posting of the bond to the LNFP without the debtor having justified it has brought court or arbitration proceedings contesting the outstanding debt for any reason whatsoever, the LFP shall proceed to hand over the guarantee to the creditor so that it may proceed to demand payment and/or execute it, as appropriate.

[58] Vid. Art. 2(1). Available at: www.laliga.es. Consulted on 1 March 2020.

a. Voluntary termination by the parties of the contract that gave rise to the registration where it is done in writing;
b. temporary assignment or definitive transfer of the registration rights to another sports corporation or club with the professional player's express agreement;
c. unilateral waiver of the registration by the sports corporation/club. In the event of an economic crisis affecting the sports corporation/club, there must be a definitive court judgment declaring the termination of the contract that gave rise to the registration.

Cancellation may also come about due to a unilateral termination of the contract by the professional player, ex article 2(2), Book V of the LFP General Regulation.[59]

In this case, if such termination is envisaged in an indemnity clause in the contract which gave rise to the registration, it shall be cancelled after the amount envisaged for compensation is posted at the LFP.[60]

Additionally, cancellation obviously comes about as a result of the expiry of the term initially set or of its possible extensions in the agreement or contract that gave rise to the registration, ex article 2(3), Book V of the LFP General Regulation.[61]

2.4 Practical issues: Interpretations of the Supreme Court, the Council of State and the High Council of Sport

2.4.1 Introduction

Having set out a theoretical legal overview of professional football licences, an analysis of the question would not be complete if the practical problems that have arisen during its effective implementation are not broached. That is the reason why the main cases that have come about in the area of professional football are set out in this section.

2.4.2 The Supreme Court's Jurisprudence

Both the Supreme Court's jurisprudence and many of the High Council of Sport's resolutions have recurrently affirmed that federation licences and the actions related to them are deemed as a regulated administrative act which constitutes an essential prerequisite to be able to take part in official national events and competitions.[62]

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[59] Vid. Art. 2(2). See www.laliga.es. Consulted on 1 March 2020.

[60] If indemnity is not envisaged, it shall be cancelled once the agreement or contract which gave rise to the registration has been terminated by the courts.

[61] Art. 2(3), official version: "*Por expiración del plazo inicialmente establecido o sus eventuales prórrogas, en el convenio o contrato que dio lugar a la inscripción".* Available at: www.laliga.es. Consulted on 1 March 2020.

[62] On this issue, see my Art.s entitled *Breves reflexiones sobre las potestades de las Ligas Profesionales en la tramitación de las licencias deportivas para la disputa de la competición profesional*: *¿una expropiación federativa? (on the so-called Murcia Case)* in Revista Española de

The Supreme Court's Conflicts Chamber literally states in its ruling of June 2001 that:[63]

"*Under this standpoint, the question ... resides in whether a resolution on the granting of sports licences should be included within the area of this delegated power, in which the Federation and Association act as a collaborating agent of the administration. The answer seems be yes, since the oft-mentioned Sports Act of 1990 – like Sports Act 13/1980 of 31 March – provides in article 7(1) that: 'The actions of the state administration in the area of sport corresponds to and shall be performed directly by the High Council of Sport, except for any circumstances of delegation envisaged in this law'. Article 33(1) adds that 'the Spanish sports federations, under the coordination and aegis of the High Council of Sport, exercise the following functions', which then goes on to enumerate the functions, including 'classifying and organising, where appropriate, official nationwide sports events and competitions'. Article 3 of Royal Decree 1835/1991 is in the same vein when it states that 'For this purpose, the organisation of such competitions is construed to refer to the regulation of the general framework thereof, as provided by the relevant federation rules'.*

One cannot therefore share the conclusion that football players' licences solely produce effects in the labour-related area and do not have any connection at all to one of the matters especially pertaining to administrative law, which involves enabling licences and authorisations. This is because a) a federation licence constitutes an enabling licence to take part in official national sports competitions articles 32(4) of the Sports Act and 7(1) of the Royal Decree on Sports Federations and, consequently, the granting and content thereof have an impact on the organisation of national sports competitions. The scope and content of this enabling title similar mutatis mutandis, for instance, to a residence authorisation or permit, which is also required of foreign nationals for them to work forms part of a 'general framework' of the competitions and included within the same area as fostering employment, which the State is obliged to promote and guarantee according to article 43(3) of the Constitution; b) the football player's licence is conceived as a 'document issued by the RFEF that allows him to do sport as a federated player and allows him to be lined up for official matches and competitions' (article 129(2) of the General Regulation). It constitutes a demonstration of the so-called Corporate Administration, the function of which is subject to administrative law and its frameworks for appeals, so that any actions that are performed when exercising the function delegated by the sports

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Derecho Deportivo, Signature Editions, No. 19, 2007, 57-73 and *El sujeto competente para la expedición de licencias en la competición profesional y la reciente interpretación del CSD*: *¿federación?, ¿federación vs. ligas profesionales?, ¿federación+ligas profesionales?* in Revista Aranzadi de Derecho de Deporte y Entretenimiento, Aranzadi, No. 18, 2006, 395-406.

[63] RJ 2001, 9121. Legal presentation by the R.H. Mr Mariano Sampedro Corral.

administration may be appealed before the High Council of Sport, whose resolutions bring the administrative track to an end (articles 3(3) and 5(2) of Royal Decree 1835/1991 and 5(2) of RFEF's Articles of Association)".

Thus, in the Supreme Court's words, the licences' legal framework is that of a legal-administrative act subject to Administrative Law and the High Council of Sport, forming part of the delegated public service to which article 33(1)(a) of the so often mentioned act refers.

2.4.3 The Council of State

It has already been mentioned above that the professional leagues hold the material competence to grant prior approval and issue licences provisionally to compete in professional competitions. Moreover, all this is closely connected with what the Council of State affirmed in Opinion No. 3775/2000 of 18 January 2001, which sets forth the two fold nature of licences to take part in professional competitions as an act which requires an express manifestation of both the federation entity and the relevant professional league, and whose content, along with the aforementioned regulations, have been reiterated by several resolutions taken by the Hight Council of Sport, which will be analysed below.

Concerning what is of interest here, the Council of State issued the following considerations about the legal framework of the licences granted for professional sports competitions: "*In reality then, it is not precisely delegation, but rather a system of self-organisation shared by the Liga/Federation that confirms an act which clearly requires dual intervention, either in the form of approval/issuance, as expressly stated by article 7(1) of Royal Decree 1835/1991, or by way of issuance/control..., we are dealing here with a joint act that clearly requires dual intention*".[64]

To achieve this, it specifies that "*For the purpose of the Federation controlling the licences' lawfulness, it is irrelevant whether there is a procedure consisting of an initial phase involving approval and a second involving the issuing of a licence or that only a single material operation should exist by way of issuance, which is immediately controlled by the federation. What is important is that both the professional league and the federation have the power to exercise ultimate control over the licences that have been issued*".[65]

Likewise, it understands that "*we are dealing here with a power that requires double intention, since Royal Decree 1835/1991 has been absolutely clear in this regard*". As a corollary to the above, the Council of State affirms in the Opinion's seventh conclusion that the issuance of licences must be construed: "*as a formal act of a process that requires the express manifestation of two intentions, the prior intention of the ACB* (Spanish Basketball League) *and the*

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[64] See Opinion No. 3775/2000 of 18 January 2001. www.consejo-estado.es. Consulted on 1 March 2020.

[65] *Ibid*.

subsequent one of the FEB (Spanish Basketball Federation) *for it to be deemed a complete act*".[66]

2.4.4 The High Council of Sport

The resolution issued on 3 February 2006 by the High Council of Sport – the Spanish state's highest authority on matters pertaining to sport – turns out to be of special importance, since it affirms that "*According to this literal wording* (specifically referring article 7 of the Royal Decree on Federations), *the licences which must be approved by the league are not only type 'P' licences due to the mere fact of being so, but rather any which enable a player 'to take part in professional competitions', since this article makes no mention at all of the licences in question*".[67]

It then concludes by affirming that: "*We are therefore dealing with an act that is perfectly known and has been accepted by the LNFP for a long time, which has allowed it to continue allowing third parties in good faith to take part in professional competitions without the need of obtaining a 'P' licence approved by the LNFP regardless of the remuneration they receive from the club which has registered them and has applied for another kind of federation licence. Naturally enough, all the foregoing is without detriment to the fact that such a situation may be regularised, provided the LNFP requires or demands that the licences of all footballers who have taken part in official professional competitions be approved for their issuance by the LNFP*".[68]

2.5 Practical cases in professional football in Spain

2.5.1 The "Murcia" Case

The LNFP refused to provisionally process the club's licences as a result of a breach by Real Murcia of a joint television rights assignment contract and an arbitration award that expressly recognised the existence of said contractual breach and penalised the club with the obligation of compensating several clubs belonging to the LNFP for the amount of five million euros.[69]

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[66] Ibid.

[67] See third legal grounds of the said Resolution.

[68] Ibid.

[69] The LFP's ruling is based on the conventional penalty imposed by the Spanish Court of Arbitration for Sport on Real Murcia on 13 December 2004 through an award in which para. 4 of the ruling is literally worded as follows: "*Uphold the claim brought by..., declaring that, inter alia, Real Murcia Club de Fútbol, S.A.D. has failed to abide by the agreement known as Unification of Agreements on the Management of the Audio-Visual Rights of Sports Corporations and Clubs and sentencing Real Murcia Club de Fútbol, S.A.D. to pay a conventional penalty of five million euros (EUR5,000,000), an amount which must be paid to the clubs concerned...*".

As a result of the failure to pay the aforementioned amount and after conducting the relevant proceedings before the LNFP, Real Murcia was suspended from the processing of any future licences.

Subsequently, after Real Murcia appealed to the RFEF, the Managing Board of said entity took the decision to unilaterally issue the professional licences requested by Real Murcia on 18 August 2005 without any kind of intervention by the LNFP at all. These licences allowed its players to take part in organised professional competitions without the LNFP having exercised its power to issue prior approval entrusted to it by the legal system.

Lastly, the Secretary of State and President of the High Council of Sport set on 3 February 2006 a series of "criteria" concerning the legal framework for the provisional issuance and prior approval of licences to take part in professional competitions, which have already been analysed in the preceding section. Please refer to its content to avoid any unnecessary repetitions.[70]

2.5.2 The "Zubiaurre" Case

The background of the case can be traced back to the judgments delivered by Social Court No. 1 of San Sebastián on 10 March 2006 and the Social Chamber of the High Court of Justice of the Basque Country on 17 October 2006. In a nutshell, the professional player Mr Iban Zubiaurre Urrutia, or Athletic Club on a subsidiary basis, were obliged to pay Real Sociedad de Fútbol, SAD five million euros as compensation for damages caused by the unilateral termination of the contract said player had entered into with the latter sports entity as a result of these judgments.

Said judgments were neither final nor definitive, since both the player and the clubs lodged appeals before Social Chamber of the Supreme Court to unify case-law, which were dismissed by the Supreme Court judgment of 12 May 2008.

Nevertheless, Athletic Club was interested in registering the player to compete in professional competitions after the Supreme Court's judgement. It therefore filed a consultation to the LFP's Executive Committee concerning the possibility of provisionally processing the player's licence.

After conducting the relevant formal steps, the LNFP's Executive Committee resolved that the player's provisional registration should proceed on a precautionary basis, which was conditional upon the following elements:

(i) the prevalence of the footballer's fundamental right to having an effective occupation;
(ii) irrefutable proof that the five million euros were placed at the disposal of Real Sociedad de Fútbol, SAD; and

[70] Said resolution can be consulted on the website www.dd-el.com. Consulted on 1 March 2019.

(iii) that the aforementioned legal situation could not be consolidated on a permanent basis through a hypothetical subsequent judicial decision which might or (might not) amend the content of the above-mentioned sentences.[71]

However, the RFEF's Management Board refused to issue the definitive licence once the provisional licence was issued to the player and, for such purpose, required the LNFP for its part to require the player, or Athletic Club, to "*effectively guarantee*" (sic) the five million euros as a prior and unavoidable step to definitively issue the licence.

Faced with said resolution, the LNFP turned to the High Council of Sport and raised a question of competence according to the third additional provision of the Royal Decree on Federations and paragraph 6 of the 12th Coordination Agreement, which was in force at the time.

By means of a resolution of 30 May 2007, the High Council of Sport ruled that the LNFP was justified under the Law, considering that it was excessive to seek to "secure" a financial amount that had already been guaranteed beforehand by the courts and also recognising conformity with the provisional issuance of the licence by the LFP for all intents and purposes.[72]

2.5.3 The "Lafita" Case

The conflict was resolved in this case by the LNFP's Licensing Committee and not by the High Council of Sport, as in the case above. The issue analysed by the LNFP's Licensing Committee had to do with whether the rights of the player Mr Ángel Lafita Castilla should be registered in favour of either Real Club Deportivo de la Coruña, SAD or Real Zaragoza CF, SAD, since both sports entities had shown an interest in registering the player.

As a result of these events concerning the processing of the said player's provisional licence, it was thus resolved to initiate the procedure mentioned in Book IX of the LNFP General Regulation in accordance with the provisions set forth in articles 1, 2, 3, and 11 of said Regulation.

In order to resolve the issue, the LNFP's Licensing Committee construed that, on the basis of the contractual documents submitted by the parties, it could be deduced that Real Zaragoza, SAD was entitled to a repurchase option on the player's rights, which could be exercised before 30 June 2009 for a certain price, or before 30 June 2010 for a higher price. Should the repurchase option not be exercised, the rights over the player would become the exclusive property of Real Club Deportivo de La Coruña, SAD.

On the other hand, if it were indeed exercised by Real Zaragoza, SAD, the method of payment would be EUR2.000.000 in cash and the rest within

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[71] Once Athletic Club had submitted irrefutable proof of having posted a bank guarantee in favour of Real Sociedad de Fútbol, SAD for the aforementioned amount of five million euros.

[72] Said resolution can be consulted on the website www.dd-el.com. Consulted on 1 March 2020.

the space of a year, counting from the date on which the repurchase option was executed.

In this regard, the Licensing Committee concluded by affirming, "*Said communication requested Real Club Deportivo de La Coruña, SAD to identify the payment account and send the corresponding invoice which, it seems, was never sent to Real Zaragoza, SAD. In view of the lack of cooperation offered by Real Club Deportivo de La Coruña, SAD on this point and due to the existence of the charges booked at the LFP on the rights in dispute, payment was made to the LFP on 31 August 2009 and, consequently, within the time limit for registering the rights*".

Hence, the Committee stated that, "*it should be construed on a prima facie basis (for the mere purpose of pre-judicial rulings and with the sole purpose of deciding on said right's registration in favour of one or other sports corporation) that the repurchase option was exercised in due time and within the time limit for registering the rights in question*".

The Licensing Committee confirmed the resolution taken by the LFP's Legal Counsel, dismissing the appeal lodged by Real Club Deportivo de La Coruña, SAD and confirming the registration of said player in favour of Real Zaragoza, SAD.[73]

This resolution was confirmed by a subsequent one taken by the Secretary of State and President of the High Council of Sport on 27 of November, 2009.

2.5.4 The "Javi Martínez" Case and the "Neymar Jr." Case

The examination of the matter was based on article 16 of Royal Decree 1006/1985 of 26 June governing professional athletes' special employment relationship, the study of which is carried out in subsequent sections of this chapter.

It can be inferred from said provision that the Spanish legal system establishes professional footballer's right to terminate his employment relationship with his club/sports corporation at any time during its term as in this case where he decided to do so unilaterally.. It also sets forth the sports entity's right to obtain an indemnity aimed at compensating the club of origin for any economic, sports-related or any other kind of damages caused by such termination.[74]

Furthermore, it should be kept in mind that article 17(2) of the FIFA Regulations on the Status and Transfer of Players in force, states that it is the joint and several responsibility of the player's new club to pay the indemnity.

Instead, the solution adopted by the Spanish legal system is different and it places the obligation to pay the indemnity exclusively upon the player, who

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[73] *Ibid.*

[74] Said indemnity may be set either directly in the employment contract by mutual agreement (so-called "buy-out clauses") or, in the lack of a pre-established agreement, by a labour judge, as the aforementioned provision sets forth repeatedly.

therefore, will be the party that must directly perform the payment of the relevant indemnity to his/her former club.

Interestingly, the different solutions adopted by the FIFA regulations on the one hand and the Spanish legislation on the other hand has been the source of important conflicts as to whether a player making use of his/her right to walk out of the contract in accordance with the dispositions in the Royal Decree 1006/1985, could potentially be terminating the employment contract without just cause under the FIFA RSTP, with all the disciplinary consequences that such circumstance would entail for the new club.

Hence, the footballer entered into a professional athletes' employment contract with the club through which, according to both Spanish and international federation regulations, they mutually agreed that the footballer would indemnify the club affiliated to the LNFP for the amount of 40 million euros should he decide to unilaterally terminate his contract.

Subsequently, the player expressed to the LNFP his wish to terminate and unilaterally extinguish the contract.[75]

Once he had expressed this wish and deposited the amount of 40 million euros envisaged in the contract to the LNFP, the LNFP notified the affiliated entity thereof and placed at its disposal the said amount of money.

Lastly, the LNFP proceeded to cancel the player's registration in favour of the club affiliated to it, informing the RFEF thereof for the relevant purposes (especially for the issuance, where appropriate, of the relevant International Transfer Certificate at the German Football Federation's request pursuant to both national and international federation regulations).

The same situation occurred in the summer of 2017 with Neymar Jr. and FC Barcelona, when the Brazilian player made use of the "buy-out clause" in his employment contract to terminate his employment relationship with FC Barcelona.

2.5.5 The "Minor" Cases

The Minor Cases – Reference

Spain is composed of 17 regions known as "Comunidades Autónomas" (CCAA). The Spanish Constitution grants to these "CCAA" competences to regulate on different fields and Sport is one of them, ex article 148.1.19;[76] so, the "*'Comunidades Autónomas' may assume competences in the following subjects:… 19.ª Promotion of sport …*".

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[75] It is of special interest to point out that the footballer made such statements to the LNFP in a personal way. He likewise expressly stated his wish to accept that the payment of the indemnity stipulated in the aforementioned contract (40 million euros) be paid by his new club to the LNFP.

[76] Cf. Art. 148.1.19, official version: "*1. Las Comunidades Autónomas podrán asumir competencias en las siguientes materias:… 19.ª Promoción del deporte y de la adecuada utilización del ocio".* Available at. www.boe.es/buscar/act.php?id=BOE-A-1978-31229. Consulted on 1 March 2020.

In consequence, each "CCAA" has its own Regional Football Association which governs football within the region in a coordinated manner with the RFEF. Each Regional Football Association organizes its own championship and issues the relevant licenses for the participating players. Minor players (U-18) mostly take part in these championships. By Law, each club has to mandatorily affiliate to the Regional Football Association and comply with its regulations, including those referred to licensing and registrations of players.

Additionally, in Spain the second additional provision of the Act against violence, racism, xenophobia and intolerance in sport (Act 19/2017, 11 July establishes that "*2. ... federations and leagues must change, in the same period in the preceding paragraph, the regulations and eliminate any obstacle or restriction that prevents or hinders participation in non-professional sports activities of foreigners who are legally in Spain with their families. Exceptionally, positive action measures based on requirements and needs arising from high level and its representative of Spain function sport may be authorized by the Superior Council of sports*".

So, the second additional provision conflicts with the regulation of registration of minors of the RSTP of FIFA. In Spain, the competence to issue the licenses in the regional competitions lies within the regional association, which FIFA does not recognize as "associations" in the sense of Art. 5 RSTP. The clubs have no other alternative but to follow Spanish internal law and request the licenses to those associations that have the competence for it and register the players there.

Therefore, in the case of minors who are participating in a regional competition, the Spanish Football Regional Associations are the competent entities to issue the aforesaid licenses. However, it is FIFA's opinion that this is a violation of Art. 5 RSTP. According to the RFEF Statutes, the regional associations are part of the RFEF's structure and are, therefore, bound by its regulations.

But the main problem, is that final decision about this issue belongs to the public Administration, The high Council of Sports. Since the High Council of Sports Resolution, 17th March 2016, the public administration in Spain declared FIFA rules inapplicable in Spain . The decision is about a claim presented by the mother of a Colombian minor against the denial of the registration of a license to enroll in a youth teamlegally residing in Spain (residence permit).[77]

The resource is estimated and the RFEF is ordered to proceed, immediately, to issue a sports license in favor of the minor. The decision establishes that: *"... Now, the application of the aforementioned FIFA rules must respect, in any case, the legal system in force in our country. In relation to this, it should be noted that there could be no possible conflict between the*

[77] Vid. A. Amorós and E. Ripoll, FIFA, CAS and Minors: the Return of the Laudable Purposes and the Disproportionate Tools in Football legal. *The international journal dedicated to football law, n. 8, 2017,* available at www.ruizcrespo.com/wp-content/uploads/2017/07/ruizcrespo-football-legal-07-01-abogado.pdf; consulted on 1 March 2020.

regulations of FIFA and the Spanish legal system. And this is because we are not before an international organization of public law of which Spain is part, but rather we are before a private organization subject to Swiss law. In this case, a conflict cannot be raised because the rules of FIFA may or may not coincide with those of the Spanish legal system, but because the aforesaid entity cannot be linked to a legal order of a sovereign State. This determines that the FIFA rules must be fulfilled only by their associates, although they would become inapplicable in the event that they contradict the state legal order ... Given the above, the requirements demanded by FIFA in the Regulations on the Status and Transfer of Players of FIFA would not be adjusted to our legal system, being sufficient to obtain the license requested from the RFEF ... being legally in Spain ...".

2.5.6 The "Pedro Leon" Case

The idea of this financial control comes with the aim to adopt the famous "Financial Fair Play UEFA" in Spain. It is born to create a due diligence handling the football clubs by their executives. There is a need to create an economic viability and in this way, they can be economically viable.

First of all, it should be noted as we explained before, that this Regulation is based on the Sport Law 10/1990, 15th October. Article 41.4.b) grants LFP exclusive jurisdiction about the protection functions, control and financial supervision for the associates of the LFP, as it is explicitly written in the preamble to that regulation.[78]

Pedro Leon, who has seen how the LNFP has forbidden his right to play football as a result of a breach of the 70% rule by Getafe FC, which sets maximum spending in the first team at 17 million euros. He has been deprived of his right to practice the profession effectively. Considering such a situation, there is a substantial change in working conditions (article. 41 Workers' Statute).

The legal support to this point is found in Article 4.2.a) of the Workers' Statute, where the right to effective occupation is recognized and more specifically in Article 7.4 of the RD 1006/85, which states that "*professional athletes are entitled to the effective occupation, being impossible, except in suspension or injury, be excluded from training and other preparatory activities for the exercise of the sport*".[79]

This case analyses the Financial Fair Play rules imposed by Laliga to the Spanish Professional Clubs. In few words, there is a limit on wages and Pedro

[78] See Art. 41.4 (b). Available at www.boe.es/buscar/act.php?id=BOE-A-1990-25037. Consulted on 1 March 2020.

[79] This is understood, by analogy, that it is applied to the competition, and this is the reason due to an athlete trains or perform other preparatory or instrumental activities to be in a good physical condition to carry out his job. Not being a technical decision but being a legal impossibility for the exercise of his profession. Attempting to his right to train, dignity and professional future due to the specificity of sport. Which provides the unilateral termination of the contract for just cause by Pedro Leon and a compensation for the damages caused to the worker.

Leon's wages took them over that cap. This was the reason why LaLiga didn't register the license requested by Getafe FC.

The trade union and the player insisted that the RFEF gave him a license to play and he did so but the High Council of Sport and LaLiga confirmed the validity of the non-registration of the license by LaLiga. Pedro Leon took the league and Getafe to commercial and administrative courts against the FFP regulations that have been put in place by LaLiga but all the legal actions had been rejected.

In this case is important to know the judgment of the Supreme Court of Spain on 12th March 2019. In few words the judgement establishes that the LNFP's refusal to process the registration of the footballer for non-compliance with the requirements related to the financial control regime constitutes a legitimate way to exercise its exclusive competence to supervise the budgets of the associated clubs and is endorsed by the applicable regulations, which do not bind the refusal only to breach the requirements of a sporting nature. The competition and the labour rights of the affected player are not violated.

In consequence, LaLiga can deny the registration of the player license if the maximum spending limit is exceeded.

3. The employment contract

3.1 Main features

Labour Law is the branch of legislation that governs all matters relating to employment contracts and Social Security. It is principally enshrined in Royal Legislative Decree 2/2015 of 23 October, which approved the Consolidated Text of the Spanish Workers' Statute.[80]

In the field of Football law, Royal Decree 1006/1985 of 26 June 1985 governing professional athletes' employment contracts was published in the Official Journal of the State on 27 June 1985.[81]

Since then, this provision has provided a regulatory response to the employment relationship of individuals who, "*as a result of a relationship established on a regular basis, voluntarily dedicate themselves to doing sport for a club or sports entity within the scope of its organisation in exchange for remuneration*", ex article 1(2) of Royal Decree 1006/1985.[82]

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[80] The main characteristics of every employment relationship in Spain in general terms are the following: (i) willingness, work is not performed in order to comply with a legal obligation; (ii) third party benefit, the fruits of one's labours belong to the employer; (iii) Dependence, the inclusion within the governing and organisational environment of the employer and (iv) payment.

[81] Regarding this issue, see E. Garcia Silvero, *El régimen laboral de los deportistas profesionales* in *Fundamentos de Derecho Deportivo* (E. Gamero Casado, ed.), Tecnos, 2012; 354-359.

[82] The employment relationships of professional athletes were excluded from being heard by the Employment Courts until the Judgement by the Central Employment Court on 24 June 1971. Cf. Art. 1(2). Available at www.boe.es/buscar/act.php?id=BOE-A-1985-12313. Consulted on 1 March 2020.

The reasons Government expressed in 1985 to proceed with the drafting of a new regulation on athletes' employment relationship basically resided in its belief of the need to introduce some changes, despite the scarce application made of the provision that had been repealed.

Thus, Royal Decree 1006/1985 sought to resolve issues which required either more complete regulation or more appropriate regulation based on the experience gained from the previous Royal Decree, always framing them within the peculiarities of a special employment relationship, such as the one of professional athletes.[83]

In so far as the basic goals sought by the provisions are concerned, the Preamble sets forth three clearly defined aims:[84]

1. As has already been mentioned, the first of these consist of transposing the criteria of the commonly applicable employment regulation to professional athletes' special employment relationship. Royal Decree 1006/1985 only contains the particularities of such special employment relationship, while at the same time setting forth as supplementary Law the provisions contained in the Workers' Statute.

   Article 21 affirms that "*The Workers' Statue and other employment regulations which are generally applicable shall apply to the matters not governed by this Royal Decree to the extent by which they are not incompatible with the special nature of athletes' special employment relationship*".[85]
2. Secondly, in conjunction with the aim described above, it ensures respect for the peculiarities of doing sport, which deserve special labour regulation.
3. The third goal refers to the decisive impulse given to collective bargaining as a source of the employment relationship, which is also a general feature of the entire Royal Decree.

Apart from the aforementioned goals, the regulation contained in the Royal Decree 1006/1985 also has the following characteristics:[86]

1. Compared to the preceding regulation – Royal Decree 318/1981 –, there is more technical rigour in the overall approach, along with greater legal precision in the wording of the articles.
2. There is also a clear commitment to respecting the various contractual clauses signed by sports clubs in accordance with the principle of free will.

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[83] In short, rather than a remodelling as a result of the awareness resulting from the application of the Royal Decree of 1981, it was an amendment of it in view of the lack of practical response of some of the provisions contained in the regulatory text.

[84] Cf. Garcia Silvero, E.A. *El régimen laboral de los deportistas profesionales* in *Fundamentos de Derecho Deportivo* (Gamero Casado, E. coord.). Ed. Tecnos, 2012. 358-359.

[85] Vid. Art. 21, official version: "*En lo no regulado por el presente Real Decreto serán de aplicación el Estatuto de los Trabajadores y las demás normas laborales de general aplicación, en cuanto no sean incompatibles con la naturaleza especial de la relación laboral de los deportistas profesionales*". Available at www.boe.es/buscar/act.php?id=BOE-A-1985-12313. Consulted on 1 March 2020.

[86] *Ibid*.

3. The prerogatives enjoyed by sports clubs disappear and social improvements are achieved for professional athletes, eroding the privileged position federation rules enjoyed in Royal Decree 318/1981.
4. Lastly, it can be seen that the 1985 regulation incorporated contributions made by the science of its time, as evidenced by the different aspects governed by the new provision.

3.2 The Royal Decree's Scope of Application

Royal Decree 1006/1985 considers as professional athletes those who "*as a result of a relationship established on a regular basis, voluntarily dedicate themselves to doing sport for a club or sports entity within the scope of its organisation in exchange for remuneration*".

The definition is particularly significant, as only athletes deemed as "professional" are included in the scope of application of Royal Decree 1006/1985.

On the basis of this definition, it can be affirmed that five circumstances must be simultaneously satisfied for an athlete to acquire the status of being a professional and, hence, his employment relationship would be governed by Royal Decree 1006/1985, namely: doing sport on a regular basis, doing so for an entity, dependence, voluntariness and remuneration for the activity.[87]

As far as the circumstance of remuneration is concerned, its absence determines that the athlete has the status of amateur, since the special employment regulation for sport excludes from its scope of application people who are dedicated to doing sport within a club and only receive from it an "offsetting" of the expenses which result from doing sport. Thus, where the amounts received exceed the mere "offsetting of expenses", the requirement of remuneration is met to deem the athlete as a professional.

The question would therefore be easy to resolve: any who receive an "offsetting of expenses" would be excluded from the Royal Decree, and those who are remunerated would be included.

The question is clear. What then is construed as remuneration, and what is offsetting of expenses? The answer is not easy and considering the relationship as an employment relationship depends on it.

The Supreme Court judgment of 2 April 2009 considered that the only criterion which should be taken into account to differentiate between remuneration and the offsetting of expenses is that the latter responds to the reality of a reimbursement of expenses; that is to say, regardless of the amount received by the athlete, whether 100 euros or 100,000 euros.

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[87] Of all these, two can be highlighted as truly configuring athletes' employment contract: remuneration and doing sport.

If said amount is not meant to offset any actual effective expense, we would be dealing with remuneration and, consequently, with a working athlete. This therefore suggests that neither the sports category in which the worker/athlete performs nor, of course, the sport he does has any effect for the purposes of Royal Decree 1006/1985.[88]

A first-division footballer can be just as professional as a regional league footballer or a player of the basketball or handball league. The determining criterion is whether the athlete is remunerated for doing sport.

The notion of "doing sport" is the second circumstance which has given rise to many disputes concerning case-law and jurisprudence, since the Royal Decree does not clearly state whether the different activities – like, for instance, those of managers, national team managers or referees – are included in or excluded from the notion.

3.3 Influences between Sports Employment Law and Football Law

It is an obligation of athletes who are affiliated to a federation to respond to call-ups from their respective sports teams to prepare for and participate in competitions, ex art. 47 of Sports Law 10/1990 of 15 October.

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[88] The Supreme Court Judgement of 2 April 2009 establishes that: "*The legal classification (as either professional or amateur athlete) that the parties may have made to this end is irrelevant, since the nature of a contract is that which can be construed from the actual contents of its obligations, pursuant to the principle of the primacy of the true situation. An athlete's federated [professional or amateur] status also does not determine whether or not there is an employment relationship, since this status does not give rise to any effect in the area of labour law and is not binding on the courts in this jurisdiction. An employer-employee relationship does not mean that the worker must devote themselves full time or that this must be the sole or principle way that they earn a living, since an athlete can perform other paid tasks without their professional status being diminished in any way [the requirement we reject is not set out in any provision of the Royal Decree]".* As regards payment, the judgement sets out the following rules: *"In application of the principles that inform the burden of proof, an athlete is required to demonstrate that a financial payment was made, but once this has been proved, the amounts paid will constitute a salary under the terms of the iuris tantum presumptions set out in articles 26.1 of the Workers' Statute and 8.2 of Royal Decree 1006/1985, in such a way that it will be the sporting organisation that will be required to prove that these payments were merely reimbursement, something it can only do by proving that they did not exceed the expenses that the athlete actually incurred in practising his or her sport. The nature of any such amounts received (reimbursement or payment) is entirely independent of any terminology that the parties may have used in this regard [we indicated earlier that deliberate contractual concealment is, unfortunately, not uncommon in the normal course of affairs], because once again the principle of the reality of the actual circumstances must apply. The fact that payments are regular and made in uniform amounts is a sign that they represent remuneration, since these are characteristic elements of a salary, as compared with the irregular nature and variation in amounts found when one is actually reimbursing costs. The legal requirement does not refer to receipt of the national minimum wage [the provision merely requires «a payment», without specifying any amount], something which is just a fundamental consequence of the fact that professional status does not mean exclusivity in the way one earns one's living; the same would be true if this were an ordinary employment relationship, in which part-time work is both feasible and common*".

In this sense, legal relationship is not classified as a labour relationship and falls outside employment law. The unjustified failure to attend is a very serious infringement of sports discipline and can be penalised regarding the national sports Law. There are regulations imposed by the federations themselves.

The employment relationship with the original club remains effective (though some aspects of it are suspended), so the rights and duties pertaining to the employment relationship are still enforceable and the respective obligations with regard to Social Security contributions persist.[89]

3.4 Main characteristics of the employment contract

3.4.1 Form

The obligations imposed by article 3 of the Royal Decree 1006/1985 are the ones which are generally set out in the Workers' Statute, though it includes some nuances in keeping with a contract of these characteristics.

In particular, as opposed to the general regime in the Statute of Workers, the RD 1006/85 and the CBAs specifically require that the contract shall be entered in writing and in triplicate. Two copies shall be for each of the contracting parties and the third shall be registered at the INEM (Spanish Employment Agency). The club, any trade unions and sports entities the athlete might belong to, if any, may request the INEM for copies of the documents thus submitted.[90]

The contract must include at least the following sections: identification of the parties, purpose of the contract, remuneration agreed, detailing the different items thereof, and, where appropriate, the relevant review clauses and the days, time limits and place where such amounts should be paid, and the contract's term.

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[89] In this sense, the judgement by Castilla-La Mancha High Court on 16 July 2007 established the following: "*The ceding of a professional player by a club that employs the player in question, so that he or she can respond to a call-up from his or her National Team, is established in law as an obligation on the part of the club to make the player available, in such a way that the player maintains his or her employment contract with the club, but payment for the work performed in this case is made by the Team making the call-up". ... "any provision of services made by the player, whether rendered to the club that engaged the player, or to the Team making the call-up as a result of the player being made available, should be considered as forming an integral part of the employment relationship with the club that engaged the player, a legal relationship that is not altered (except in terms of the powers of management and control) by the player being made available; and any injury suffered by the player in question during the performance of these duties must be classified as a workplace accident, provided that it is enshrined in one of the cases set out in Art. 115 of the General Social Security Law*". Therefore, the Mutual Insurance Company that filed the appeal must be aware that it assumes responsibility for covering any contingencies arising from the workplace accidents suffered by the company's workers (professional athletes) while engaging in their sporting activities, both for the club that engaged them and for the National Team that called them up, since all these activities result from the signing of their employment contract.

[90] Three copies, one for each contracting party and the other for the Spanish Public Employment Service. The Federations usually publish standard forms. *Ibid*.

Minimum requirements, ex art. 3 of Royal Decree 1006/1985 are the following: details of the parties; purpose of the agreement; agreed payment and term. There is a possibility to establish specific provisions, depending on the characteristics of the relationship between the professional athlete and the Club for which he or she works: Salary, image rights, extensions, others.

The only particularity envisaged in Royal Decree 1006/1985 is the formal obligation of athletes' employment contracts being entered in writing.

In any event, in view of the judicial interpretations made to date, failure to comply with the obligation to conclude the contract in written form does not render the contract null and void, which for practical purposes means that such requirement is simply a formal requirement ("*ad probationem*") with no direct legal consequences for the employment relationship's validity (not "*ad validitatem*").

3.4.2 Term

The sports employment contract's term is governed by article 6 of Royal Decree 1006/1985.

Said provision sets forth that the professional athletes' special employment relationship shall always have a specific term and that "*the hiring may come about for a certain time or for the performance of a certain number of sporting appearances which constitute a unit that can be clearly determined and identified in the area of the relevant sport*".

Hence, it can be affirmed that there is no room for an indefinite employment contract in our model for athletes' employment contracts – which is deemed null and void –, though no constraints are placed on the duration over time of the contracts.

A far as renewals are concerned, it is set forth that these may come about "*through the expiry of the originally agreed term*". Though it seems one must wait until the initially agreed term comes to an end, this does not prevent any of the usual preliminary contracts on possible new working conditions from being stipulated beforehand.

Moreover, this regulatory provision sets forth that "*only where a collective agreement so provides, may a system of different renewals be agreed on other than the above for contracts, which in any case shall be in keeping with the conditions set forth in the collective agreement*".[91]

In this regard, case-law has revealed the possible danger involved in entrusting to collective agreements and individual agreements the possibility of governing a system of renewals different from the one set forth in special labour regulations for athletes.

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[91] In professional football see the Collective agreement for the professional footballing sector (Official State Journal ("BOE") 08/12/2015. Available at www.boe.es/diario_boe/txt.php?id=BOE-A-2015-13332. Consulted on 1 March 2020.

It must therefore be construed that what the collective rule can do under the provisions of article 6 of Royal Decree 1006/1985 is to establish a different system of renewals, but in any event abiding by the principles that inspire the regulation contained in the Royal Decree.

Hence, there would be no room for a mandatory renewal system, which would in practice do away with the freedom to sever the relationship with the club or sports entity, which is meant to be secured for professional athletes.[92]

3.4.3 Rights and duties of athletes within the framework of their employment contract

Though lawmakers have described athletes' employment relationship as special, this evidently does not involve a reduction of their rights and duties as workers of a company and, in this case, of a club or sports entity.

What is certain is that athletes, as workers, are also subject to a system of employment-related obligations and duties in keeping with their particular labour framework according to the provisions set forth in article 7 of Royal Decree 1006/1985.

In view of said article, this basically consists of the following:

a. Professional athletes are obliged to carry out the sports activity they have been hired to do as diligently as possible in keeping with their personal physical and technical condition and in accordance with the sporting rules that apply and the instructions of the club or sports entity's representatives.
b. Professional athletes are entitled to freely express their opinions on matters related to their profession, abiding by the Law and the requirements of their contractual situation, without detriment to any other constraint that may set forth in a collective bargaining agreement, provided they are duly justified by sporting reasons.

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[92] It is important to explain the Judgement by the High Court of Castilla-La Mancha on 13 February 2012 that establishes the following: "*There is no doubt regarding the legality of the clause concerning us here, i.e. the automatic renewal of the contract so long as one condition is met, namely that the footballer plays more than 25 matches for which he is picked. Its legality is maintained by the Supreme Court in its Judgement of 13-02-1990, in which the Court examined the validity of an identical clause to the one we are examining here, indicating in this regard that "it should be stressed that the clause in question was only mandatory for the Club, not for the player who, under the terms of the clause, was not bound by the extension that it provided for. This therefore constituted a right conferred upon the player, insofar as, if the agreed condition was met, he would be given the freedom to apply or not to apply the extension, which would be mandatory for the Club. This being the case, we have to agree that the said clause is not contrary to the system of extensions provided for under the aforementioned Art. 6, since what that Art. prevents is a distortion of the temporary nature of the special employment relationship enjoyed by professional athletes through the advance provision of extensions that are binding on the worker, thus depriving him or her of any contractual freedom when the contract's agreed term has been completed and allowing the Club to impose such extensions. This would remove any chance for the professional athlete to agree new conditions in line with the value that they have attained*".

c. With regard to their share of the profits resulting from the commercial exploitation of the image of athletes, what is provided for in a collective bargaining agreement or individual agreement shall apply.
d. Professional athletes are entitled to have an effective occupation and may not be excluded from training sessions and other instrumental or preparatory activities to doing the sports activity, except in the event of a penalty or injury.

Regardless of the specific basic rights and duties set out herein relating to professional athletes' employment relationship, it is evident that the basic rights and duties envisaged in articles 4 and 5 of the Workers' Statute also apply to this group of workers.

There have not been many labour disputes under this legal and regulatory system since Royal Decree 1006/1985 came into force. Perhaps, the only thing worth noting is that the tribunals and courts of justice have construed as a breach of an athlete's right to effective occupation (the right to work in his job and on his duties) in any circumstances where, even though the contract remains in force, the athlete lacks a federation licence to take part in competitions.

4. Transfer Agreements

4.1 Introduction

As mentioned in section 3 above, the regulation of transfers agreements in the Kingdom of Spain must be predominantly understood from the perspective of labour law and the mandatory nature of its dispositions.

Professional athletes are considered employees under Spanish law[93] and for this reason, in Spain the regulation of transfer agreements concerning athletes is primarily found in the well-known *Royal Decree 1006/1985 of 26 June, regulating the special employment relationship of professional athletes*[94] the scope of which extends beyond footballers covering, as its name indicates, the transfer of any professional athlete from one club to another.[95]

The dispositions of the Royal Decree 1006/1985 are completed, in case of any lacuna, with the Spanish employment law, the so-called Statute of Workers (i.e. Estatuto de los Trabajadores[96]) and developed by the various collective bargaining agreements across different professional sports, which despite their consensual nature constitute source of law.

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[93] Cf. Art. 2 let. d) of Royal Decree 2/2015 of 23 October regarding the Statute of Employees (i.e. el Estatuto de los Trabajadores).
[94] Available at: www.boe.es/buscar/act.php?id=BOE-A-1985-12313. Consulted on 1 March 2020.
[95] The jurisprudence of Spanish state courts has extended the subjective scope of the RD 1006/85 to coaches and sports-related professions.
[96] Cf. Art. 21. *Ibid*. Available at: www.boe.es/buscar/act.php?id=BOE-A-2015-11430. Consulted on 1 March 2020.

In the case of professional men's football, there is the collective bargaining agreement concluded between the Asociación de Futbolistas Españoles (AFE) and the LNFP on 23 November 2015 and valid until 30 June 2020, and more recently, since 18 February 2020,[97] there is also a specific collective bargaining agreement applicable to women's football.

At a federative level, as mentioned earlier in section 2, the General Regulation[98] of the Real Federación Española de Fútbol (RFEF) will also include certain provisions regarding transfers, licenses and the registration of players that will also impact the conclusion of transfer agreements at a national level.

It is also important to understand that as opposed to the General Regulation of the RFEF – that primarily deals with the transfer of registration of players from one club to another at a national level –; the law, regulates the private nature of the transfer and hence, includes provisions that must necessarily appear in transfer agreements.

Additionally, the General Regulation of the LNFP[99] regulates as well, some formal requirements of transfer agreements as also announced earlier.

All of the above set of rules must be read together in order to get the full picture of transfers of professional football players in Spain.

With these premises in mind, the analysis of transfer agreements requires making a preliminary distinction between in one hand, *transfers of temporary nature or loans*; and in the other hand *definite transfers*.

4.2 Temporary transfers of football players or loans

As mentioned earlier, the regulation of temporary transfers is found firstly, in the *Royal Decree 1006/1985 of 26 June, regulating the special employment relationship of professional athletes* (hereafter "RD 1006/85"). The Royal Decree applies to all professional athletes irrespective of their sport.

In the case of professional football, loans are also regulated through the *Resolution of 23 November 2015*,[100] *of the General Direction of Employment, whereby the Collective bargaining agreement for the activity of professional football is registered and published* (hereafter, "men CBA").

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[97] The women CBA was not officially published at the date of writing the present chapter although it was agreed on 18 February 2020 by the Asociación de Clubes de Fútbol Femeninos (ACFF) in representation of clubs; and the trade unions Asociación de Futbolistas Españoles (AFE) and Futbolistas ON in representation of the players.

[98] See articles 145 to 147. Available at: https://rfef.es/normativas-sanciones/reglamentos. Consulted on 1 March 2020.

[99] Available at: https://files.laliga.es/201612/13140025reglamento-laliga-26.pdf. Consulted on 1 March 2020.

[100] Available at: www.boe.es/diario_boe/txt.php?id=BOE-A-2015-13332. Consulted on 1 March 2020.

The men's CBA applies exclusively to men footballers playing for clubs' that are members of LaLiga,[101] which is formed in turn by clubs that take part in the first and second A national divisions.

The women's CBA also includes provisions regarding loans, the content of which are identical to the men's CBA and for that reason are jointly discussed.

Thus, article 11 RD 1006/85 provides the following (free translation):

"*Temporary transfers:*

One. During the period of contract, clubs or sports entities may temporarily transfer to third parties the services of a professional athlete, with his/her express consent.

Two. The club or sports entity will have to consent to temporarily transfer the athlete to another club or sports entity when throughout one entire season their services to participate in official competitions held in front of public have not been used.

Three. The transfer agreement will necessarily include the duration of it, which will not go beyond the remaining period of time of the professional athlete´s contract with the club or entity of origin. The transferor will subrogate in the rights and obligations of the transferee, being both jointly liable for the fulfilment of the employment and Social Security obligations.

Four. If the transfer takes place though economic consideration, the athlete will be entitled to receive the amount agreed through individual or collective agreement, which will not be less than 15 per 100 of the agreed gross amounts. In the case of reciprocal transfer of athletes,[102] *each one of them will be entitled at least, against their club of origin, to a sum equivalent to one month of the periodic remunerations, plus one twelve part of the complementary quality and quantity amounts received during the last year*".

The professional football CBA for men contains also two specific articles (i.e. articles 15 and 16) dedicated to loans (the articles regulating loans in the women CBA are articles 17 and 18)[103] (free translation):

"Art. 15 Temporary transfers.

1. During the term of a contract, the Club / SAD may temporarily assign to another Club/SAD the services of a Professional Footballer, provided that he expressly accepts said temporary assignment, where, in any case, the specific identity of the Club/SAD to which the player is assigned must be identified, as well as to which of the teams that conform the structure of the player will be assigned.

2. In no case may the temporary assignment be for a period longer than the time remaining in force of the said Football Player's contract with the assigning Club/SAD.

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[101] Vid. Art. 190 para. 3 of the General Regulation of the RFEF, available here: https://cdn1.sefutbol.com/sites/default/files/pdf/reglamento_general_junio_2019.pdf. Consulted on 1 March 2020.

[102] Exchange of players.

[103] The reading of the articles regarding loans of footballers is practically identical in both CBA.

3. The assignment must necessarily be made in writing and will include the conditions and period of the assignment, in respect of which the loanee will be considered subrogated, with respect to the transferor. In the event that [the loan agreement] only contains the assignment, it will be presumed that the loanee is subrogated in all rights and obligations of the transferor. In any case, both will respond jointly and severally for the fulfilment of the employment and Social Security obligations".

"Article 16. Financial consideration for temporary assignment.

In the event that the assignment was made through financial consideration agreed between the transferor and the loanee, the Professional Footballer will have the right to receive at least fifteen percent (15%) of the agreed price, which must be paid by the loanee Club/SAD, at the time of acceptance by the Footballer of the assignment. In the event that no amount is agreed upon, the Footballer will have the right to receive at least the amount resulting from dividing by twelve all the remuneration received from the Club/SAD in the previous immediate season, multiplied by one and a half times one hundred (1.5%)".

Likewise, as anticipated in section 2 above, Book V of the LNFP General Regulation, dealing with licenses, includes specific provisions concerning loans in its articles 13, 14, 15 and 16 that complete the provisions of the RD 1006/85 and the CBA (men).

Even if not explicitly mentioned in the law, the doctrine considers that the temporary transfer of athletes will necessarily have to respect the conditions imposed by each sports federation applicable to loans,[104] such as for instance, possible limitations in loans or number of licenses, requirements regarding overdue payables, transfer windows etc., and therefore, requirements under the regulations of the Spanish football federation (RFEF) will also need to be accounted for.[105]

By way of example, article 145 par. 3 of the RFEF General Regulation states that in order to process the player's licence, the club of origin will have to demonstrate that there are no overdue payables towards other football clubs stemming from a previous contract regarding the same player.

But focusing the attention in RD 1006/85, a first reading of article 11 above suffices to realize that the law distinguishes in turn between two different types of temporary transfers of athletes; in one hand there are *consensually agreed transfers* (vid. article 11 para. 1, 3 and 4) and in the other hand, there are *compulsory transfers* at the request of the athletes (vid. article 11 para. 2), where under specific circumstances athletes can force clubs to loan them out.

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[104] Cf. J.A Sagardoy Bengoechea and J.M. Guerrero Ostolaza, *El contrato de trabajo del deportista profesional*, Ed. Civitas, Estudios de Derecho Laboral 1991, 84.

[105] For instance, the prohibition in art. 116.2 of the General Regulation of the RFEF for player to be registered and play for more than three teams during the course one season, the violation of which would not, as a general rule, affect the validity of the loan agreement but, would allow the player to terminate the employment contract for violation of his right to effective occupation.

From a strict perspective of Spanish labour law, the possibility to transfer an athlete from one club to another represents an exception to the general prohibition in the Statute of Employees[106] to assign employees from one employer to another.

Renowned Spanish legal scholars find the justification for this exception in the fact that the specificity of professional sport involves all parties , i.e. athlete and the two clubs, who benefit from the loan.[107]

Indeed, in the case of football, where competitions limit the number of players that can be registered by clubs, there is a real risk for some of them of not being able to compete which would constitute in turn a violation of their right to effective occupation.[108]

The law therefore, reinforces the mobility of athletes and allows their temporary transfer to third clubs so, they can continue to play and hence, maintain their much-needed physical form, skills, and market value.

With regards to the first category of temporary transfers, i.e. consensually agreed loans, it is important to note the following aspects:

– It goes without saying that a loan agreement will only be possible as long as the athlete and the club have an ongoing employment contract.
– The duration of the loan agreement (and by extension of the new employment agreement between the athlete and the loanee club), will necessarily be of temporary nature and in no case, longer than the duration of the employment contract between the club of origin and the athlete (article 11 para. 3 RD 1006/85 and article 15 para. 2 men's CBA).

  This circumstance implies, that at the end of the period of loan, as a general rule, and unless the parties included an option (or an obligation[109]) to permanently transfer the athlete or extend the loan, he/she will have to resume duties with the club of origin. If the athlete fails to do so without reason, it would amount to a severe breach of his/her employment obligations toward the club of origin and allow the club to terminate the contract.
– The loan agreement will have to identify the club that the player will join and the team within the structure of the club to which the player will be assigned (article 15 para. 1 men's CBA).
– Loan agreements necessarily require the consent of both clubs (i.e. the transferor club; the loanee club) and the athlete. The law conceives loan agreements as veritable tripartite contracts and consequently, without the consent of all parties it will not be valid (art. 11 para. 1 RD 1006/85).

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[106] Art. 43 of the Statute of Employees essentially limits the possibility to recruit and assign employees to third parties, to authorized job placement agencies.

[107] Cf. J.A. Sagardoy Bengoechea, J.A. and J.M. Guerrero Ostolaza, *El contrato de trabajo del deportista profesional*, Ed. Civitas, Estudios de Derecho Laboral 1991. 83.

[108] The right to effective occupation is explicitly guaranteed in Art. 7.4 of the Royal Decree.

[109] E.g. if the player takes part in a certain number of matches.

The consent must be express and in the specific case of football it must also be reflected in written[110] in the loan contract which will also include the conditions and the period of loan.

If the loan only refers to the assignment of the player (without specifying other conditions), the loanee club will assume all rights and obligations of the employment relationship between the player and the transferor club (article 15 para. 3 CBA).

– During the period of loan, two employment relationships will coexist: (1) the employment relationship between the athlete and the club of origin that will remain suspended, although the parties might agree upon certain aspects remaining in force (e.g. the payment of part of the remuneration); and (2) the new employment relationship between the loanee club and the athlete, which will establish its own terms and conditions and will remain active pending the loan.
– The loanee club will substitute the transferor club in the rights and obligations towards the athlete, and consequently, temporarily assume all powers and prerogatives coming under the condition of employer with respect to the athlete (i.e. direction, organization, control and disciplinary[111] etc.) but will also be responsible for the obligations such as the payment of the remuneration or guaranteeing the athlete right to effective occupation *inter alia* (article 11 para. 3 RD 1006/85) in accordance with the terms agreed.
– Furthermore, during the period of loan, both clubs will remain jointly and severally liable towards the athlete with regards to the fulfilment of all contractual and social security obligations (article 11 para. 3 RD 1006/85 and article 15 para. 3 CBA) and hence, the athlete will have the right to bring action against either club indistinctively.[112] This is a major difference with the loan system as provided in the FIFA RSTP.

  According to the jurisprudence of Spanish state courts,[113] the legal guarantee in article 11 par. 3 RD 1006/85 established in favour of athletes operates in two directions:

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[110] Vid. Art. 15 para. 3 of the professional football men's CBA. Available at: www.boe.es/diario_boe/txt.php?id=BOE-A-2015-13332. Consulted on 1 March 2020.

[111] Cf. J.L. Fraile Quinzaños, Las Cesiones temporales de los deportistas profesionales in *Régimen Jurídico del Deportista Profesional,* Palomar Olmeda, A. (coord.). Ed. Thomson Reuters, 2016, 198, 199 and 204. Professor Tomás Sala Franco seems to differ and is of the opinion that the prerogative to terminate the employment relationship remains exclusively to the club of origin. See footnote below T.Sala Franco, J. Arnanz Galache, I. López García, *El Futbolista Profesional*. Tirant lo Blanch, 2013. 102. So does Professor Remedios Roquetas Buj who also questions the right of the loanee club to terminate the employment contract with the player, vid. *Los deportistas profesionales. Régimen jurídico laboral y de Seguridad Social.* Ed. Tirant lo Blanch, 2011, 333.

[112] Cf. T. Sala Franco, J. Arnanz Galache,I. López García, *El Futbolista Profesional*, Tirant lo Blanch, 2013, 100.

[113] Cf. J.L. Fraile Quinzaños, *Las Cesiones temporales de los deportistas profesionales* in *Régimen Jurídico del Deportista Profesional,* A. Palomar Olmeda, ed., Thomson Reuters, 2016, 206.

(a) when the athlete leaves the club of origin and as a result of it, the loanee club jointly responds with the club of origin for any debt existing towards the athlete prior to the loan; and
(b) when the athlete re-joins the club of origin after the loan, and the latter also assumes responsibility for any salary or remuneration, compensation (e.g. for termination of contract without just cause) or others unpaid by the loanee club.
The parties, are however, free to deviate from the above rule and agree upon a limitation or even an extension of the joint responsibility in the loan agreement.[114] Indeed, clubs usually do address this matter in loan agreements.
By virtue of the principle of freedom of contract, the parties are allowed to delineate the limits of the obligations for each club in the loan agreement, but in lack of a specific agreement, the joint and severe responsibility extends to all the obligations born before and after the loan.[115]

– The loan agreement can end due to the expiration of the period of duration or prematurely (*ante tempus*) if the player terminates the employment contract with the loanee club or vice versa.
In cases where loan is terminated before the end of the initially agreed period, the employment relationship with the club of origin will survive and stand alone. Moreover, given the mandatory tripartite nature of loan agreements, in the interim, the athlete will not be able to sign with a third club unless the club of origin agrees.[116]
– The loan agreement can be made on a free basis or against the payment of a transfer fee. When the loan takes place against the payment of fee (be it a fixed amount or contingent on match appearances for instance), the athlete will be entitled to receive a share in the amount he/she individually agreed in the loan contract, or established in the collective bargaining agreement when this exists. In the case of professional football, the CBA establishes that the player will be entitled to receive at least fifteen per cent (15%) of the gross transfer fee (article 11 para. 4 RD 1006/85 and article 16 men's CBA).
The CBA (as opposed to RD 1006/85 that does not explicitly specify it) places the obligation of payment of this levy upon the loanee club).[117]
Furthermore, when the loan is concluded on a free basis, the CBA also grants the player the right to the "*amount resulting from dividing by twelve all the remuneration received from the Club/SAD in the previous immediate season, multiplied by one and a half times one hundred (1.5%)*". In practice, clubs address all these matters in the loan agreement so that the player

[114] Cf. T. Sala Franco, J. Arnanz Galache, I. López García, I. *El Futbolista Profesional*, Tirant lo Blanch, 2013, 101.
[115] Cf. J.L. Fraile Quinzaños, *Las Cesiones temporales de los deportistas profesionales* in *Régimen Jurídico del Deportista Profesional,* A. Palomar Olmeda, (ed.) Thomson Reuters, 2016, 204.
[116] *Idem,* 200 and 207.
[117] Vid. Art. 16 of the football CBA. Available at: www.boe.es/diario_boe/txt.php?id=BOE-A-2015-13332. Consulted on 1 March 2020.

acknowledges receiving this amount as included in the remuneration agreed with the loanee club.

Remarkably, nor the law nor the CBA expressly indicate whether athletes or players are allowed to waive their economic rights in the context of a loan agreement. The jurisprudence of state courts in similar cases however, indicates that, as a general rule, nothing impedes the athlete to waive his/her right to receive the share of the loan fee, if his/her consent is given freely and without vice (i.e. error, violence, threats, or wilful deception).[118] All Spanish legal scholars[119] seem to be of the same opinion.

– In the case of exchange of athletes between clubs, each one of them will be entitled to claim from their respective clubs of origins the amount equivalent to one month of his/her yearly remuneration, plus one-twelve of the quality and quantity complements perceived during the last year (article 11 RD 1006/85).
– Other important aspects to account for when entering into loan agreements are the obligations and rights of the clubs in case the player is injured during the loan (insurance policies, payment of salaries etc.); and, the rights of the clubs with respect to training compensation or solidarity payments.

On the other hand, compulsory loan agreements (article 11 para. 2) operate at the initiative of athletes when these have not been used during the precedent season in any official competition held in front of spectators.

The rationale behind this provision is to allow athletes to be able to compete guaranteeing their right to effective occupation. This type of loan nevertheless, remains residual as it is very difficult to materialize.

Indeed, a compulsory loan presupposes the existence of a tripartite agreement, and therefore, even in those situations where the player is legally entitled to impose his/her loan to a third club, the assignment to this third club cannot be performed without the mutual consent of the clubs and the player as to the economic conditions and others.[120]

The effectivity of this formula necessarily requires the existence of a third club that cannot be forced to enter into a loan nor to sign the player against his will.

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[118] See e.g. STSJ ICAN 3960/2000 (Makaay Case) regarding the waiver of a player of his economic rights in the context of a permanent transfer and the incidence of vitiated consent in the validity of the waiver.

[119] Cf. J.L. Fraile Quinzaños, Las Cesiones temporales de los deportistas profesionales in *Régimen Jurídico del Deportista Profesional,* A. Palomar Olmeda (ed.), Thomson Reuters, 2016, 212.

[120] Cf. J.A Sagardoy Bengoechea, and J.M. Guerrero Ostolaza, *El contrato de trabajo del deportista profesional,* Ed. Civitas, Estudios de Derecho Laboral 1991, 86.

4.3 Permanent transfers

Both the Royal Decree and the CBA distinguish between *temporary transfers* and *permanent transfers of professional athletes/footballers*, but whereas as seen earlier, temporary transfers have a specific regulation of its own; permanent transfers instead are regulated as a specific cause for the premature termination of the employment contract by mutual consent between the athlete and the club of origin.

Thus, the Royal Decree refers to permanent transfer of athletes in the second limb of article 13, *Termination of contract* (free translation):
"*The employment relationship shall terminate for the following causes: ... b) By mutual agreement of the parties. If the termination by mutual agreement had as its object the definitive transfer of the athlete to another club or sports entity, the agreement between the parties regarding the economic conditions for the termination will prevail; in the absence of an agreement, the compensation for the athlete shall not be less than 15 percent gross of the stipulated amount*".

Article 17 of the professional football CBA (and article 19 of the female CBA)[121] as the RD 1006/85 does, also refers to permanent transfers as a modality for the termination of employment contracts between players and clubs by mutual consent (free translation):
"*Article 17. Early termination of the contract due to permanent transfer.*
1. During the term of a contract, the Club/SAD and the Professional Football Player may agree to terminate the contract, provided that the former [club] has agreed with another club the permanent transfer of the contractual rights held over the Football Player, and provided that the latter consents, expressly, to said permanent transfer.
2. In this case, the permanent transfer agreement will be done in writing, and shall at minimum mention the participating Clubs/SADs, the price of the transfer, the express acceptance of the transferred Football player and their willingness to terminate the contract in force with the transferring Club/SAD.
3. The Footballer shall have the right to receive at least 15 percent of the price of said transfer, which must be paid by the Club/SAD acquiring the rights, in any case".

Additionally, in line with the regulation in the law, article 17 of Book V of LNFP General Regulation stipulates [free translation]that "*Clubs or SAD's can transfer to others* [clubs or SAD's] *the rights arising from the registration of their professional players under the conditions that they agree, always*

[121] The reading of the article regarding permanent transfers of footballers is practically identical in both CBA. The female CBA was not officially published at the date of writing the present chapter although already approved since 18 February 2020 by the Asociación de Clubes de Fútbol Femenino (ACFF) in representation of clubs; and the trade unions, Asociación de Futbolistas Españoles (AFE) and Futbolistas ON in representation of players.

departing from the termination of the original [employment] *contract and with the agreement of the player*".[122]

Furthermore, according to article 140 of the RFEF General Regulation, any player unilaterally terminating his/her employment contract with the club who pretends to be registered with another club will have to previously deposit the amount of the indemnity ("*buy-out clause*") agreed in the employment contract with the club of origin. In the case of players registered with the first and second A division, the dispositions regarding the termination of contracts set out in the agreement entered between the LNFP and AFE (i.e. the player's trade union) will be of application.[123]

As a side note it is also interesting to briefly refer to articles 27 and 28 of Book V of LNFP General Regulation, the change of ownership in the federative rights over a player will require the previous supervision of the La Liga as to whether there are or not third right ownership, in which case, the license in favour of the new club will not be issued until the new club deposits the amounts in La Liga or presents the authorization of the third club detaining rights.

According to García Silvero,[124] permanent transfers under Spanish law (i.e. RD 1006/85) present the following features:

– The permanent transfer of professional athletes *is legal* and therefore, as in the case of temporary transfers or loans, they don't contravene the general prohibition in employment law to assign employees to third employers.
– The transfer is a transaction of *private nature*, involving in both sides of the equation entities of private nature such as clubs or sports entities[125] (i.e. transfer of a footballer from club A to club B).
– The logic interpretation of article 13 leads to conclude that permanent transfers of professional athletes must always be *onerous* transactions. A club transferring an athlete to a third club will always receive a consideration, be it the price agreed between the clubs,[126] be it the default amount foreseen in the article. As opposed to loans, under Spanish law, the institution of permanent transfers cannot be construed as being free of costs, for in such cases it would amount to a simple termination by mutual consent between the club of origin and the

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[122] Cf. Art. 17, official version: "*Los Clubes o Sociedades Anónimas Deportivas pueden transferir a otro/a los derechos dimanantes de la inscripción de sus jugadores profesionales en las condiciones que convengan, siempre partiendo de la resolución del contrato originario y con la conformidad del jugador*". Available at https://assets.laliga.com/assets/2020/03/03/originals/2c306a7a2a248f150e3cda4271767649.pdf. Consulted on 1 March 2020.

[123] Available at https://cdn1.sefutbol.com/sites/default/files/pdf/reglamento_general_junio_2019.pdf. Consulted on 1 March 2020.

[124] Cf. E.A. García Silvero, *La extinción de la relación laboral de los deportistas profesionales*, Ed. Thomson Aranzadi, 2008, 91.

[125] See also para. 95 et seq. on the parties to the transfer agreement, in CAS 2016/A/4471 Abel Aguilar Tapias v. Hercules de Alicante FC, award of 2 February 2017.

[126] The amount for the transfer does not necessarily have to be money and can consist of other types of consideration such as for example, friendly matches or a share in a future transfer of the former club.

player and the subsequent conclusion of a new employment contract between the player and his/her new club.
– Permanent transfers can be structured as being unilateral (i.e. athlete/player moves from club A to club B) or reciprocal (i.e. exchange of athletes/players between clubs).
– Permanent transfers constitute a way *included in the special regulation of professional athletes to terminate employment contracts by mutual consent*.

The parties involved in a permanent transfer agreement, continues García Silvero,[127] will be on one side the transferor club, as holder of *the registration rights* of the player; on the other side, the new club, as the interested party in acquiring such rights; and finally, the football player whose consent must necessarily be obtained.

The law in Spain has configured permanent transfers in professional sport and in football in particular as veritable triangular transactions, and therefore, in order for a transfer to be effective it will need the consensus of all parties. Nevertheless, the agreements reached between the different parties involved in the transfer will always be of bilateral nature and hence, stand independent from one another:
– The *agreement between the transferor club and new club*, whereby the registration rights are transferred to the latter.
– The *agreement between the new club and the player*, materialized in the new employment contract.
– The *agreement between the transferor club and the player* consisting in the termination of the employment relationship with the former.

In addition to all of the above, in accordance with the disposition of the CBA (for both men and women's professional football), permanent transfer agreements must comply with the following formal requirements:
– They must be made in writing.
– They must identify the two clubs involved in the transfer.
– They must indicate the price of the transfer.
– They must also, reflect the express consent of the player to terminate the employment contract with the transferor club and his/her will to be transferred to the new club.

As mentioned in the introduction the General Regulation of the RFEF also includes dispositions touching upon permanent transfers. Hence, article 147 of the said regulation remarks as well, that the definitive transfer of a player must always depart from the termination of the employment contract between the player and his/her former club; that the line-up of the player will be subject to the fulfilment of the regulatory requirements; and that if the transfer is made against the payment of a fee, the player will always be entitled to a percentage of at least 15%.

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[127] Cf. E.A. García Silvero, *La extinción de la relación laboral de los deportistas profesionales*. Ed. Thomson Aranzadi, 2008, 92.

Similarly, nothing prevents the parties within the limits of the law,[128] from subjecting the validity of the termination of the employment contract *due to the transfer of the player to a third club* (i.e. permanent transfer) to the previous fulfilment of conditions such as the registration of the player with the new club, or the successful passing of medical examinations.

Finally, as in the case of loans, players being transferred from one club to another will be entitled to a share of the transfer fee of (in lack of a specific agreement) at least 15% of the gross amount[129] agreed between the clubs, the payment of which will correspond to the new club cf. article 17 of the CBA.

The problem appears when the transfer of the footballer has *international dimension*. The jurisprudence[130] of Spanish state courts has confirmed that the territorial and subjective scope of the CBA does not extend to third football clubs that are not members of the Liga Nacional de Fútbol Profesional.

The question that is still controversial is whether in cases with international dimension (where the CBA does not apply) the football player can or not, still claim his/her share of the transfer fee on the basis of article 13 a) of RD 1006/85 from either club. As anticipated, the jurisprudence has been contradictory in this particular point.

Legal scholars[131] have therefore, claimed for a reform of the norm, suggesting that the best solution would be to place the payment obligation as a general rule upon the "*selling club*", and that in cases of "*import*" of players, such percentage is added to the transfer fee and distributed to the player by his/her new club in Spain, so it is in any event the foreign club which is the party bearing the cost.

Another crucial aspect revolving around the right of the player to claim a share on the transfer fee is whether he/she can legally waive such right and if so, in what conditions. Two decisions; one concerning a transfer at national level handed down by Spanish courts; and another adopted by CAS concerning a transfer with international dimension are worth paying attention to in this respect.

– Sentencia del Tribunal Superior de Justicia de las Islas Canarias nº 3960/2000 of 20 November 2000[132] (known as the *Makaay case*) touches among other

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[128] i.e. purely potestative clauses that leave the validity of contracts to the discretion or arbitrariness of one of the parties won't be considered legal.

[129] García Silvero refers to potential problems in the determination of this amount when the consideration agreed between the clubs does not consist in the payment of a sum of money but rather in other formulas such as, friendly matches, a share in TV rights, or others. The author is of the opinion that in the price of the transfer for the purposes of Art. 13 RD 1006/85, extends also to these different kinds of considerations. Cf. García Silvero, E.A. *La extinción de la relación laboral de los deportistas profesionales*. Ed. Thomson Aranzadi, 2008, 95.

[130] *Idem* 117.

[131] *Idem* 119.

[132] Cf. J. Hervás, *A comprehensive comment to this decision can be read* in *La Jurisprudencia en el Deporte. Análisis de los casos más significativos* (A. Palomar Olmeda and M.M.Garcia Caba,), Difusión Jurídica. 2018. 87.

things, upon the possibility of players to waive their right to a share in a future transfer fee and the conditions to meet for such waiver to be valid.

In short, the Dutch international player Roy Makaay, claimed against CD Tenerife 20%[133] of the transfer fee which the latter had agreed with RC Deportivo de La Coruña in the summer transfer window of 1999, despite he had accepted a liquidation clause in the transfer agreement[134] ("*finiquito*") waiving all of his rights. According to the player, he acceded to include the liquidation clause under duress and the threat that CD Tenerife would not clear his registration with RC Deportivo de La Coruña.

Through a previous agreement the clubs had indeed conditioned the validity of the transfer to the player giving his explicit consent and admitting having no claims against CD Tenerife and so, the player had to submit to such requirements if he wanted to play for his new club.

In order to evidence his reservations, right before signing the final transfer agreement, the player declared in front of a public notary that his consent was vitiated and that he was waiving his rights under intimidation of his former club.

After analysing all the circumstances of the case, the Tribunal concluded that the transfer agreement could not be conditioned to the player signing the liquidation clause with his former club as this would render the validity of the transfer to sole will of one of the parties (i.e. the former club and its control over the issuance of the player´s licence).

Furthermore, the Tribunal determined that the player had no other option but to sign the document he was presented with as the start of the season was around the corner having little time to register him before the competent sporting bodies and obtaining the necessary licence to compete. According to the Tribunal the specific factual background created severe psychological pressure upon the player which intimidated and forced him to assume the waiver against his will in the conditions imposed by the former club.

The Tribunal also remarked that by forcing the player to waive his rights after his transfer had been agreed, the club acted in bad faith. Interestingly, the Tribunal also rejected the argument of CD Tenerife whereby the waiver of the player was the counterpart of the club waiving its right to receive the so-called "*buy-out clause*" in the employment contract. In the eyes of the Tribunal, after the parties had initially agreed to the transfer agreement, the employment relationship between the player and CD Tenerife ended and consequently, the latter no longer had a right to claim the "*buy-out clause*", as such prerogative

[133] Amount individually agreed in the player´s employment contract with CD Tenerife.

[134] The decision includes an in-depth dissertation on the diverse legal nature that *liquidation slips* can adopt under Spanish employment law as instruments whereby employers are released from their obligations towards employees and employment contracts are terminated; or instead construed as simple documents for the settlement of outstanding balances between the employer and the employee after the employment relationship has already ended.

could only be triggered in case of unilateral termination at the initiative of the player.

Therefore, all legal requirements under articles 1.265 (i.e. nullity of consent given under error, violence, duress or deceit) and 1.267 (i.e. violence and duress) of the Spanish Civil Code[135] were present and met and the liquidation clause in the transfer agreement nullified,[136] with the consequence that CD Tenerife had to reimburse the amount it received in excess (i.e. 20% of the transfer fee) from RC Deportivo de La Coruña to the player.

– In *CAS 2016/A/4471 Abel Aguilar v. Hércules de Alicante FC*[137] the debate circled around the possibility for the player who had been transferred abroad, to waive his rights under Spanish law, and the interplay of such waiver with alleged pressures received by his former club to forcing him accept the waiver by withholding the delivery of the ITC. It is very relevant to note that the two party appointed arbitrators are renowned and prestigious Spanish jurists.

The same day the player was transferred to French side Toulouse FC against a transfer fee of 1.800.000 euro, Hercules FC required the player to sign a waiver according to which the employment contract between them came to an end and the latter renounced to claim any other amount from the club. Initially the player however refused to sign it but still moved to his new club.

Shortly after, the player´s agent wrote Hercules informing that the player would not waive his right to 15% of the transfer fee provided in article 13 RD 1006/85, nor his monthly salaries for July and August 2013. The stance of the player led Hercules FC to withhold the delivery of the ITC putting pressure upon the player and his new club to cave in.

Eventually, the player signed the waiver and Hercules FC fulfilled with its TMS obligations. However, the player filed a claim against Hercules FC before FIFA claiming for the 15% of the transfer fee plus his salaries in arrear for July and August 2013. The DRC dismissed the claim considering that by signing the waiver the player had relinquished from any financial right against Hercules FC, and that the claim of 15% of the transfer fee had no contractual basis.

The player appealed the DRC decision before the CAS who also rejected the appeal on the following grounds:

"*75. The RSTP do not contain any provision governing financial consequences of the mutually agreed termination of an employment contract between a club and a player. Assuming that the Real Decreto is applicable to the present dispute (a question which can actually be left open, in view of the conclusion reached hereafter), its Article 13 a) specifically foresees the possibility for the parties to a labour relationship*

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[135] Available at: www.boe.es/buscar/act.php?id=BOE-A-1889-4763. Consulted on 1 March 2020.

[136] The decision was not adopted unanimously and contains a very interesting and elaborated dissenting opinion from one of the judges of the Tribunal.

[137] Available here: http://jurisprudence.tas-cas.org/Shared%20Documents/4471.pdf. Consulted on 1 March 2020.

to agree among themselves to any other allocation percentage of the transfer fee. The "15% gross of the agreed transfer compensation" appears to be a default amount set by the Real Decreto "in case no express agreement exists". In this regard, it is recalled that, in the past, the Player had accepted to renounce entirely to his rights under Article 13 a) of the Real Decreto, when he was transferred to La CorunÞa for the 2012/2013 season. In other words, it is possible for a player to waive his entitlement to a percentage of the transfer fee. This conclusion is crucial for the remainder of the Panel's analysis. If, as the Player had argued, the 15% compensation cannot be contractually waived, then similar contractual clauses will have to be consistently disregarded. For the reason mentioned above, this is not the case, and the Panel accepts that the Spanish Law at hand, the Real Decreto, provides for the possibility to deviate from the practice of paying 15% of the transfer fee to the Player. Article 13 a) is a default payment, which kicks in only when parties have not, through contractually means, provided otherwise". [emphasis added]

With regards to the alleged duress, the panel explained that since the FIFA RSTP does not contain any provision related to duress, Spanish civil law was to be applied in relation to this aspect, and after a detailed and careful analysis of the circumstances of the case concluded -conversely to the Makaay case above referred- that the player did not sign the waiver under fear of an imminent and serious threat. Interestingly (although *obiter dictum*), the panel analysed as well, the legality of the waiver under the lenses of article 341 of the Swiss Code of Obligations, understanding that the waiver complied with the requirement that both parties to the termination agreement make reciprocal concessions.

In practice, in order to avoid all of such problems, clubs will include in their transfer agreements that the percentage to which the player is entitled under the CBA and/or RD 1006/85 is included in and part of the remuneration of the player with his/her new club.

See e.g. Example of a clause in a transfer agreement between two first division Spanish clubs:

"The player declares that he has nothing to claim from any of the clubs involved in the transfer of the federative rights agreed herein, for any concept, including those referred to in article 17.3 of the LNPF-AFE CBA and in article 13 a) of the RD 1006/85, considering himself sufficiently compensated by the remuneration agreed between him and the [new club] under the contract to be signed between them, expressly stating that his economic interests derived from this transfer have been fully satisfied".

5. Termination of Contracts

The RD 1006/85 regulates the causes for the termination of employment contracts between professional athletes in article 13 transcribed below [free translation]:

"Article 13. Termination of contract. The employment relationship will terminate for the following reasons:

a) By mutual agreement of the parties. If the termination by mutual agreement had as its object the definitive transfer[138] of the athlete to another club or sports entity, the agreement between the parties regarding the economic conditions for the termination will prevail; in the absence of an agreement, the compensation for the athlete shall not be less than 15 percent gross of the stipulated amount.

b) Due to the expiration of the agreed period.

c) For full compliance with the contract.

d) Due to death or injury that produces total or absolute permanent disability or great disability in the athlete. The athlete or his beneficiaries will have, in these cases, the right to receive compensation, at least, of six-monthly payments if the death or injury were caused in the exercise of the sport. All without prejudice to the Social Security benefits to which they were entitled.

e) By dissolution or liquidation of the club or the corresponding sports entity, by agreement of the General Assembly of Members. In these cases, the procedure established in article fifty-one of the Workers Statute will be followed.

f) Due to the economic crisis of the sports club or entity that justifies a restructuring of the sports team, in accordance with the procedure mentioned in the preceding section. Likewise, due to a crisis of another type that prevents the normal development of the activity of the sports club or entity through the same administrative procedure.

g) For the causes validly stipulated in the contract, unless they constitute manifest abuse of law by the sports club or entity.

h) For dismissal of the athlete.

i) By the will of the professional athlete".

In addition to the above, article 45 of the CBA (men) also includes as cause for the termination of contracts the relegation of the team (free translation):

"Article 45. Termination of contracts/licenses due to relegation for non-sporting reasons:

It will be considered just cause for the termination of contracts and licenses signed by footballers under the scope of the present collective bargaining agreement, the relegation of the club or SAD due to administrative reasons, as well as the adoption of any measure that prevents said club or SAD from competing in the category that, according to the sports results, should compete.

The aforementioned right may be exercised solely and exclusively by the affected footballer, through AFE, within the non-extendable period of ten

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[138] The permanent transfer of athletes as cause of termination is studied in the precedent sub-chapter.

days from the date on which the aforementioned measure is adopted, and must formally notify the LFP, the RFEF and the club or SAD affected, their will to abandon the club or SAD for such reason.
The termination of the contract and the license for this reason will take place without prejudice to the footballer's right to demand the compensation that may be due to the impossibility of fulfilling the contract in the agreed conditions".

Each cause of termination in the law has its own intricacies:

– *Termination by mutual agreement*

The first of the termination causes in article 13 of the RD 1006/85 is the mutual agreement between the parties. In the same way a club and a football player can freely enter into an employment relationship, they can likewise walk out from it through mutual consent without any other reason than their agreement.

The only limit to the parties' freedom of pact is that the decision to terminate is not based on a waiver of legally guaranteed rights by the athlete or that their consent is vitiated.

There is no provision in the RD 1006/85 preventing the parties to express their consent to terminate in a tacit manner, however for obvious reasons, the vast majority of cases that terminate by mutual agreement take place by the signing of a specific termination agreement between the club and the player.

– *Expiration of the agreed period*

According to legal scholars,[139] the fact that this cause is explicitly mentioned in the law emphasises the temporary nature of employment relationships in professional sport in general and in football in particular,[140] be it in terms of a fixed duration of time, be in terms of a specific number of matches for which the athlete has been contracted. Indeed, as opposed to regular workers in other industries that seek for long term stability, professional athletes must be able to frequently negotiate[141] their contractual situation and move from one club to another given the short time of their careers.

Further to that, articles 14.1 (CBA men) and 16.1 (CBA women) on the duration of contracts, also remark that no formal notice shall be required to ascertain the expiration of the contract, although in these cases, athletes might be entitled to claim for an additional compensation from the club.[142]

Despite the mandatory temporary nature of contracts in professional sport, article 6 RD 1006/85 allows the possibility to extend the validity of the

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[139] Cf. E.A. García Silvero, *La extinción de la relación laboral de los deportistas profesionales,* Thomson Aranzadi, 2008, 132, 133.

[140] Vide. Art. 6 of RD 1006/1985 and 14.1 of the CBA (men) and 16.2 CBA (women).

[141] F. Rubio Sánchez, *El contrato de trabajo de los deportistas profesionales*, Ed. Dykinson, 2005, 186.

[142] Cf. art. 49.1c) Estatuto de los Trabajadores (i.e. 12 days per year of work).

employment contract for a new fixed term by means of agreement entered into by the parties after the termination of the period initially agreed.

Moreover, article 6 RD 1006/85 allows for alternative mechanisms for contract extension through collective bargaining agreements. However, to this day, articles 14.2 CBA (men) and 16.2 CBA (women) refer back to article 6 the RD 1006/85.

The termination of the contract due to the expiration of its period of duration might trigger in some cases the right of the former club to receive training compensation from the new club.[143]

– *Full compliance with the contract*

Scholars[144] are of the opinion that in order to understand the meaning of this cause of termination one needs to first look at article 6 of the RD 1006/85 that sets out the duration of employment contracts between professional athletes and clubs.

Thus, article 6 establishes that employment contracts will always be for a fixed period of duration. Such period can be materialized in terms of time (e.g. the contract will be valid until 30 June 2021) or alternatively, by identifying a certain number of sporting activities/events that jointly constitute a clearly identifiable unit within the corresponding sport (e.g. the contract will be valid for the season 2020/2021).

By referring to the full compliance with the contract, the RD 1006/85 is in fact covering those situations where the duration of the contract is fixed through the second option above.

– *Death or injury of the professional athlete*

When the death or an injury[145] (that implies the total or absolute permanent disability or major disability of the athlete) occurs in the exercise of the sport, article 13 let. d) RD 1006/85 establishes that the athlete or his/her heirs will have, the right to receive compensation, of at least equivalent to six months of remuneration, as well as any Social Security benefits to which they were entitled.

Remarkably, not any injury will put an end to the employment relationship but only those that occur during the life of the contract and affect the capacity of the athlete to perform his/her work in accordance with the specific definitions and terms of the law.[146]

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[143] Vid. Next sub-chapter on *National training compensation*.

[144] Cf. E.A. García Silvero, *La extinción de la relación laboral de los deportistas profesionales,* Ed. Thomson Aranzadi, 2008, 150.

[145] The term injury includes illness. Cf. E.A. García Silvero, *La extinción de la relación laboral de los deportistas profesionales*. Ed. Thomson Aranzadi, 2008, 153.

[146] Cf. Real Decreto Legislativo 8/2015 de 30 de octubre, por el que se aprueba el texto refundido de la Ley General de la Seguridad Social. Available at: www.boe.es/buscar/act.php?id=BOE-A-2015-11724. Consulted on 1 March 2020.

The respective CBAs for men and women footballers also regulate the compensations allocated for these events as long as they are a direct consequence of the practice of football under the discipline of a club or SAD.

Hence, article 34 of the men's CBA sets the compensation in the amount of 180.000 Euro for the season 2016/17 increased by the CPI for the following seasons during its period of validity.

On the other side, article 33 of the women's CBA instead, sets the compensation for the same cause in the amount at 60.000 Euros in case of death, and 90.000 euros in case of absolute disability. Still a long way to go.

– *Dissolution or liquidation of the club*

Scholars have criticized the confusion generated by reading letter e) of article 13 RD 1006/85, arguing that dissolution and liquidation are not two alternative or independent causes for the termination of contracts. The dissolution is always the first step toward the extinction of the legal personality of a company.[147]

Only after the dissolution is approved, the liquidation phase begins. It is in fact, technically speaking, impossible to liquidate a club or a company before having previously agreed to its dissolution. Therefore, it will not be necessary to wait until the club is liquidated to terminate the contract.

In any event, the rationale behind this paragraph is to include as cause for termination of employment contracts the cessation of existence of the club as a result of the relevant agreement of the General Assembly in that regard. The regulation of the required proceedings to undertake and the consequences behind this cause for termination are found in article 51 of the Spanish employment law, i.e. the Statute of Workers, and so is, the compensation that athletes (included footballers) will be entitled to receive in such cases (i.e. 20 days per year of work cf. art. 53.1).

It is important to keep in mind that not all cases of dissolution will necessarily imply the termination of the employment relationship. The dissolution of the club is undoubtedly necessary but it might not be enough in cases of succession of clubs due to e.g. mergers, transformation, acquisitions, or even the transmission to third clubs of the license to take part in a competition, where the new club might be obliged to assume former employment contracts.

Furthermore, article 104 of the RFEF General Regulation also establishes the obligation for newly incorporated clubs to pay the debts of disappeared clubs whenever the two clubs share any of the circumstances listed therein such as playing matches in the same stadium, having the same legal domicile, use the same or a similar crest, share directors or structure, or any other element likely to generate confusion.

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[147] Cf. E.A.García Silvero, E.A. *La extinción de la relación laboral de los deportistas profesionales*, Thomson Aranzadi, 2008, 174. See also the regulation of dissolution and liquidation of SADs, 181-184.

– *Economic crisis that justifies the restructuring of the team*

An economic crisis of a club can be generated for example by the unexpected relegation of the team to a lower division. Imagine that at the beginning of the season the club recruits high profile players all having important salaries and despite it the team ends up underperforming and relegates.

Understandably, the financial impact of the relegation might endanger the stability of the club and prevent it from covering the remuneration of the players for the following season unless it is able to renegotiate the terms of contract, or it prudently included a clause in the contracts whereby salaries are automatically reduced in case of relegation.

However, not every economic hardship will allow a club to make use of this option in the law to terminate an employment contract and the courts will not invoke it lightly even in cases of relegation.

The jurisprudence of Spanish courts has established certain parameters in order to make sure that clubs avoid relying upon this cause of termination indiscriminately, highlighting that other elements beyond the alleged *economic reasons to restructure the team* must be accounted. They concern the specific factual context in which the norm is to be applied and the employment relationship that is at stake.

In particular the following aspects will need to be individually considered and prove to successfully invoke it:[148]

a) The termination must be an adequate and proportionate means to overcome the bad economic situation of the club.
b) The club must have a plan for the recovery of the financial situation.

Lastly, letter f) of article 13 also refers to "*crisis of another type that prevents the normal development of the activity of the sports club or entity*".

The doctrine understands that these other types of crisis refer to cases of *force majeure* such as for example the suspension or cancellation of the competition.

The compensation received by a player affected by a proper and proven termination of contract based on economic reasons or crisis *of another type*, will be also of 20 days per year of work.

– *Causes validly stipulated in the contract*

This cause for the termination of contracts refers to the introduction in the employment contract of one or more conditions subsequent upon which the validity of the contract is made dependent. The condition must necessarily consist of a future and uncertain event for the parties in the sense of article 1114 and 1117 of the Spanish Civil Code.

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[148] Cf. E.A.García Silvero, *La extinción de la relación laboral de los deportistas profesionales*, Thomson Aranzadi, 2008, 174. See also the regulation of dissolution and liquidation of SADs, 187.

In order for a such condition to be valid under Spanish civil law, three requirements need to be met:[149]

a) They must be in the employment contract, which in the case of professional athletes must necessarily be concluded in written form cf. article 3.1 RD 1006/85.
b) They must be valid, excluding therefore, conditions that are deemed impossible, prohibited by the law or contrary to bonas mores cf. 1116 Spanish Civil Code.
c) They cannot constitute an abuse of rights by the club.

Amongst valid conditions subsequent are, e.g. conditioning the termination of the contract to the team remaining in a certain division; subjecting the validity of the contracts of the assistant coaches to the validity of the contract with the head coach; and, under certain conditions, also the successful passing of medical examinations.[150]

Purely potestative conditions will also be deemed null.

– *Dismissal of the athlete*

Letter h) of article 13 RD 1006/85 regulates the dismissal of the athlete by the club as a cause for the termination of contracts at the initiative of clubs. The main characteristic of the dismissal of a professional athlete is, as a general rule, the impossibility for the athlete to be reincorporated to the place of work in case of wrongful dismissal.

Further to the above, the RD 1006/85 does not identify which behaviours might amount to severe contractual breach that might justify the dismissal of the athlete.

In professional football, these faulty conducts are found primarily, in the dispositions of the CBA (Annex V of the men's CBA and Annex III of the women's CBA) both establishing the so-called "*General Regulation of the Disciplinary Regime*"[151] which must be observed by clubs and footballers playing for clubs' member of La Liga (i.e. the first and second division).

The General Regulation includes a comprehensive catalogue of offenses categorized as:

– *Minor offenses* (art. 4 CBA) such as, not informing the club of the change of domicile; lack of punctuality at two training sessions occurred within a month accumulating a delay of 20 minutes; or not carrying the ID or passport while travelling with the team as long it causes a prejudice to the club, *inter alia*.
– *Serious offenses* (art. 5 CBA) such as, committing three minor offences during the season; the first and second unjustified absence from work; or not informing the coach of an injury or illness; defamatory or malicious statements against the club, its officials, coaches or players, *inter alia*.

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[149] Cf. E.A.García Silvero, *La extinción de la relación laboral de los deportistas profesionales*, Ed. Thomson Aranzadi, 2008, 207.

[150] Even if contrary to Art. 18.4 of the FIFA Regulations on the Status and Transfer of Players.

[151] Clubs cannot establish through their internal regulations, harsher sanctions than the ones in the CBA.

– *Very serious offenses* (art. 6 CBA) such as, committing three serious offenses during the season; the third and subsequent unjustified absences from work; abandoning work without justified cause during an official match, if the player was able to continue taking part in it (sent off and injury are excluded); the continuous and voluntary decrease in the performance of normal or agreed work; or, the repeated consumption of recreational narcotic drugs or occasional consumption of any hard narcotic drugs, *inter alia*.

The dismissal of the footballer is foreseen as one of the sanctions that clubs can adopt in cases of very serious offenses (article 7.3.3 CBA[152]).

In addition to the provisions in the CBA, the dispositions in the Statute of Workers shall apply in subsidiary, informing and completing any lacuna in the CBA.

According to article 54.2 of the Statutes of Workers regulating the dismissal of employees due to disciplinary reasons establishes the following contractual breaches that might justify an employer to dismiss an employee [free translation]:

a) Repeated and unjustified absences or punctuality at work.
b) Lack of discipline or disobedience at work.
c) Verbal or physical offenses against the employer or the people who work in the company or the relatives who live with them.
d) The breach of contractual good faith,[153] as well as the abuse of confidence in the performance of work.
e) The continuous and voluntary decrease in the performance of normal or agreed work.
f) Habitual drunkenness or drug addiction if they have a negative impact on work.
g) Harassment based on racial or ethnic origin, religion or belief, disability, age or sexual orientation, and sexual or gender-based harassment of the employer or people who work for the company.

The dismissal of a footballer due to disciplinary offences, as well as the imposition of any other sanction, will have to strictly follow the procedure established in article 9 of the CBA in order to guarantee the right of the player to be heard and defend him/herself in front of any accusation of wrongdoing.

The football player's trade union (AFE) shall be mandatorily informed of the procedure from the beginning of it. The relevant decision will be communicated to the football player in written and will inform him of the facts that motivate it and the date from which it is effective.

The football player shall have the right to contest the decision of the club to dismiss (or to sanction) him or her before the labour state courts in accordance with the provisions of the law. The time limit to submit the claim in state courts is

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[152] Available at: www.boe.es/diario_boe/txt.php?id=BOE-A-2015-13332. Consulted on 1 March 2020.

[153] Conducts that are likely to violate the obligation of contractual good faith: Use a false passport to take part in a competition as if the athlete had EU citizenship; failure to inform the new club of precedent disciplinary sanctions; and possibly, doping offences.

of 20 working days since the day of dismissal, or sanction (cf. art. 59.3 of the Statute of Workers).

The effects of the dismissal are regulated in article 15 para. 1 and 2 RD 1006/85 and these will depend on whether the judge deems the dismissal unfair, or fair.

The dismissal will be unfair when the club failed to meet the formal requirements or if the player's conduct is not sufficiently severe to justify his/her dismissal. In such case the athlete will be entitled to compensation according to the terms agreed in the contract or in accordance with article 15.1 below.

The dismissal will instead be deemed fair, if the club is able to demonstrate that the facts imputed to the player for his/her dismissal are true and amount to a very serious offense. In such case the athlete will not be entitled to compensation cf. article 15.2.

Conversely, the club might be entitled to claim compensation for damages in the amount agreed in the employment contract, or in absence of it, the amount freely established by the judge.

Article 15 RD 1006/85 [free translation]:

"*Art. 15. Effects of the termination of the contract by dismissal of the athlete.*

One. – In the event of unfair dismissal, without readmission, the professional athlete will be entitled to compensation, which, in the absence of an agreement, will be established by the judge, in at least two monthly payments of their periodic remuneration, plus the corresponding proportional part of the quality and quantity increases received during the last year, prorating in months the periods of time less than one year. For its calculation, the specific circumstances will be weighed, especially the remuneration not received by the athlete due to the early termination of his contract.

Two. – The dismissal based on serious contractual breach of the athlete will not give him/her the right to any compensation. In the absence of an agreement in this regard, the Labour Jurisdiction may, where appropriate, agree on compensation in favour of the sports club or entity, depending on the economic damages caused to it".

There is a third option that, even if not mentioned in the RD 1006/85, it is according to the doctrine[154] fully applicable to employment relationships in professional sports. This third option consists in *the dismissal being considered null*.

Following article 55.5 of the Statutes of Workers, a dismissal will be null when the reason behind it is discriminatory under the Spanish Constitution or the law; or it is made in violation of the fundamental rights and public liberties of

[154] Cf. E.A. García Silvero, *La extinción de la relación laboral de los deportistas profesionales*. Ed. Thomson Aranzadi, 2008, Ed. Thomson Aranzadi, 2008, 224-227.

workers. Unquestionably, one of these situations would be dismissing a female footballer for being pregnant. To this effect, article 39 of the women's CBA explicitly includes provisions protecting footballers in cases of pregnancy.

Although highly discussed and criticized by the doctrine, the main consequence under the law of a null dismissal is the readmission of the worker back in his/her place of work and the payment of all accrued remuneration in the interim, which at all lights, does not seem fit or find purpose in professional sports, let alone in professional football, where employment contracts are by nature, temporary.

– *Will of the professional athlete*

The termination of contract at the initiative of the athlete is regulated in article 16 RD 1006/85 as follows:[155]

> *"Art. 16 Effects of the termination of contract due to the will of the athlete: One. – The termination of the contract due to the will of the professional athlete, without fault of the club, will give the latter the right, where appropriate, to a compensation that, in the absence of an agreement in that regard, will be established by the Labour Jurisdiction depending on the circumstances of sporting nature, the damage that has been caused to the club, the reasons for the termination and other elements that the judge may consider appropriate.*
>
> *In the event that the athlete, within one year from the date of termination, signs with another sports club or entity, these will be subsidiary responsible for the payment of the mentioned pecuniary obligations.*
>
> *Two. – The termination of the contract at the initiative of the professional athlete, based on any of the causes indicated in article 50 of the Workers Statute, will produce the same effects as an unfair dismissal without readmission*".

Article 16 distinguishes between two possible situations.[156]

The first, in art. 16 para. 1, where the athlete unilaterally decides to put a premature end to the employment contract *without fault of the club*. The

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[155] Art. 16, official version: "*Efectos de la extinción del contrato por voluntad del deportista: Uno.– La extinción del contrato por voluntad del deportista profesional, sin causa imputable al club, dará a éste derecho, en su caso, a una indemnización que en ausencia de pacto al respecto fijará la Jurisdicción Laboral en función de las circunstancias de orden deportivo, perjuicio que se haya causado a la entidad, motivos de ruptura y demás elementos que el juzgador considere estimable. En el supuesto de que el deportista en el plazo de un año desde la fecha de extinción, contratase sus servicios con otro club o entidad deportiva, éstos serán responsables subsidiarios del pago de las obligaciones pecuniarias señaladas. Dos.–La resolución del contrato solicitada por el deportista profesional, fundada en alguna de las causas señaladas en el artículo 50 del Estatuto de los Trabajadores, producirá los mismos efectos que el despido improcedente sin readmisión*". Available at www.boe.es/buscar/act.php?id=BOE-A-1985-12313. Consulted on 1 March 2020.

[156] Vid. R. Roqueta Buj, R. *Los deportistas profesionales. Régimen jurídico laboral y de Seguridad Social.* Ed. Tirant lo Blanch, 2011, 333.

doctrine[157] understands this provision as the transposal of the fundamental right of any employee to resign to the specificities of professional sport.

The article aims at striking the right balance between the right of the athlete to resign during the life of the contract, and the interest of clubs to retain its best talent by the way of economical compensation, be it, in the amount previously agreed between the parties (popularly known as *buy-out clause)*; be it -in the lack of agreement- in the amount determined by the judge.

The termination of the contract by the athlete under this first limb will therefore produce immediate effects (*ad nutum*). It is not necessary, as opposed to the termination based on cause (art. 16.2), the intervention of the judicial authority to ascertain the end of the employment relationship.[158] Nevertheless, as mentioned, the intervention of the judge might be required, in order to determine the consequences of the termination if the parties did not agree beforehand in the employment contract, upon the amount of compensation to be paid by the athlete.

The legal nature of the so-called "*buy-out clauses*" has been the object of intense doctrinal debates as to whether they must be construed as a penalty for breach of the employment contract; or instead, whether they constitute a payment that entitles the athlete the use of the right to put a premature end to the employment relationship.

García Silvero[159] concludes that when opting for terminating a contract prematurely without any fault of the club, an athlete makes use of a legally protected right to walk out of the contract, and that accordingly there is no breach of contract from his/her side under the Spanish legislation.[160]

To conclude the analysis of the first par. of article 16 it is likewise important to highlight that if the player signs a new contract within a year from the termination, his/her new club will be liable in subsidiary. Moreover, in the case of clubs that are members of La Liga (i.e. the first and second A national divisions), the new club will not be able to obtain the required validation of the player's licence from la Liga until it proofs the amount has been duly paid or deposited cf. article 2.2. of the General Regulation LNFP.

On the other hand, the second paragraph of article 16 regulates the termination by the athlete based on a previous contractual breach of the employment contract by the club i.e. one of the situations considered to be *just cause* described in article 50 the Workers Statute such as a) substantial change of the working conditions, b) the lack of payment of the agreed remuneration or c) any other

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[157] Cf. García Silvero, E.A. *La extinción de la relación laboral de los deportistas profesionales*, Ed. Thomson Aranzadi, 2008, 238.

[158] *Idem,* 239. Despite the above, Art. 2.2. of the General Regulation LNFP *in fine*, requests a judicial decision confirming the unilateral termination of contract in cases where the employment contract does not include a pre-established compensation.

[159] *Idem,* 254.

[160] A different discussion would be whether in case of a football employment dispute with an international dimension, such termination could, under the dispositions of the FIFA RSTP, be deemed as being without just cause and hence, potentially trigger the effects under Art. 17 FIFA RSTP (e.g. the imposition of sporting sanctions on the player and/or his/her new club).

serious breach by the club of its contractual obligations except in cases of *force majeure*[161] as for example depriving the athlete of his/her right to effective occupation.

This second avenue requires the intervention of the judge in order to confirm the termination of the contract and the consequences of the termination will be the same as the ones provided in article 15 for cases of unfair dismissal explained above.

6. National Training Compensation

In Spain, the so-called training rights are regulated in article 14 of the RD 1006/85. This circumstance alone implies that the subjective scope of application is limited to professional athletes[162] in their relationship with training clubs. Additionally, as explained in detail in section 2, the first issuance of a professional licence for a football player will also accrue solidarity payments in favour of the previous training clubs.

Thus, article 14.1 reads as follows [free translation]:

> *"Art. 14. Termination of the contract due to the expiration of the agreed time.*
>
> *One. – In the event that after the termination of the contract due to the expiration of the agreed time the athlete agrees to a new contract with another club or sports entity, by means of a collective bargaining agreement, a compensation for preparation or training may be agreed, corresponding to the new club its payment to the [club] of origin*".

The law does not mention the rationale of the training rights, although it is evident that the objective is to compensate the investment and efforts of the club of origin in the education of the player from which his/her new club will benefit. Tellingly, the amounts received by the educating club will in turn help it to develop new players.

Remarkably, the law regulates training rights as an option (not an obligation) that will necessarily have its source in a collective bargaining agreement[163] agreed between the respective athlete's trade unions and the clubs. Hence, in lack of a collective bargaining agreement specifically regulating training rights, athletes will have absolute freedom to move from one club to another without the new club having to pay any amounts to the club of origin.[164]

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[161] Read the complete Art. 50 of the Statute of Workers.

[162] Some sports federations (included the RFEF) have also extended training rights to amateur players (vid. Art. 118 of the RFEF General regulation) on the basis of the Royal Decree 1835/1991 of Spanish Sports Federation allowing to implement protective measures in favour of clubs training athletes.

[163] Vid. P. Fernández Artiach, *Los derechos de formación deportiva* in *Régimen Jurídico del Deportista Profesional*. A. Palomar Olmeda, (ed.) Thomson Reuters, 2016, 111.

[164] The parties are nevertheless, free to determine through individual pact, amounts to be paid as training compensation. In this case however, the player would not be entitled to a percentage of the amounts unless they agree to it in the transfer agreement. Vid. Roqueta Buj, R, Régimen jurídico de

Two conditions are therefore required under the law to trigger training rights (1) the period of duration of the contract agreed between the athlete and the club expires[165] and subsequently, (2) the athlete enters into a new contract with a new club.

Further to that, paragraphs 2 and 3 of article 14 RD 1006/85 regulate in a rather general manner cases with international dimension, where an athlete comes from or goes to a foreign club and refers to criteria of reciprocity with the respective countries. In these cases, however, it seems evident that the scope of a collective bargaining agreement existing for a particular sport in Spain cannot extend or apply to foreign clubs. Therefore, the doctrine[166] coincides that in practice the parties will need to rely upon the regulations adopted by International Federations.

Beyond the general legal framework established by the law, in order to understand the specific regulation of this institution in professional sports one needs to focus the attention to the dispositions of the respective CBAs which in the case of football are found in article 18 of the men´s CBA and article 20 of the recently approved women´s CBA.[167] Both articles have in essence, an identical reading.

Below are the main features of training compensation in Spanish professional football under the provisions of the CBAs currently in force:

a) The right to receive training compensation belongs to the club of origin only if the two conditions indicated in article 14.1 of the RD 1006/85 are cumulatively met: (1) *the termination of the player´s employment contract*[168] *due to the expiration of the period of duration* and (2) *the signing of a new employment contract with a new club*.[169]
b) The club of origin is entitled to freely determine the amount it wants as training compensation from the new club[170] and will have to indicate it in the "Compensation lists".

   To this effect, the club shall inform the player, the LNFP (the league) and the AFE (player´s trade union) – in the case of men's football –, and the joint committee c/o the ACFF[171] – in the case of women's football –, on or before

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los deportistas profesionales y otros agentes del deporte (II) in *Derecho Deportivo, Legislación, Comentarios y Jurisprudencia*" A. Palomar Olmeda and C. Pérez González, (ed.) Tirant lo Blanch. 2013, 466.

[165] Vid. Art. 13 let. b) of the RD 1006/85.

[166] Vid. P. Fernández Artiach, Los derechos de formación deportiva in *Régimen Jurídico del Deportista Profesional*. A. Palomar Olmeda, (ed.), Thomson Reuters, 2016, 122.

[167] The women´s CBA was agreed on 18 February 2020 between the ACFF (club´s representatives) and the football player´s unions (AFE and Futbolistas ON).

[168] Training rights will therefore not apply to players under 16 years of age, who according to Spanish law, are not allowed to sign employment contracts. Vid. R. Roqueta Buj, Régimen jurídico de los deportistas profesionales y otros agentes del deporte (I) in *Derecho Deportivo, Legislación, Comentarios y Jurisprudencia*", A. Palomar Olmeda and C. Pérez González, Tirant lo Blanch. 2013, 373.

[169] Cf. Art. 18.1 CBA (men) and Art. 20.1 CBA (women).

[170] *Ibid.*

[171] Asociación de Clubes de Fútbol Femenino. www.asociacioncff.com.Consulted on 1 March 2020.

1st of March of the season where the contract of the player is set to expire of his/her inclusion in the "Compensation lists" and of the amount fixed as training compensation.[172]

In case the player moves to a foreign club the exceptions in articles 18.10 (men CBA) and 20.10 (women CBA) will apply). See letter i) below.

c) Clubs cannot include players turning or being over 23 years old[173] on 30 June of the year when the club intended to include them in the "Compensation lists". In case the player moves to a foreign club the exceptions in articles 18.10 (men CBA) and 20.10 (women CBA) will apply). See letter i) below.
d) Within five days from signing a professional player registered in the "Compensation lists" the new club shall present the employment contract before the LNFP (male CBA) or the RFEF (female CBA) along with the proof of payment of the established training compensation.[174] Employment contracts must therefore, mandatorily include a condition precedent,[175] subjecting their validity to the payment of the training compensation in the above-mentioned deadline.
e) A player included in the "Compensation lists" that does not sign with a new club, will have the right to continue with the club of origin for one additional season in the same terms of the expired contract for the precedent season. Additionally, his/her remuneration will increase by 7% of the amount fixed in the compensation list plus the Consumer Price Index (CPI) of the previous twelve months.[176]
f) The player will have to make use of such right at least 25 days before the day of the first match of the official competition.[177] The doctrine seems to be divided as to[178] whether after the new extension of contract expires, so does the right of the club of origin to claim training compensation.
g) Players included in the "Compensation list" signing with a new club will be entitled to fifteen (15%) per cent of the compensation once the employment contract enters into force.[179]
h) Clubs shall not be allowed to include a player in the "Compensation list" with whom they have overdue payables at the moment he/she is included or during the time he/she is in the list. In this last case, the club will forfeit any right to claim training compensation.[180]

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[172] Cf. Art. 18.2 CBA (men) and Art. 20.2 CBA (women).
[173] Cf. Art. 18.3 CBA (men) and Art. 20.3 CBA (women).
[174] Cf. Art. 18.4 CBA (men) and Art. 20.4 CBA (women).
[175] Cf. Art. 18.5 CBA (men) and Art. 20.5 CBA (women).
[176] Cf. Art. 18.6 CBA (men) and Art. 20.6 CBA (women).
[177] Cf. Art. 18.7 CBA (men) and Art. 20.7 CBA (women).
[178] Vid. P. Fernández Artiach, *Los derechos de formación deportiva* in *Régimen Jurídico del Deportista Profesional,* A. Palomar Olmeda, (ed), Thomson Reuters, 2016, 130.
[179] Cf. Art. 18.8 CBA (men) and Art. 20.8 CBA (women).
[180] Cf. Art. 18.9 CBA (men) and Art. 20.9 CBA (women).

i) If a player included in the "Compensation list"[181] by a club member of the LNFP signs with a foreign club that falls out of the scope of applicability of the CBA, the club of origin shall in any case have the right to:
   – Maintain the player in the "Compensation list" for one additional season with the same amount, in which case the club shall notify the player, the LNFP and the AFE before 1st of March of the previous immediate season.
   – The Spanish club entitled to compensation will not be obliged to reintegrate the player once the term of 25 days prior to the first day of the start of the official competition expires, but will still have the right to receive the training compensation set out in the "Compensation list" if the requirements are met.

j) If during the season when the player is still included in the "Compensation list" he/she returns and signs for a club member of the LNFP, this latter will have to pay the (Spanish) club of origin that included him/her in the aforementioned list, the amount fixed.[182]

   The doctrine is of the opinion that this last disposition is meant to dissuade clubs from entering into bridge transfer agreements with third foreign clubs in order to circumvent the payment of the national training compensation.

   At this point it is necessary to remind that foreign clubs are not subject to the CBAs, but instead are subject to the norms set forth in the FIFA Regulations on the Status and Transfers of Players, and that the amount of training compensation calculated under the international regulations could turn out to be much less than the amount fixed by the club of origin in the "Compensation Lists". And this is precisely what the CBA pretends to avoid with this last provision.

Criticism has been raised by legal scholars against the regulation of training rights in Spain:[183]

– Allowing the club of origin to establish the amount of training compensation at its free will can hamper (in extreme cases) the right of players to freely choose their profession protected by article 35.1 of the Spanish Constitution. Legal scholars thus, assimilate the fixing of a very high amount to a *de facto* resurgence of the infamous right of retention.[184]
– The amount fixed by the club of origin does not necessarily reflect the costs incurred by the latter in the training of the player.
– If the aim of training rights is to compensate clubs training players then clubs should only be allowed to include in the Compensation Lists undergoing those

[181] Vid. Art. 18.10 CBA (men) and Art. 20.10 CBA (women).
[182] Cf. Art. 18.11 CBA (men) and Art. 20.11 CBA (women).
[183] Vid. P. Fernandez Artiach, *Los derechos de formación deportiva* in *Régimen Jurídico del Deportista Profesional*, A. Palomar Olmeda (ed), Thomson Reuters, 2016, 133-134.
[184] Vid. R. Roqueta Buj, *Régimen jurídico de los deportistas profesionales y otros agentes del deporte (II)* in *Derecho Deportivo, Legislación, Comentarios y Jurisprudencia*", A. Palomar Olmeda and C.Pérez González, (ed.,), Tirant lo Blanch, 2013, 467.

players that are effectively in their period of formation and not to those that are already trained. The CBA, similarly to the FIFA RSTP, has adopted an objective approach towards establishing the end of the period of formation, although without referring to the exception in the FIFA RSTP allowing the new club to overturn the regulatory presumption regarding the end of the period of formation.[185]

– Experience shows that in lack of a specific regulation of training rights through CBAs, players have benefited from longer contracts and have had higher wages.

7. Judicial Bodies

7.1 Social Courts and Tribunals

The competence over any disputes which arise from this relationship between the worker/athlete and the employer/club (classic examples of these are dismissals, unilateral contract terminations at the athlete's will or claims for amounts in default) shall solely be dealt with by the social courts and tribunals, as expressly laid down by article 19 of the Royal Decree.

This article states that (free translation) "*Any disputes which may arise between professional athletes and their clubs or sports entities resulting from their employment contract shall be the competence of the labour jurisdiction*", without it being possible to resort to arbitration mechanisms in order to resolve disputes within sports federations, professional leagues or other sports bodies.

7.2 The High Council of Sport

As provided by the public law in Spain, the High Council of Sport, as we have analyzed in sections 1 and 2, is the competent body to resolve from the legal point of view the conflicts related to the registration of players that arise before the RFEF and before the LNFP. Its resolution finishes the administrative via and it is possible to file an appeal before the contentious-administrative Courts.

7.3 RFEF Jurisdictional Committee

As provided by article 41 of the Real Federación Española de Fútbol's (RFEF) General Regulation, the Jurisdictional Committee is responsible for dealing with and resolving any issues, claims or complaints that are not of a disciplinary or competition-related nature that are raised or result from the natural or legal persons that make up the national federation organisation, as well as by intermediaries registered at the RFEF concerning the transactions they register at the RFEF in

[185] Vid. FIFA RSTP Annex 4, Art. 1 "*unless it is evident that a player has already terminated his training period before the age of 21*".

accordance with the RFEF's Intermediation Regulation, without detriment to the powers held by the competent jurisdiction.[186]

The Jurisdictional Committee does not analyse or resolve any claim that has already been heard and resolved by any other sports bodies, like, for instance, but not only the Joint Committees ("Comisiones Mixtas").

Special mention should be made to article 49 of the RFEF General Regulation, which is devoted to the enforcement of the Committee's rulings and envisages that it may resolve on the following matters to ensure its resolution's effectiveness:

a) Not providing the federation's services;
b) Prohibiting the organisation and holding of matches and competitions, along with participation in them, unless they are official;
c) Forbidding the issuance and/or renewal of the licences of footballers, managers or any other technical staff.
d) Any other matters which are not contrary to the Articles of Association or regulations that are appropriate for the effective fulfilment of the resolution or obligation in question.

It is of interest to note that, according to article 50 of the General Regulation, the actions which may be carried out under the Regulation shall have a statute of limitations of six months from the date the events in question come about, apart from economic issues, in which case the statute of limitation is of two years, counting from the day following the date the right to receive such rights come into effect.[187]

7.4 LaLiga's Licensing Committee

Any disputes involving clubs and sports corporation which arise from the processing of provisional licences or their prior approval to compete in the professional competitions organised by the LFP are resolved by the so-called "Licensing Committee".

For such purpose, the LNFP General Regulation includes Book IX, which is solely devoted to governing said procedure. The Regulation provides for the setting up of a Licensing Committee as the body entrusted with definitively resolving any disputes which may arise between the LFP's members having to do with the processing of provisional licences or their prior approval to take part in professional competitions.[188]

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[186] The Committee is made up of three members, who are law graduates and appointed by the President of the RFEF, who likewise determines whether it should also deal with the competitions of the National Third Division, the National Youth League and the Third Division.

[187] The statute of limitations shall only be interrupted by exercising the relevant actions and may be waived implicitly, considering as such the fact of not having invoked it as an exception.

[188] The members of the Committee are appointed by LFP's Executive Committee at the President's proposal and should be law graduates having at least six years' professional experience. Their terms of office shall last for two sports seasons.

As far as the procedure is concerned, the clubs must give the LNFP notice of the existence of a dispute, provided it necessarily meets the following two conditions:

(i) the dispute concerns the processing of provisional licences or the prior approval thereof to compete in professional competitions; and
(ii) the dispute affects two or more clubs and/or sports corporations affiliated to the LNFP.

The procedure is initiated at the behest of the President, the Executive Committee, the Legal Counsel or any affiliated club or sports corporation having a direct interest in the matter. The Legal Counsel shall draft the dispute's resolution within fifteen days at most from the date the procedure was initiated. An appeal against the resolution may be lodged before the Licensing Committee within two days at most, counting from the day following the date notice of the dispute's resolution was served.[189] The Licensing Committee shall draft the relevant resolution within a month at most from the date the appeal was lodged.[190]

If the dispute concerning the processing a provisional licence should come about prior to the end of any of the footballer registration periods set forth by the Regulation and it is not possible for the Licensing Committee to hand down a resolution before the end of said periods, the applications for registration shall be construed to have been submitted within the time limit, though they shall not be processed until the relevant resolution is issued.

8. Conclusions

The legal regime of the national transfers of football players in the Kingdom of Spain presents specific characteristics with respect to the existing system in other countries.

Indeed, as it has been analysed, in Spain the sports and football rules regarding national transfers co-exist with the public and the labour law, which causes, on more occasions than desired, conflicts between these rules.

In addition, from a legal and a logical point of view, it seems unquestionable that there is an excessive intervention of the Public Administration in this field. This is the case, for example, when the RFEF denies the registration of a player, because the footballer has the possibility to appeal to the High Council of Sport and, then, it is possible to file an appeal before the Courts.

In a different order, the RD 1006/85, and its predecessor RD 318/81, settled very solid foundations for the modernization of football in Spain by

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[189] If no appeal is lodged against the Legal Counsel's resolution, notice of the resolution shall be given to the RFEF in order to attempt to attain the necessary coordination to ensure the effectiveness to said decision.

[190] Should a month elapse since the date the procedure was initiated without the Licensing Committee issuing a ruling, it shall be construed that the claim has been dismissed. Any resolutions handed down by the Licensing Committee shall be deemed definitive.

recognizing the long-time requested condition of workers to all professional athletes. But 35 years have passed already and the sports industry has evolved beyond the borders of our beloved country to become an international phenomenon with a more and more sophisticated legal landscape implemented by international federations aiming to standardizing the applicable rules at a global level. And this reality cannot be ignored.

The referred regulatory interventionism is probably more evident in football than in any other sport. After the *Bosman* ruling[191] in 1995 international mobility of football players skyrocketed. FIFA could not, and did not, remain passive in aligning its international transfers regulations to the European Court of Justice ruling. Such process[192] was not easy nor short and took place in dialogue with the European Commission, which eventually, after much negotiation, fructified in the 2001 version of the FIFA *Regulations for the Status and Transfers of Players*. The FIFA RSTP has been – lately more than ever – in constant revision through the years, leading up to its latest version, which at the time of writing this paper, is the March 2020 edition.

The RD 1006/85 instead has not been modified since its approval. And truly by simply reading the RD 1006/85, one could say, and the authors would subscribe, that the solutions found in it to strike balance between the labour rights of professional athletes and the interest of clubs in protecting their federative rights, strongly inspired the FIFA regulations now in place. But as good as the RD is, no rule is immune to the passing of time and the sports industry in 2020 has little to do with the reality in 1985. For all these reasons scholars and professionals of the law have called for its revision.

In our particular view, amongst the most urgent revisions stand out the following:

– Clarify the subjective scope of application of the RD 1006/85 and whether this must extend to coaches, national coaches and other sports-related professionals or not, such as physical trainers, sports directors or referees.
– Update the training compensation system in article 14 which is completely inoperative and its use remains very residual.
– Clarify once and for all articles 11 par.4 (i.e. loans) and 13 a) (i.e. termination due to the athletes' definitive transfers) in order to identify which club is obliged to pay the player his/her right to the 15% share in of the loan/transfer fee, and the incidence of these dispositions in the context of international transfers.
– Reassess and update the causes for and the consequences of the termination of contracts, especially if the subjective scope of the RD extends to coaches or other sports-related professions.
– Acknowledge the role and importance of sports corporations (SADs) and professional leagues.

[191] European Court of Justice C 415/93.
[192] F. de Weger, "*The Jurisprudence of the FIFA Dispute Resolution Chamber*", 2nd Edition, Ed. Springer, 6 and ff..

NATIONAL TRANSFERS IN THE UNITED STATES: FOCUS ON MAJOR LEAGUE SOCCER

by *Nicole A. Santiago*[*]

1. The National Framework

Perhaps a sensible starting point in the discussion of the structure of this particular sport in the United States is a brief consideration on nomenclature. A few years ago, Stefan Szymanski wrote about the origin of the word and its roots in the phrase "Association football," an English concept, as well as the rest of the world's largely open rejection of the use of the term "soccer" to refer to the most commonly-played sport in the world.[1] This particularity in the sport's name in the United States is reflective of numerous other particularities as to how football, or for purposes of this chapter, soccer, operates in the United States relative to other countries of the world, with particular emphasis on the subject from the point of view of Major League Soccer.

1.1 The Structure of Football in the United States

The basic framework of the sport is roughly the same as can be found in any other country with organized football. The United States Soccer Association ("US Soccer") is the national governing body of soccer in the US, and is a member of CONCACAF and FIFA. US Soccer sanctions the various professional and amateur divisions of the sport within the country, in addition to being responsible for enforcing the FIFA rules and regulations, organizing national tournaments such as the Lamar Hunt US Open Cup, managing the youth, men's and women's national teams, and managing player registrations.

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[1] S. Szymanski, "*It's Football not Soccer*", University of Michigan (May 2014), available at: http://ns.umich.edu/Releases/2014/June14/Its-football-not-soccer.pdf.

However, unlike the national association framework found in the vast majority of countries across the globe, one cannot speak of soccer in the United States without speaking about soccer in Canada as well. Despite the fact that each country has its own national association (US Soccer and the Canadian Soccer Association, or the "CSA"), both of these national associations are closely linked due to the way in which the professional side of the sport is organized.

Major League Soccer ("MLS") is the first division of professional soccer in both the US and Canada. Though the league's humble beginnings in 1994 only included a handful of US-based teams, it eventually expanded to incorporate three Canadian outfits as well. This creates a number of interesting scenarios when considering intra-league transfers, which shall be developed in further detail below, but it is fair to say that a discussion of national transfers in the US would be incomplete without due consideration for the top flight's dual nationality, so to speak.

This dual nationality also extended to the second division up until very recently. The United Soccer League ("USL") Championship, the current second division professional league and former third division professional league, also spanned both countries, though the last of its Canadian members ceased operations in 2019.

Conversely, the third professional division in the United States still includes one Canadian team, though it is interesting to note that US Soccer provisionally sanctioned two separate third division leagues in 2019, USL League One (which spans the US and Canada) and the National Independent Soccer Association ("NISA").

There is no officially sanctioned lower division beyond the third division of US Soccer, though there are a number of semi-professional and amateur leagues in operation. On the amateur side, US Soccer recognizes the United States Adult Soccer Association ("USASA") as one of its members, which in turn has a number of affiliated leagues such as the USL League Two, the United Premier Soccer League, and the National Premier Soccer League, as well as state and local soccer associations.

2. Registration and transfer rules

The focus of this chapter shall now turn to matters pertaining to the registration and transfer of players within MLS and players entering and exiting the league in order to provide a few concrete observations about the national transfer system. Reference will be made to the relevant provisions of the principal document governing the employment relationship between the league and its players, the collective bargaining agreement ("CBA") negotiated between the league and the MLS Player's Association ("MLSPA"),[2] and the MLS Roster Rules and Regulations, which are approved and published by the league every season.

[2] The MLSPA is the exclusive bargaining representative for MLS players since the players unionized under the National Labor Relations Act in 2003. Among other things, the National Labor Relations

2.1 Intra-league transfer of players

Within MLS, the main mechanisms by which players generally move from one team to another are, on a temporary basis, by way of an intra-league loan, and, on a permanent basis, by way of a trade. In either case, it is important to remember that the player's employment contract is with MLS and not with a particular club, which means that while the player's employment contract terms must fit into the receiving club's salary cap, there is no obligation to renegotiate the player's compensation upon executing the player's loan or trade because he remains under the same employment contract.[3]

Those who follow US sports or participate in any sort of fantasy sports league will no doubt be familiar with the concept of a player trade: the reassignment of a player from one team to another in exchange for another player or some other tradeable asset, such as a draft pick or a preferential right to sign a prospective player, among others. In MLS's case, the concept is the same: two teams come together to negotiate and, upon reaching agreement and receiving League Office approval, "*a player may be required, without his consent, to relocate to any team in the league as directed by MLS*".[4] The list of tradeable assets that MLS teams may exchange in a trade is comprised of players, MLS SuperDraft picks,[5] General Allocation Money,[6] Targeted Allocation Money,[7] Allocation Ranking order,[8]

Act, 29 U.S.C. sec. 151-169 (2019), provides the right for workers to form a single collective bargaining representative body to negotiate in good faith the terms and conditions of their employment relationship with their employer.

[3] That is not to say that renegotiation of a player's does not occur once the trade has taken place.

[4] See MLS CBA Section 15.1. Some players may be granted a no-trade clause in an addendum to their standard player agreement, at MLS's discretion.

[5] The MLS SuperDraft order is set by taking the reverse order of the club standings at the end of each MLS season, taking postseason performance into account, with new expansion clubs at the top of the order. Clubs may trade their position in any given round.

[6] General Allocation Money ("GAM") are funds that the league makes available to a club in addition to its salary budget. GAM may be used to "buy down" or reduce a player's salary cap charge, subject to certain conditions imposed by the league. Each MLS club receives an annual allotment of GAM and may also receive additional GAM if that club fails to qualify for the MLS Cup Playoffs, if a transfer fee is received for transferring a player out of MLS, if it qualifies for the CONCACAF Champions League, if it does not have a third Designated Player (marquee players whose compensation is mainly covered by a club's ownership and not the salary cap), if any new club enters the league (an "Expansion Year"), among other reasons.

[7] Targeted Allocation Money ("TAM") is a separate category of funds strategically provided by the league to clubs in order to sign or retain players that are expected to make an immediate impact on the field. These funds are applied in an even more restrictive fashion than GAM in order to reduce a player's salary cap charge and the player must meet a particular set of criteria, chief among them being that the player must be earning a salary within a specific salary range (generally, between the "maximum budget charge" applicable for the season and USD 1,000,000 per season).

[8] The Allocation Ranking order refers to one of the player acquisition mechanisms employed to determine which MLS Club has first priority to acquire a player listed on the Allocation Ranking List. The list is made up of select U.S. Men's National Team players, elite youth U.S. National Team players, and/or former MLS players returning to MLS after joining a non-MLS club for a transfer fee greater than USD 500,000, and may be periodically updated.

international roster slots, a Right of First Refusal over a particular player, Discovery rights[9] over a particular player, and Waiver ranking order.[10] Many of these tradeable assets have a direct link to a team's salary cap, as the salary cap and the appurtenant rules dictate in large part what player moves a team may or may not be able to make.

Per the MLS Roster Rules and Regulations, both intra-league loans and player trades must be initiated during either the Primary or Secondary Transfer Window established by FIFA for the US. Yet, unlike most leagues in the world, MLS's Primary Transfer Window takes place in the winter and spring, usually from February to May, and the Secondary Transfer Window during the summer (usually between July and August). This obviously has some effect on the pool of international players available for loan and permanent transfer into the league, since the beginning of MLS's primary transfer window is in the middle of the season for many foreign leagues.

2.1.1 Movement of players between US-based MLS teams

Among those teams based in the US, an intra-league loan is fairly straightforward. In the case of intra-league loans, the player being loaned must be 24 years old or younger at the time of the loan and each club may only loan one player to another MLS club per season. Intra-league loans are, in principle, season-long loans but those that are initiated prior to the close of the Primary Transfer Window may include a right of recall for the loaning club during the Secondary Transfer Window as well as an option to make the loan permanent. One important aspect of intra-league loans worth highlighting is that the loaned player may not play against his former MLS club during the season while he is on loan in any competition, MLS or otherwise.

In case two MLS clubs come to an agreement about loaning a player, the MLS League Office approves the loan and draws up the relevant agreement, to be signed by the player, both clubs, and MLS. It is then the League Office's responsibility to communicate the loan to US Soccer so that the player may be reassigned in their player registration system to his new club.

As far as trades are concerned, the process requires slightly more League Office involvement due to the need to verify the terms of the trade and approve them. Once teams agree on a particular trade involving a player, the formal trade process entails submitting a trade form to the League Office for verification and approval, which contains the details of the trade. The League Office is then tasked with executing the terms of the trade: switching a player's registration from one

[9] Discovery rights are yet another player acquisition mechanism designed by the league for the purposes of competitive balance. Clubs interested in players who are not under an MLS contract nor are subject to any other player acquisition mechanism may be "claimed" by an MLS club before the league. If granted the discovery right, the MLS club holds first priority in having the player assigned to it in the event that player ever signs an MLS contract.

[10] The subject of waivers will be addressed in subsection 5.1.3 below.

team to another, reallocating GAM from one team to another, rearranging the SuperDraft picks, etc. Needless to say, the fact that there are a number of tradeable assets to enhance a player movement operation means teams can get quite creative sometimes and work not just different types of assets but also different types of conditions based on sporting results or other contingencies into their player trades. In a league-wide effort to achieve greater transparency, trade terms are made public as of just a few years ago through the MLS Trade Tracker, allowing the public to view just how creative trades can get.[11]

2.1.2 Movement of players between US-based and Canada-based MLS teams

Player movements in MLS become slightly more complex when dealing with loans and trades between a US-based MLS team and a Canada-based MLS team for the simple reason that, while the player is moving within the same league, he is in fact transferring internationally. For all the characteristics that may vary from the FIFA regulatory framework and make MLS unique relative to other leagues in the world, a player's move from one national association to another, even if he remains in the same league, is considered an international transfer and requires that his International Transfer Certificate move with him in order for him to be registered with his new club.

In practical terms, this means that if Toronto FC wishes to acquire a player from the Columbus Crew in exchange for a certain amount of TAM and an international roster slot, for example, the operation requires the trade procedure described above as well as the execution of an international player transfer. This case would require the League Office to approve the trade terms and reassign the player, the TAM amount and the international roster slot to the appropriate club salary budgets and rosters, and then have a transfer agreement drafted, signed and uploaded (along with the requisite third-party ownership declarations) to the FIFA Transfer Matching System so that the player's International Transfer Certificate can be sent from the US to Canada and the player can be registered with his new club before the CSA.

2.2 Inter-league transfer of players

As a starting point for this discussion, it should be noted that one of the main attributes of the single-entity structure MLS enjoys is that it employs all of the players in the league and holds their registration rights. This means that all agreements to transfer players in or out, on a temporary or permanent basis, are executed with Major League Soccer, L.L.C. exclusively, not the club to which the player is assigned.

[11] See the MLS Trade Tracker, available for the 2019 season at www.mlssoccer.com/transactions/2019/trade-tracker.

Players moving between an MLS team and one of the lower division teams can go though one of several mechanisms, depending on the lower division team involved. Some teams participating in the USL Championship or League One are officially recognized as an affiliate of an MLS team, or may even be owned by an MLS team, and either of those statuses garners particular considerations that would not otherwise arise in the case of player transfers to lower division teams with no links to MLS teams.

2.2.1 Movement between an MLS team and a USL affiliate

In order to foster player development at the lower levels, MLS entered into a partnership agreement with the USL in 2013 to create affiliation agreements between their teams. The intention with these affiliation agreements was to provide opportunities for younger players to go out on loan to accumulate more playing minutes, have the opportunity to play at higher levels, and try to bridge the critical developmental gap that had been identified between players at the U-18 academy level and the first team level.

Some MLS teams, like New York Red Bulls or Orlando City, have their so-called "B team" or "reserve squad" participating in one of the USL divisions. These teams are wholly owned and operated by their MLS counterparts, which generally translates into one common decision-making structure for managerial and sporting matters among both clubs. The alternative structure, such as in Houston Dynamo's case, involves an affiliation agreement between an MLS club and an independently-owned USL Championship or League One club, which often limits the MLS club's decision-making to tactical or on-field matters.

In either case, the MLS CBA and Roster Rules and Regulations establish a very specific set of rules for player movements in this category. When an MLS player is loaned to a USL affiliate, for example, he is loaned for free for an entire season, and MLS will retain the right to recall him from his loan at any time in case the player's MLS team facing extreme hardship (defined as less than 14 field players or 2 goalkeepers available for a given match). Teams also have salary cap and roster implications to consider since loaning a player to a USL affiliate who is under the age of 25 means that player no longer counts towards the club's roster (especially useful if that player happens to be an international) or salary cap for the season he is on loan.

Conversely, a USL affiliate player may only be signed to a short-term MLS contract for up to 4 days at a time (and up to a maximum of 4 short-term contracts in a given season) in order to be able to play with the corresponding MLS team. Moreover, a USL player on a short-term MLS contract may only participate in CONCACAF Champions League, Canadian Championship, Lamar Hunt US Open Cup and exhibition matches; he cannot participate in MLS League Season matches unless the MLS club to which he is assigned is facing extreme hardship.

Because of the contractual framework built around MLS and USL affiliates, these player movements are rather mechanical and not subject to open negotiation, as is the case of the next type of player movement being discussed in this chapter.

2.2.2 Movement between an MLS teams and another lower division team

Loans and transfers between MLS teams and lower division teams having no affiliation to them are straightforward operations, where a loan or transfer agreement is negotiated between the transferring club and the receiving club with the player's explicit consent and MLS's approval. Neither the MLS Roster Rules and Regulations nor the CBA impose restrictions on which players may be loaned or transferred out to a non-affiliated lower division team.

Of particular note with respect to the MLS team's salary cap and roster is the fact that a when a player is loaned out, it automatically frees up a roster slot for the team but the player will remain on the team's salary cap unless the loan agreement specifies that the receiving club will assume the player's salary.

Finally, though it may be somewhat infrequently, inter-league loans and transfers of this kind may be executed for a fee. In MLS's case, the fact that it is based on, among other things, the principle of revenue sharing (again, single-entity) means that any proceeds derived from the sale or loan of an MLS player are generally split between the league and the player's MLS club and in varying percentages depending on the type of player involved. By way of example, when MLS transfers out a player who was acquired through the MLS Super Draft, the club receives 1/3 of the transfer or loan revenue if the player accumulated only 1 MLS Service Year,[12] 1/2 of the transfer or loan revenue if the player accumulated 2 MLS Service Years, and 3/4 of the transfer or loan revenue if the player accumulated 3 or more MLS Service Years; in all cases, MLS retains all remaining portions of the transfer or loan revenue.

3. Employment contracts (standard contract and main clauses)

With respect to MLS, as stated above, the CBA is the principal document governing the employment relationship between the league and its players. All MLS players are required to sign a Standard Player Agreement ("SPA"), in order to confirm their acceptance of the CBA before being able to formally join the league. This is true even for the USL Championship and League One players who are called up and signed to a 4-day agreement (see section 2.2.1 above), as that player is employed by the league and paid a salary for those four days.

[12] A player accumulates one year of Service if he was on a club's roster prior to August 30 or played in at least one regular season or post season match in the relevant year, subject to certain USL loan exceptions.

Among the provisions contained in the CBA, which players accept to adhere to upon signing their employment contracts with MLS, the following stand out and warrant further discussion for purposes of this chapter:

1) Minimum salaries
2) The Salary Cap
3) Consent to Being Traded
4) Marketing and Image Rights
5) Unilateral Extension Options.

3.1 Minimum Salaries

The CBA establishes the minimum salaries for players for each of the five years that it has been in force. These salaries are divided into 2 categories of players, senior minimum salary players and reserve minimum salary players. The first category corresponds to the minimum salary level (USD 70,250 in 2019) that must be offered to players who are placed in the senior roster, i.e., players occupying the 20 slots that count towards the team's salary cap. The senior minimum salary category also applies to players in the supplemental roster, who occupy slots 21-24 of the roster but do not count towards the salary cap.

On the other hand, the reserve minimum salary is the minimum salary level (USD 56,250 in 2019) that must be offered to those players who occupy the remaining roster slots (up to 6 more). These reserve minimum players also do not count towards the salary cap, but they must be 24 years or younger during the relevant league season in order to qualify for this type of contract.

3.2 The Salary Cap

As referenced above, each club operates within a salary cap and must ensure its players' salaries comply with the cap at the start of each season and throughout. This salary cap is dictated by the CBA for each of the 5 years that the current CBA has been in force, increasing each year.

The salary cap is league-funded, as are different types of funds made available to clubs in order to reduce players' budget charges and provide more flexibility, or to sign particular players (see, for example Targeted Allocation Money players and Designated Players).

It is clear that the purpose of a salary cap is to provide competitive balance within the league, which is one of MLS's basic tenets since its inception. But in the end, working within a salary cap means, from a player's perspective, that his salary is not freely determined by his employer, but rather as a function of the rest of his teammate's salaries. Only those players who are "off-book", Designated Players whose compensation is mostly covered by the club and not the salary cap, have markedly high earning potential; however, clubs can only have a maximum of three Designated Players on their rosters. Thus, a great deal

of criticism towards MLS over the years has emanated from the existence of a salary cap and whether or not the measures taken to soften its limitations help or hinder the league's development.[13]

3.3 Consent to Being Traded

When signing their SPAs, players naturally consent to all of the obligations set forth in the CBA as well as the SPA. As previously mentioned, this includes the player's consent to be reassigned to any MLS team, at any time at MLS's discretion. In other words, upon signing, players consent to being traded at any time, anywhere in MLS (section 15.1). The reason for including such a consideration in the employment relationship is as a result of MLS's broad management rights (article 5), which serve to facilitate the maintenance of a competitive balance within the league.

The only variation to this obligation exists in the extremely rare case that the league grants the player a no-trade clause in his particular agreement (foreseen in the *"Unless otherwise agreed to in an SPA addendum"* part of section 15.1). No-trade clauses, which would not allow the player to be traded to any other MLS team without his consent, are few and far between and it stands to reason that they would mainly only be granted to Designated Players. Designated Players were conceived to be signed as "marquee players" for each franchise, as a way to build up that particular franchise's brand, thus requiring the player's permanence. Not to mention the fact that it is the MLS team to which they are assigned that is responsible for most of his compensation, not the league. Since each Designated Player's compensation package can vary greatly, some teams' ownership groups may not want to or be able to take on those costs, so it would hardly make sense to re-allocate Designated Players like other types of MLS players.

This ample consent to be traded does not come without something in return for MLS players, as the CBA provides for a USD 3,000 stipend for traded players and reimbursement for his moving expenses when he relocates to his new MLS club (section 10.11(iii)).

3.4 Marketing and Image Rights

With the signature of his SPA, each player grants and assigns to the MLSPA for its use or further assignment or licensing, the exclusive rights to his likeness,[14] per the terms of the Group License Agreement between MLS and the MLSPA (article 28 of the CBA). Not only does the player consent to the MLSPA assigning those

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[13] C.R. Chase, "*How Major League Soccer's Transfer and Acquisition Rules Affect its Standing in the International Transfer Market… To its Detriment*", European Leagues Legal Newsletter, available at: https://europeanleagues.com/wp-content/uploads/MLS-Transfer-Rules-FINAL-DRAFT.pdf.

[14] Likeness can be understood to refer to the player's name, nickname, image, photograph, signature, specific attributes that identify him, etc.

rights to MLS but he also recognizes that MLS may enter into sub-licensing or sub-assignment agreements for these rights without needing further approval or consent from the player (within reason, of course).

In practice, this group license provides for the right to use a player's likeness in conjunction with promotional material for MLS, the player's team, local and national sponsors and such. However, the use of the player's likeness in this sense has its limitations, such as the obligation to use a particular player's likeness in conjunction with a certain number of other players, and the obligation to remunerate any promotional or commercial appearances or any other specified use of his likeness (article 8 of the CBA).

Aside from the foregoing, the CBA makes reference to other types of marketing compensation throughout its articles, which corresponds to additional economic arrangements with players of a certain stature, for example Designated Players, for an exclusive worldwide assignment of their image rights in exchange for compensation.

3.5 Unilateral Extension Options

In addition to the SPA, players are also required to sign a Schedule to the SPA detailing the specific terms and conditions of each player's employment relationship with MLS regarding duration, salary level, performance bonuses, agent fees, variations from some of the SPA terms (such as no-trade clauses), and the focus of this subsection, unilateral extension options.

Upon signing his SPA, a player agrees that MLS may, at its sole discretion, extend the duration of the player's SPA beyond the guaranteed term pursuant to the option(s) contained in the player's Schedule. MLS will generally include options in players' agreements, but how many and for how long depends on the player and what the CBA dictates. Often, the standard option structure for young players is to include three consecutive one-year options, but in the case of more seasoned players the negotiation may not be able to advance past more than one or two options or one two-year option, for example, in favor of a longer guaranteed term. In any case, section 18.13 of the CBA establishes the maximum number of total option years is 3. This same section also establishes that players who are at least 24 years old and have at least 2 MLS Service Years cannot have more than 2 option years in their contracts, and players who are at least 28 years old and have at least 8 MLS Service Years may only have as many option years as they do guaranteed years on their contracts (ex. 2 year-guaranteed term plus 2 one-year options), save for the case of free agents.

Each option must be exercised by a specific date during the immediately preceding season (usually expressed as December 1st in the player's contract) and must include an increase on the base salary the player earned in the prior season. Section 18.12 of the CBA specifically establishes that those players earning USD 150,000 or less must have an annual increase in their base salary of at least

5% in each option year, unless the initial guaranteed term in the player's contract was 16 months or longer. Furthermore, section 18.13 of the CBA indicates that this annual increase rises to 10% if the player participates in at least 20 of the 30 League Season matches in the immediately preceding season, and 12.5% if the he participates in 23 of those 30 League Season matches.

As many practitioners are aware, unilateral extension options are not regulated in the FIFA RSTP and therefore not immune to debate in football, [15]sometimes deemed as an unreasonable restraint on a player's ability to enter the open market and affecting his future earning potential depending on the particular circumstances of the case. MLS is no exception; though uncommon, some MLS players have sought to challenge the unilateral extension options in their contracts. Cyle Larin, a former Orlando City player, was recently involved in a dispute arising from his desire to pursue his career abroad coming up against a unilateral extension option in his contract.[16] Larin's representatives claimed he was a free agent at the close of the 2017 season and he left to join Besiktas J.K. Football Team, yet Orlando City and MLS asserted that his option for the 2018 season had been duly exercised and that he was therefore still under his MLS contract. The matter came to a head when Larin failed to show up to practice with Orlando and video footage surfaced of him training with Besiktas, though in the end an agreement was reached with the Turkish club for them to pay a fee for the player.

Like Larin's case, thus far, matters pertaining to unilateral extension options in MLS have settled out of court and not been subjected to legal scrutiny, so it remains to be seen whether they would withstand such a challenge.

4. Transfer agreements

Section 2 of this chapter provides an extensive overview of how player movements occur within MLS and between MLS and the lower division leagues in the US. By way of summary, and with specific attention to their execution, it is important to distinguish between the categories of player movements identified above:

– If the player is *moving between US-based MLS teams permanently via trade*, teams reach an agreement on the terms and submit a signed trade form containing those trade terms to the league for approval. As one would expect, the trade form must clearly identify the player(s) involved, any other tradeable assets being transferred between clubs (after ensuring that they in fact have those tradeable assets at their disposal), and it must explain any

[15] *Inter alia,* Decision of the Dispute Resolution Chamber dated 21 February 2006 (no. 261245), TAS 2005/A/983 & 984 *Club Atlético Peñarol v. Carlos Heber Bueno Suárez, Christian Gabriel Rodríguez Barrotti & Paris Saint-Germain*, CAS 2014/A/3852 *Ascoli Caclio 1898 S.p.A. v. Papa Waigo N'diaye & Al Wahda Sports and Cultural Club.*

[16] "Orlando City secures transfer fee from Besiktas for Cyle Larin", ESPN.com (30 January 2018), available at: www.espn.com/soccer/orlando-city-sc/story/3365277/orlando-city-secures-transfer-fee-from-besiktas-for-cyle-larin.

contingencies or conditions to the trade. Once approved, the league takes care to execute the trade and communicate the information to US Soccer for registration purposes.

– An *intra-league loan between US-based clubs* is not all that dissimilar, requiring the clubs involved to express their desire to execute the loan (which may or may not be via formal written loan agreement), the league's approval, and communication to US Soccer for the player's registration.
– *Movements between MLS clubs in US and Canada via trade or intra-league loan* require the addition of a TMS operation to the above-described process. Once teams have come to an agreement and MLS approves the transaction, it is necessary to have a loan or transfer agreement, the player's contract, the player's passport, and the requisite TPO declarations in order to upload to TMS. Once that occurs, the regular ITC request process takes place. Through TMS, both US Soccer and the CSA are alerted to the fact that a player movement between the federations is happening and, in conjunction with MLS, will also take the necessary steps to de-register and register the player involved, as the case may be. Furthermore, it is also necessary to remember that the player may need a work permit if he holds any nationality other than the nationality of the country to which he is moving. The CBA foresees this issue and establishes MLS's obligation to pay the fees associated with the player's non-immigrant visa application and renewal for as long as he is in MLS's employ (section 8.2 of the CBA).

Notably, all of the above-described player movements can only happen during one of the two transfer windows during the season so as to not cause any unfair disadvantages to the teams by virtue of their being in two different countries with two different national associations yet all playing in the same league.

– When a player *moves between MLS and a lower division team that is affiliated to or owned by an MLS team*, the player, the lower division team and the leagues involved must sign and/or otherwise provide their approval on the standard loan agreement drafted by MLS, in addition to having the player execute the relevant employment agreements if he is moving from an affiliate to MLS; if the player is moving from MLS to the lower division affiliate, the player will nonetheless remain on his MLS employment contract and receive all the benefits derived therefrom. Furthermore, all of the aforementioned documents must then be transmitted to US Soccer or the CSA, as the case may be, for the proper player registration changes.
– Finally, player *movements between MLS and a lower division team that is not otherwise affiliated to an MLS team* are similar to international transfers in that all the usual deal points will be on the table for negotiation (salary, loan or transfer fee, and duration in case of a loan, to name a few) due to there being no specific regulatory or contractual framework (like the MLS-USL affiliation), and require US Soccer or CSA support to register the player movement. Moreover, in the event the specific loan or transfer involves, for

example, a US-based USL Championship team and a Canadian MLS team, it will also require that the transaction be carried out on TMS and will therefore be limited to occurring during the transfer windows.

5. Termination of contracts

This subsection will briefly touch upon the various ways in which the SPA between MLS and a player can be brought to an end, excluding the case where the employment relationship ends due to the player being transferred out of the league:

1) The Player's Contract Expires
2) MLS Terminates the Player's Contract
3) The Player Terminates His Contract
4) MLS and the Player Reach a Mutual Termination Agreement.

5.1 The Player's Contract Expires

To dive into the subject of the expiry of a player's contract, it is necessary to distinguish between two sets of players: those whose contracts will expire at the end of the season because there are no more guaranteed years or unilateral extension options left to exercise on their contracts ("out-of-contract players"), and those whose contracts will expire at the end of the season because the league has declined to exercise the unilateral extension option for the following season in the player's contract ("option-decline players").

According to the league rules, at that point in time, a player in either of the aforementioned situations may still not quite in a position to freely seek out a new club. As odd as it may seem to those who are accustomed to other contractual schemes in football where a player is completely free to seek out new employment opportunities elsewhere in his league and freely negotiate his salary once his contract with a particular club expires, this is not the case in MLS.

5.1.1 Free Agency

The concept of free agency is generally understood in US sports as the player's right to choose where to work and, presumably, earn a higher salary once his contract has expired, subject to additional requirements set by the league. MLS has what is regarded as "restricted free agency".

First introduced in the current CBA, free agency in MLS requires that a player be out of contract or that his club chooses not to exercise the extension option in his contract, that they are at least 28 years old, and that they have accrued at least 8 MLS Service Years. Players who meet these requirements are placed on a free agent list distributed by the league to all teams and the MLSPA. Clubs who wish to sign a free agent must offer the contract terms as set out in article 29 of the CBA, which makes a clear distinction between option-decline and

out-of-contract players. The minutiae of the free agent compensation structure in the current CBA is sufficient for an entire separate chapter, but in general terms, option-decline players can earn as much or less than the salary stipulated in the declined option, or re-sign with their team and potentially earn more than their declined option, subject to league discretion. Out-of-contract players, on the other hand, receive a standard percentage raise from their salary in the previous season, unless they have significantly and materially outperformed their expired contract. In short, the foregoing terms operate to set a limit on the earning potential of a free agent in the league.

When free agency was introduced to MLS in this fashion in 2015, many criticized it as placing quite onerous conditions on players when compared to free agency in the NBA, the NFL and MLB. However, it is crucial to note that given MLS's single-entity structure, unrestricted free agency could translate into the league bidding against itself for players, which hardly contributes to MLS's mission of providing a sustainable league.

Article 29 of the CBA dictates not only the compensation structure for free agents, but also the contract terms. Free agents who are between the ages of 28 and 30 will either receive a 2-year guaranteed contract with up to 2 one-year unilateral extension options and a 5% increase in the base salary each guaranteed and option year, or a 1-year guaranteed contract with up to 2 one-year unilateral extension options containing a 5% increase in base salary each.

Finally, it goes without saying that the foregoing does not remove a free agent's right to seek out employment in a lower division league in the US or abroad.

5.1.2 Re-Entry

If the option-decline or out-of-contract player in question does not meet the MLS free agency requirements summarized above, he will need to be put through (or, depending on the circumstances, opt out of) one of two other mechanisms: re-entry or waiver (more on this later).

Option-decline players who are at least 23 years old and have at least 3 MLS Service Years and out-of-contract players who are at least 25 years old and have at least 4 MLS Service Years may be put through the re-entry process. Free agency-eligible players who are out of contract and opt out of free agency may also go through re-entry. To put it simply, this process consists of offering up the aforementioned categories of players simultaneously at the end of the season in a draft format with a specified priority order for each of the two stages of the process. There are a quite a number of possible outcomes that can arise in this process because of the different variables at play: aside from whether the player is option-decline or out-of-contract, the outcome can depend on if the player opts out of one or both re-entry process stages, if the player must be extended a genuine offer (and what constitutes a genuine offer for that player based on his age and MLS Service Years), if the player rejects the offer made to him, etc. In the end, if

the player remains unselected after the first and second stage of the re-entry process are free to negotiate with any club without the constraints of his previous MLS contract ("first come, first serve" basis). Moreover, if at any point in the process, a player is selected and extended a genuine offer but does not accept it, the club who selected the player in the re-entry process will retain a right of first refusal on the player with respect to the rest of the MLS clubs.

5.1.3 Waiver

When an out-of-contract or option-decline player does not qualify for free agency or re-entry, and is at least 22 years old and has accrued at least 1 MLS Service Year (meaning he is probably a young player who is relatively new to the league), section 29.2 of the CBA dictates the player must be waived, i.e., formally made available by the league to all MLS clubs at his current salary and subject to a pre-determined priority order for clubs, by the end of the year. If he is not selected off waivers by any club, then he is free to negotiate on a first come, first serve basis. If an option-decline player is selected off waivers, he is added to the selecting club's roster under his existing contract, and if an out-of-contract player is selected, the selecting club must make the player a genuine offer for him to accept.

Neither re-entry nor waivers typically lead to a large number of players being selected each year. For example, in 2019, only 4 players were selected off the waiver draft out of a fairly sizeable pool.[17] The reality is that clubs MLS clubs may be able to pinpoint a few potential candidates in each of the pools to reinforce their squads, but especially in the case of waivers, many players tend to find themselves continuing their careers in the lower divisions in the US or even abroad because it is extremely rare for a club to wind up finding a starting 11 member in either of these processes.

5.2 MLS Terminates the Player's Contract

Pursuant to the CBA, MLS shall generally have the right to terminate the player's SPA on the following grounds:

1. If the player is waived at any point during the season and not selected off waivers, subject to payment of any guaranteed compensation (section 29.2);
2. If the player goes on strike and declines to practice or play or fulfill his other obligations under his SPA for any reason (section 6.2);
3. If the medical examination conducted after the signature of his Semi-Guaranteed Contract[18] establishes the player is not fit to play, and the

[17] B. Baer, "*Haris Medunjanin, Danilo Acosta highlight 2019 Waiver draft picks*", MLSsoccer.com (25 November 2019), available at: www.mlssoccer.com/post/2019/11/25/haris-medunjanin-danilo-acosta-highlight-2019-waiver-draft-picks.

[18] Per the CBA definitions, a Semi-Guaranteed Contract is an SPA that may be terminated by MLS pursuant to section 18.7 of the CBA prior to the Contract Guarantee Date of the year in which his

medical examination and termination occur before the player participates in any match or training with his MLS club (section 9.2(ii));
4. If the player is on a Semi-Guaranteed Contract, and MLS determines that the player has failed to exhibit sufficient skill or competitive ability to qualify for or continue as a member of his team's active roster, but only if the termination occurs before the Contract Guarantee Date (section 18.7(i));
5. If the player incurs in multiple disciplinary infractions (ex. repeated incidents of tardiness to scheduled practices or failure to appear for multiple team meetings) (section 20.1(i)), engages in on-field misconduct (section 20.2(i)), engages in off-field misconduct detrimental to the reputation and public image of MLS (a description of the specific grounds can be found in section 20.2(ii));
6. If MLS, in conjunction with the player's MLS club, chooses to buy out the remainder of the player's contract. Teams are allowed one buyout per season during the off-season (section 10.22 of the CBA).

5.3 The Player Terminates His Contract

Pursuant to the CBA, an MLS player shall generally have the right to terminate his SPA upon 10 business days' written notice to MLS and the MLSPA if MLS fails to pay his salary or fails to perform any other material obligation under the SPA, and does not remedy such default within 10 business days or give notice of intent to arbitrate within 7 business days of the player giving written notice of default (section 18.4). In other words, a player has the right to unilaterally terminate his contract for cause, defined as a material breach of contract, and upon complying with the stated notice requirements. The foregoing, while not as explicit as the just cause and sporting just cause grounds developed under the FIFA regulatory framework and applicable FIFA and CAS jurisprudence, in practice may not necessarily be that distant from the rights granted to players under the FIFA RSTP, although it appears that it would be difficult, as things stand with the current CBA, to sustain an argument that any sort of repeated exclusion from matches, practices, and/or team events, for example, would be considered a failure to perform a material obligation on MLS's part justifying the player's unilateral termination.

5.4 MLS and the Player Reach a Mutual Termination Agreement

The simplest out of all of the termination scenarios mentioned in this section of the chapter is the mutual termination. Once the decision has been made to part ways

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SPA is terminated, without further obligation for either party. If the Semi-Guaranteed Contract is not terminated for such reasons prior to the Contract Guarantee Date of any year, then the SPA may not be terminated for such reasons until the immediately following December 31. Conversely, a Guaranteed Contract is an SPA that may not be terminated by MLS solely because of the quality of the player's on-field performance or the fact that he may have sustained an injury during the performance of his duties as an MLS player.

and any applicable exit mechanism has been applied (see above), the player and MLS execute a standard termination agreement establishing any compensation owed to the player, a mutual release from obligations arising from the employment relationship, and, not surprisingly, a waiver of any and all claims the player may have against MLS.

6. National training compensation and solidarity mechanisms / Levy on transfers

The subject of training compensation and solidarity mechanism in US soccer has been hotly debated for quite some time. On the international side, it was not until 2019 that MLS announced it would begin to assert claims pursuant to the FIFA training compensation and solidarity mechanism systems. However, on the domestic side, neither US Soccer nor the CSA have domestic training compensation and solidarity mechanism systems put in place nor have they confirmed any intention to do so.

Nonetheless, it should be noted that MLS must abide by the FIFA Regulations on the Status and Transfer of Players in this respect with signings between the US and Canada. This essentially means that, although there is no purely domestic training compensation or solidarity mechanism scheme, some player movements could potentially trigger these obligations on the basis of the FIFA RSTP, such as, for example, a player trained in the US and signing his first professional contract with MLS to play for one of its Canada-based clubs.

Finally, there is no system for applying levies on national transfers in the US.

7. Judicial bodies

Further examples of the exceptionality of soccer in the US may be found, to a lesser extent, in the matter of judicial or dispute resolution bodies. This section shall focus on the subject of employment-related disputes.

The dispute resolution process within US Soccer, set forth in Bylaw 702 and 703 of the Bylaws of the United States Soccer Federation, Inc.,[19] is limited in scope to (i) a claim by an athlete, coach, trainer, regarding their opportunity to participate in any *amateur* athletic competition or any soccer event of the Pan American Games, the Olympics or World Championship competitions (Bylaw 702), or (ii) a claim by an individual or Organization Member[20] complaining that either another US Soccer Organization Member has failed to comply with its membership requirements or US Soccer has failed to comply with its membership requirements

[19] Bylaws of the United States Soccer Federation, Inc., as revised and amended, effective May 1, 2019. Available at: www.ussoccer.com/governance/bylaws.

[20] Defined in Bylaw 202 as an associate, disabled service organization, indoor professional league, national affiliate, national association, other affiliate, professional league or state association.

in the United States Olympic Committee (Bylaw 703). Thus, there is no national dispute resolution chamber for employment-related disputes to be found at the federation level.

Turning to MLS specifically, in case of a dispute involving the interpretation or application of, or compliance with, any agreement between the MLSPA and MLS or between a player and MLS, called a "grievance," article 21 of the CBA states that such grievance shall be submitted to arbitration under the terms and conditions set forth in that article. The foregoing principally refers to breaches of the CBA, the SPA and the Schedule to the SPA. Moreover, a breach of the CBA by an MLS club is also subject to this grievance arbitration procedure.

Only MLS or the MLSPA may initiate a grievance procedure, and must do so within 30 days from the date of the fact(s) giving rise to the grievance occurred or, at the very least, became known. The claiming party must provide the grounds for such grievance in writing, and the responding party will have 10 days to present its written answer.

If the grievance is not solved after 7 days from the date the responding party's answer has been filed, the matter is referred to a Grievance Committee, composed of an MLS-appointed representative and an MLSPA-appointed representative, unless the parties agree to submit the matter directly to an Impartial Arbitrator. This Grievance Committee holds a meeting with the parties so that each may present and discuss their submissions in order to reach a resolution and/or settlement of the grievance, sort of as an assisted negotiation or prior mediation proceeding. (section 21.4 of the CBA).

A waiver of the Grievance Committee procedure or failure to resolve the grievance before the Grievance Committee entitles the claiming party to submit the matter to an Impartial Arbitrator jointly appointed by the parties (section 21.5 and 21.6). Parties may raise new arguments and facts not presented in the Grievance Committee proceeding in good faith before the Impartial Arbitrator, but evidence of settlement discussions and offers are inadmissible. The Impartial Arbitration proceeding therefore consists of a written submissions phase and an in-person hearing, where witnesses may be heard (section 21.7 of the CBA) Once the hearing has come to an end, the record will be deemed closed and the Impartial Arbitrator has 30 days to render a written award, which is considered to be a full, final, and complete disposition of the Grievance that is binding upon the parties (section 21.8 of the CBA).

The above-described system begs the question as to whether this would constitute a national dispute resolution chamber in the sense of article 22(b) of theFIFA RSTP and, if so, whether it passes muster in light of the criteria set forth in FIFA Circular No. 1010 for establishing a national dispute resolution chamber's competency. Indeed, the fact that it is created through the collective bargaining agreement with the league and not the national federation could raise some concerns, as does the fact that, while the Grievance Committee allows for each party to name a representative, the arbitration proceeding is handled by a jointly-appointed single arbitrator, not a three-member panel with an independent chairman.

8. Conclusions

It is the author's hope that the foregoing has provided a bit more insight into the complex rules governing player movements in the United States, particularly in the top-flight. There are certainly concepts in the CBA and the MLS Roster Rules and Regulations that can lead to far deeper discussions (free agency and the re-entry mechanism no doubt come to mind), but it would be a herculean task to fully encompass and thoroughly develop them in one single chapter. The fundamental point to be made here is that this chapter deals with a unique regulatory framework of national transfers and employment-related matters that errs on the side of a large degree of centralized control by MLS and deviates in many respects from the FIFA regulatory framework, but was in large part born with FIFA's acquiescence out of the need for the league to survive and thrive.

Now that it is thriving, it is highly relevant to note that, at the time of drafting this chapter, the CBA is drawing closer to its expiration date (31 January 2020, to be precise) and negotiations for the new CBA are well-underway and already signaling potential changes to some of the concepts described in this chapter. As was the case 5 years ago, free agency will once again be a major point of discussion, with the MLSPA aiming to obtain "true, unrestricted free agency at a much earlier point in players' careers",[21] which will, in theory, greatly simplify the matter in terms of the rules and, naturally, achieve more freedom for players to choose where and under what conditions to play in MLS. The MLSPA has also expressed their desire to tackle the issue of increasing player compensation in the CBA negotiations, particularly in light of the fact that this new CBA, which will be in force for the next 5 years, will see substantial league expansion, new broadcasting contracts and preparations for the hosting of the 2026 FIFA World Cup during its term. Thus, the first months of 2020 could possibly reveal significant changes to how and when player transfers may occur, and it would behoove any practitioner working in the US soccer market to stay tuned.

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[21] J. Cardillo, "*MLS Players Association lays out key issues ahead of negotiations for new CBA*", ProSoccerUSA.com (7 November 2019), available at: www.prosoccerusa.com/mls/mls-cba-negotiations-perspectives/.

"I WANT THIS PLAYER AND I WANT HIM NOW… PLEASE MAKE IT HAPPEN!" A SYNOPSIS OF THE ESSENTIAL RULES AND PRACTICES ON THE TRANSFER OF FOOTBALLERS

by *Ornella Desirée Bellia*[*] and *Michele Colucci*[**]

Introduction

The FIFA regulations have been and will be, time and again amended in order to address new and often delicate issues arising when negotiating and concluding the international transfer of a player.

Rules frequently change and yet the attitude and goals of the parties involved (clubs, players, intermediaries) remain the same: they try to maximize their economic and sporting benefits from the transfer while their legal counsels are tasked with translating their wishes in legal, valid and binding agreements.

From this perspective, the contractual parties will typically consider to have achieved a good transfer when they agree upon the contractual terms and conditions that represent the best possible balance of their respective economic and sporting expectations, whilst preventing disputes and/or claims from any party.

Every transfer gives rise to two parallel and simultaneous negotiations. The first one settles the economic aspects of the transaction while the other one aims at defining the legal term of the agreement, in order to prevent and solve any possible legal issues. Both negotiations are equally important and closely connected since, as mentioned above, the ultimate task for lawyers is to give legal form to the will and interests of the parties, completing the transfer finally in the best possible way.

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This publication reflects the Author's personal views and does not represent the position of the institution they belongs to.

Furthermore, a transfer can be a complicated operation because of the different interests and parties involved.

First and foremost, stands the player, who has his/her economic and professional demands while clubs have to deal with their financial assets or constraints in trying hard to meet their sporting ambitions and targets.

Then there are the intermediaries, whose main aim is to maximize their clients' economic profits and benefits from the transfer ; incidentally, in doing so, they are also eager to earn a higher cut as percentage of the transfer value.

Of course, the parties involved have to give in to compromises on several elements of the negotiation. In fact, just like in any other business sector, labour relations in football are essentially defined by the parties' bargaining power.

On the player's side, this power is given by his/her past/current performances, the results achieved, his/her fame among supporters, not to mention his/her potential for commercial exploitation; for the club, leverage lies *inter alia* with its prestige, past and current sporting achievements, as well as its ambitious targets and more often than not, its financial, accounting and regulatory constraints. All these factors eventually have an ultimate impact on the contractual terms to be negotiated.

Finally, once they reach an economic agreement, all parties must prove they are able to maneuver through the legal, financial and fiscal provisions in view of building up the mutually satisfying contractual construction.

By considering those points and the in-depth analysis of the relevant international and national case-laws conducted by the Authors of this book, this essay shall focus on the essential issues that arise when parties negotiate and conclude both transfer and employment agreements, the practical considerations to make and the actions that parties have to take.

At the same time, due attention will be given to the challenges that lawyers have to face in identifying and flagging the legal issues, clarifying them to their clients, and providing them with the most effective solutions which enhance their legitimate economic interests in compliance with the relevant legal framework where relevant best practices and the main specific regulations of some of the most important federations[1] around the world will be addressed.

1. Preliminary to any negotiations

In a footballer's transfer, the interests at stake may often be huge: as a consequence, parties need to take all possible precautions and leave nothing to chance.

A successful transfer starts even before the parties begin negotiations.

[1] These include England, France, Germany, Italy, Portugal, Spain and, outside Europe, Argentina, Brazil, China and the USA.

1.1 The Status of the Player and the nature of the Transfer

The engaging club should ascertain the *status* (i.e. amateur or professional) of the relevant player.

In principle, if the player is an amateur there will be no transfer fee to pay.[2] On the contrary, if the player is a professional, the club should verify whether he is under contract or a free agent in view of a possible request for compensation.

The status of the player is also relevant in connection with the *nature of the transfer* (definitive or temporary): both amateurs and professionals can be transferred on a definitive basis, while only professionals can be loaned from club to club.

1.2 The footballer's age impacts on training compensation

The engaging club should also consider the *age* of the player. Given that training compensation for international transfers must be paid until the age of 23, in order to budget possible costs related to *training compensation.*

In order to ascertain whether and to whom such compensations should be paid, it is highly advisable for the club to request a copy of the player's passport (Art. 7 RSTP) to the former Football Association, however, these passports are not always reliable and are easily made available. In order to overcome such a problem, FIFA has recently approved the so-called *e-registration system* to facilitate the tracking of clubs with whom a player has been registered.[3]

1.3 Minors

In a *transfer agreement,* the age of a player is important since FIFA explicitly forbids the international transfers of *minors* (i.e. under 18).

However, there are three exceptions detailed in Art. 19 para. 2 RSTP, in particular to facilitate the transfer of young players above the age of 16 between the EEA/EU countries. In compliance with EU Single Market rules, players whose parents move to the country in which the new club is located for reasons not linked to football, those who live no further than 50km from a national border and the club with which the player wishes to be registered in the neighboring association is also within 50km of that border.

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[2] Nevertheless, there are some specific cases in which FIFA has recognized that a transfer fee is legitimate if it has been for amateur players. See J.F. Vandellos Alamilla, "*Transfer Agreements pursuant to the FIFA PSC decision and the CAS jurisprudence*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, para. 2.2, SLPC, 2020.

[3] V. Plavjanikova and A. N. Reck, "*Training Compensation and Solidarity Mechanism*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

Clubs willing to benefit from such exceptions need to submit all relevant documentation and information to the FIFA Subcommittee of the Players Status Committee (Art. 19 para. 4 RSTP), which will eventually clear the transfer.

Furthermore, FIFA jurisprudence has foreseen two further exceptions, which are codified and implemented as of 1 March 2020 in the FIFA regulations with specific regard to refugees and exchange students.[4]

In any case, clubs can legally only offer a minor a contract with a maximum three-year length (Art. 18 para. 2 RSTP) and not five years as for any other professional football player.

There are, however, exceptions to those general rules: for instance, **Brazil**'s legislation is in conflict with the FIFA rules given that, according to Brazilian law, the minimum duration of an employment contract is three months and the maximum is five years for every player regardless of the player's age. On the basis of this specific rule, the Brazilian confederation (CBF) has inserted a provision in its domestic regulations, which warns its affiliated clubs that only the first three years of the contracts may be considered in case of international disputes.[5]

In **China**, there are some rules establishing that 16 years old players (but under 18) can sign contracts for a maximum duration of 3 years (Article 50 CFA RSTP) while players under 18 cannot sign employment contracts unless they are registered in the first team of a club competing in a professional league (i.e. CSL, CL1 or CL2) (Article 4 of a CFA Regulation called "Implementation Opinion regarding Transfer of Youth Players and Standard Regulation of Training Compensation").[6]

1.4 Nationality and work permit

Depending on the player's *nationality*, there are a series of legal formalities to be carried out with regard to immigration compliance rules that the clubs should be aware of before offering an employment agreement.

In **Brazil,** for instance, visas are valid for only two years under the relevant immigration rules. As a consequence, clubs are obliged to split the total length of the employment contract (up to five years) in two or more subsequent registration periods (for up to two years).[7]

In **England** until now players coming from EU Member States have not needed visas/work permits; however, this will likely change if/when Brexit finally occurs in the course of 2020 or in 2021 following the relevant negotiations with the

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[4] L. Ferrer, "*Understanding the FIFA rules on International Transfer and First Registrations of Minors*", *Transfer of Players*, O.D. Bellia and M. Colucci eds, SLPC, 2020.

[5] V. Eleuterio and A. Galdeano, "*National Transfers in Brazil*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[6] D. Wu, G. Marino, T. Pereda Rueda and R. Chu, "*National Transfers in China*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[7] V. Eleuterio and A. Galdeano, "*National Transfers in Brazil*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

European Union. Non-EU players presently require a governing body endorsement (GBE) from The FA in order to register with a club in England. The present GBE/work permit system broadly aims to permit only the most exceptional non-EU players to play in England, as it is based on EU players being able to freely move to England. If/when this changes due to Brexit, it is possible that the entire GBE/work permit system might also be overhauled or re-worked accordingly.

In **Portugal,** after the signature of a contract for the professional competitions, both the player and/or the club can request a work permit when he moves to Portugal. Furthermore, the national authorities and the League have established a Protocol granting special treatment to foreign professional players.

That said, in accordance with Art. 18 para. 4 of the FIFA RSTP, the validity of an employment contract between a player and a club cannot be made subject to the acquisition of a *work permit* from the local authorities. Such a condition, if included in a contract, is not admissible and shall be considered as null and void.

Furthermore, the FIFA DRC jurisprudence has established that this rule also implies that the club is responsible for the renewal of the visa/work permit during the contract period, and thus not only at the moment they engage the player.

It falls thus within the responsibility and remit of a club to ensure that the necessary visa/work permit is requested and delivered to a player.[8] Therefore, the club is not entitled to unilaterally terminate the employment contract because of the lack of a valid work permit.[9]

On the other hand, the player has to put himself at the club's full disposal and supply the prospective club with all necessary information and documentation in order to facilitate this task.[10]

In **China** there is no specific restrains to players in this regard. However, no visas nor working permits will be provided in case a person has an offense in his/her criminal record.[11]

1.5 Quotas

The buying club should consider the relevant ***quotas*** for foreigners established by its sports association in order to avoid that once recruited, the foreign player cannot be named on the field of play.[12]

It however comes to reason that if the club engages a new foreign player, whilst other foreign players are still under contract, the club envisages that the

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[8] See FIFA PSC 5 June 2013, no. 613864.

[9] See CAS 2007/A/1205 *S. v. Litex Lovech*, award of 6 June 2007.

[10] S. Civale and L. Pastore, "*Employment Agreements of Football Players*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[11] D. Wu, G. Marino, T. Pereda Rueda and R. Chu, "*National Transfers in China*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[12] For the latest figures and statistics see *FIFA Professional Football Report 2019* available at https://img.fifa.com/image/upload/jlr5corccbsef4n4brde.pdf.

newly engaged player will take the 'foreigner-spot' of one of the foreign players already at the club.

If over quota, the club *will de-register* another player *forcing* the latter to claim the termination of the employment contract for just cause. This is generally an unfavourable situation for the player; he or she would have to find new employment in a time in which most registration periods are closed and new clubs would often be reluctant to sign a player who has terminated his/her contract due to the joint liability deriving from art. 17 RSTP. Also, there is no financial gain for the player in this situation: at most he or she will receive the residual value of the employment contract (which he would have earned anyway if the club had not forced him to terminate) and if the player were to find new employment, the compensation to be paid by the club to the player for breach of contract would be mitigated by the new earnings. It can be considered a lose-lose situation for the players. As a result, many players in this kind of situation are increasingly accepting of settlement agreements in order to avoid jeopardising their career and obtaining an amount in a more expedited manner, rather than having to go through an often-lengthy procedure at FIFA and possibly CAS.

For **all EU countries** there is no limit to the registration of foreign players coming from other EU countries in compliance with the principle of freedom of movement of workers as enshrined in the Treaty of the Functioning of the European Union. This situation could change in **England** after Brexit; however, it is too early at this stage to predict whether there would be any specific quotas for foreigners (be it EU or non-EU players).

Nevertheless, each national sports association can set limits to the registration of players coming from third countries, i.e. outside the European Union.

In particular, in **France**, clubs of League 1 are allowed to employ a maximum of only four players from outside the EU/EEA or countries with an Association or Co-operation Agreement with the European Union. Furthermore, employment contracts with foreigners coming outside the European Union need to be validated by the League (LFP) upon verification of the relevant documents such as the resident permit, work authorization and visas. In any case, the player will be qualified for LFP's competitions only for the duration of validity of the corresponding document (plus an additional period of 30 days for its renewal).

The validity period of the French immigration documents varies between 4 months and 10 years.

In **Italy,** clubs of serie A (first category) can register a maximum of four foreign players (two already registered plus two new players) subject to specific conditions established by the Italian Football Federation every year.

In **Spain**, clubs of the First Division can register a maximum of three foreign players and in the Second division can register a maximum of two foreign players.

Furthermore, legal rules on quotas can vary greatly across continents.

In **Argentina** for instance, clubs playing in the top division category (Superliga), are allowed to enter into and register contracts with a maximum of up to six foreign football players per club.

Nevertheless, only five of them will be able to participate in official matches.[13]

In **Brazil,** there is no limit for registrations, but only five foreigners may be simultaneously lined-up. Refugees however are not computed in this limit and are free to play.

In **China,** the CFA has recently amended its regulations increasing the number of foreign footballers. Chinese Super League clubs (first category) can register a maximum of seven foreign footballers per year and list four together, China League One clubs (second category) can register a maximum of four foreign players per season and field two together, while naturalized (nationalized?) players meeting certain specific conditions can be registered as domestic players.[14]

1.6 Verification of any TPO agreement

By introducing Arts. 18 bis and 18-ter RSTP, FIFA put into effect a complete *ban of third-party ownership* whose legitimacy has been upheld by CAS as well as by several national tribunals.[15]

Most recently, on 12 December 2019 the Court of Appeal of Brussels confirmed the validity of the disciplinary decisions rendered by the FIFA disciplinary committees which sanctioned the Belgian club FC Seraing for having violated the TPO and TPI rules.

The Court therefore acknowledged the full effect of *res judicata* of the CAS award on the same matter rendered on 9 March, 2017 and of the judgement of the Swiss Federal Tribunal rendered on 20 February 2018.[16]

As a consequence, clubs and players are forbidden from assigning to a third-party any rights or participation in the compensation payable for the future transfer of a player.

As such and always bearing in mind the recent amendment of the FIFA RSTP, according to which players are not considered third parties, they are entitled to hold a percentage over their own future transfer but are prohibited from further assigning it to any other third party.[17]

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[13] M. Claria and R.Trevisan, "*National Transfer in Argentina*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[14] D. Wu, G. Marino, T. Pereda Rueda and R. Chu, "*National Transfers in China*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[15] See M. Motta and S. Malvestio, "*Third Party Ownership*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[16] Unpublished decision. See FIFA press release www.fifa.com/about-fifa/who-we-are/news/fifa-welcomes-brussels-court-of-appeal-ruling-on-fifa-s-tpo-and-tpi-rules.

[17] M. Motta and S. Malvestio, "*Third Party Ownership*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

1.7 Approaching the player

Once the club has carried out the above investigation and made up the indispensable economic considerations, it should fulfill its legal obligations on ways and means of *approaching* the player.

Usually, the club interested in a player under contract makes contact with the other club to express its interest in the player, while the latter is discretely sounded out via his agent. However, practices sometimes differ, and the interested club may decide to enter into contact directly or indirectly with the player, luring him with much improved salary conditions. In most cases, the player then applies pressure on the club to favour his move. In most cases, clubs and players rely on the services of intermediaries and lawyers.

It is important to underline that Art. 18 para. 3 RSTP clearly states that: "*A club intending to conclude a contract with a professional must inform the player's current club in writing before entering into negotiations with him. A professional shall only be free to conclude a contract with another club if his contract with his present club has expired or is due to expire within six months. Any breach of this provision shall be subject to appropriate sanctions*".

In **China,** Article 51 CFA RSTP includes exactly the same provision.[18] So does article 143 of the General Regulation of the RFEF in **Spain**.

In order to get in touch with the player, the club can either contact him directly and/or the releasing club can rely on the services of intermediaries and lawyers.

The above FIFA provision applies to international transfers whilst different rules govern domestic transfers.

In **England**, for instance, players on expiring contracts who intend to move domestically cannot approach or be approached (directly or indirectly) by other English clubs until the third Saturday of May in the year of their expiring contracts.

Similarly, in **Portugal** during the last six months prior to the expiration of the contract, the new club must notify the player's previous club within five days of the date of signature of the new contract.

Clubs cannot even make any public statements expressing interest in an already employed player, as this can be considered as an indirect approach to the player and therefore leads to the imposition of disciplinary sanctions.

In **France,** the Federation's regulations do not impose a specific date from which a club may approach a player.

However, and in any case (and therefore even in the case of a pre-registration procedure), the validation by LFP of any employment contract for a player already registered with a French club is subject to the submission of a

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[18] D. Wu, G. Marino, T. Pereda Rueda and R. Chu, "*National Transfers in China*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

prior information letter by the new club which notifies the player's current club about the beginning of negotiations.

In **Italy,** parties can sign a preliminary contract in the specific form provided by the relevant League which encompasses exactly the same content as the relevant definitive contract it refers to.

This form can be used to agree in advance on transfers, assignment of contracts, new employment contracts or renewal of existing employment contracts, with the juridical effects of the transaction entering into force at a later date.

For its validity, a Preliminary Contract Form related to a transfer (i) can only be concluded during specific periods set forth every year by the Italian Football Federation, (ii) cannot involve clubs and players competing in the same championship when these are still ongoing and (iii) must be deposited with the relevant League within 20 (twenty) days of signing.[19]

1.8 The background of the player and the financial means of the clubs

From the perspective of the "buying" club, the latter should investigate the player and check his/her *background beyond his/her sporting performance*.[20]

In fact, the club should be very well aware of his/her personal and social attitudes and past behaviour on and off the pitch and verify whether he was involved in any match fixing or doping practices. It should check the existence of a possible pending *disciplinary suspension* on the player whereas a sanction, not totally served under the previous club, will be taken on under the new employment relationship.[21]

The Club should also verify whether the player terminated his employment contract with or without just cause with his previous club and inform the latter accordingly before signing any contract in order to avoid any complaint of having induced the player to breach the employment agreement and thus, avoid the risk of being sanctioned .

From a player's perspective, he/she or his/her representative should adequately ascertain the *financial means* of the buying club and its actual capacity to honor the contract, its current sports standing, and its ambitions.

The lack of financial means – or the mere unwillingness to pay in order to force a player out of his contract – is by far the greatest cause for complaints before the FIFA DRC.

Furthermore, it would be good for the player to gain some information about the culture and living conditions in a country which could be very far from

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[19] L. Tettamanti and M. Spadini, "*National Transfers in Italy*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[20] Some of the points hereby made – especially with regard to the preliminary stage of the negotiations of players' contracts have superbly been dealt with by G. Monteneri and E. Mazzilli at the occasion of the AIAS (*Associazione Italiana Avvocati dello Sport*) workshop on International Transfer of Players in Milan on 25 October 2019.

[21] See Art. 12 FIFA RSTP on "*Enforcement of Disciplinary Sanctions*".

home with the implications regarding "adaptation". In the past, too often, pending a valid employment agreement, players have abandoned their new foreign club without authorization because they could not stand the different social and cultural environment of the country, perceiving it as too hostile or even dangerous. By all means, the unauthorized leave has triggered disputes before the FIFA Dispute Resolution Chamber for *de facto* unilateral termination of the employment contract without just cause.

Finally, the releasing club should investigate the financial capacity of the "buying" club while his/her legal advisor applies all possible legal and contractual means to ensure that it will receive the money agreed in the transfer agreement.

In fact, as we will see hereafter, an experienced lawyer will insert all guarantees in the contract, such as penalty clauses, bank guarantee, advanced payment and any relevant evidence concerning financial obligations.

2. Negotiations

During the negotiations the parties should always *act in good faith* in order to avoid liability for *culpa in contrahendo,* meaning that they have a clear duty to negotiate with care, seriously and in a fair manner.

From a mere *economic or budgetary* point of view, it is important for the "buying" club to know the budget at its disposal in order to better negotiate the transfer fee with the other club . The latter is determined by the estimated player's value, the player's age, the remaining duration of the player's current employment contract; his national team appereances; his/her position on the pitch; any trophies won and of course, the competitive and concurrent offers he might receive from other clubs. These are the main factors to keep an eye on.

Transfer fees, of course, may also be determined on the basis of the cost that the releasing club incurred in acquiring the service of the player, plus the additional funds invested in salaries, bonuses and training.

When dealing with a player, the club should be aware of the money it can spend in terms of remuneration (salary, bonus, and fringe benefits), keeping in mind the taxation, social security costs and the possible commission for intermediaries' services.

Then, of course, the peculiarities of each country and federation should be taken into account.

In certain cases, the club shall also take into consideration the financial constraints arising from financial control regulations implemented at national (**Spain**) or confederational level (**UEFA**).

In **China**, for instance, there are certain specific issues to take into consideration prior to entering into negotiations: 1.the so-called "luxury tax" on the transfer fees; 2. the salary cap (introduced for the season 2020); 3. other limitations on expense imposed to Clubs by the CFA.[22]

[22] D. Wu, G. Marino, T. Pereda Rueda and R. Chu, "*National Transfers in China*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

3. Drafting a transfer agreement

3.1 The form

Ideally, in order to complete the transfer of a player, a transfer agreement between the two (buying and releasing) clubs should be signed first, and only then should the new club and the player enter into the relevant employment contract.[23]

However, sometimes a club might prefer to immediately put a player under an employment contract and then negotiate the transfer agreement with the player's former club. In this case, the employment contract should be made conditional upon the conclusion of the relevant transfer agreement, otherwise the player could be accused of having terminated his/her employment relationship without just cause.

The releasing club ought to draft the transfer agreement since it is in most cases the one to be compensated: much care and attention must be paid in order to include all necessary guarantees which safeguard its own interests.

In general, agreements for the transfer of players whithin the same association do not tend to differ materially from the agreements used in international transfers.

In **Argentina**, **China**, **England**, **Germany**, and **Portugal** neither the federations nor the leagues prescribe that transfer agreements take a specific form, and unlike employment contracts, a standard/template transfer agreement is not used.

In **Spain**, the collective bargaining agreements existing in professional football for men and women, require that transfer agreements (both of temporary and permanent nature) are necessarily made in written form and include some essential terms such as the parties involved, the price of the transfer, the consent oft he parties etc.

In **France**, like the employment contract, the Temporary or Permanent Transfer Agreement between 2 French Clubs are generated via the software Isyfoot, and therefore all the National Transfer Agreements have the same standard form (their contents however remaining freely negotiatiable by the two French Clubs).

By contrast, for International Transfer Agreement, there is no specific mandatory standard form.

3.2 Payment of Transfer fee

By far, the economic terms are dominant because often the amounts at stake are as significant as the expectations of the contractual parties. It is also crucial that the parties should clarify whether the relevant transfer fee is *net or gross* of any taxes.

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[23] For a detailed and very critical analysis of transfer agreements, see J.F. Vandellos Alamilla, "*Transfer Agreements*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

At the same time, they should clearly establish which party is going to bear the *training compensation and the solidarity mechanisms costs*, if they want to derogate from the general rules provided by the RSPT.

With particular regard to the solidarity compensation, it deserves a particular mention the local system established in **Germany** wherein all 36 clubs from Bundesliga 1 and Bundesliga 2 jointly fund the solidarity payments, irrespective of (i) any transfer fee paid in connection with the player's transfers, and (ii) the question of which club finally benefits from the players' training by fielding him in official matches.[24]

Furthermore, in compliance with the principle *pacta sunt servanda,* the payment of a transfer fee can be delayed or denied in case of a force majeure, keeping in mind that this shall always be interpreted as an instance far beyond the control of the parties and one which could not be forecast and avoided by exercising reasonable due care.

Finally, it is worth recalling that clubs in breach of their financial obligations cannot invoke the fact that they did not receive the relevant invoice or tax certificate, or that they got the wrong bank account in order to justify their failure to comply with their financial obligations towards the other party.[25]

3.3 Terms and conditions

As for the *contractual terms*, the parties must establish the conditions upon which the transfer agreement may be subject to.

These can be *the successful passing of the medical examination* conducted by the new club*; the delivery of the players' visa/working permits; the signing of an employment contract between the player and the new club; the timely delivery of the ITC by the former club; the release of bank guarantees.*

It is also interesting to note that following the latest CAS jurisprudence, a club could make the transfer of a player conditional upon an upfront payment of the transfer fee before the conclusion of the transfer.[26]

The parties can even agree for the money to be transferred to an escrow account by a certain date, with failure to comply with such a condition resulting in the immediate termination of the contract.[27]

Typically, negotiations will also revolve around the question of whether to include lawful preferential rights (*e.g. buy-back clause; option to transfer;*

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[24] J. Wilkens, "*National Transfers in Germany*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[25] J.F. Vandellos Alamilla, "*Transfer Agreements*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[26] See CAS award 2018/5953 *FIFA Sport Lisboa e Benfica Futebol SAD, v. FIFA,* paras. 123-124 available https://resources.fifa.com/image/upload/cas-2018-a-5953-sport-lisboa-e-benfica-futebol-sad-v-fifa.pdf?cloudid=c2woa5ehyixwqvs05hpl.

[27] *Ibidem.*

rights of first refusal) bearing in mind not only the limitations pursuant to Arts 18 bis and 18 ter of the FIFA RSTP on Third Party Influence and Third Party Ownership, but also with the relevant national sports regulations.

In addition, the preference of the player needs to be considered, who may actually not agree with the buy-back clause agreed on between (stipulated by?) the transferring clubs.

As a matter of fact, the scope of Art. 18 bis RSTP is quite broad and open to interpretation: FIFA's current position as to what is lawful under Art. 18bis RSTP is very narrow. Finally, when only the two clubs are parties to the transfer agreement, it would be prudent to subject the validity of the transfer to the *consent of the player*, and thus, to the subsequent employment contract between the player and the new club. Likewise, it would be advisable to make the termination of the employment contract between the former club and the player conditional upon the receipt of the transfer fee or the successful passing of the medical examination.[28] This is, however, difficult to obtain in practice, given that transfer fees are normally paid in instalments and payment plans have durations that exceed the transfer date.

As a peculiarity of the North American legal system, it is interesting to note that, in *Major League Soccer* (*MLS*), a player may be required – even without his/her consent – to relocate to any team in the same league; with the simple agreement between the two clubs coupled with the approval from the League Office being enough to complete the transfer of the player.[29]

3.4 Jurisdiction and applicable law

Clubs and players should identify the *competent forum* to hear any disputes relating to the transfer agreement (FIFA Players' Status Committee, the CAS or other arbitral tribunals) and the *applicable law* to the agreement.[30]

In this regard, Art. R58 CAS Code refers to the regulations and law chosen by the parties. If no choice is made, the law of the country where the football association issued the challenged decision shall apply.

The parties to international transfer agreements usually opt for the subsidiary application of Swiss law, by expressly or implicitly referring to the application of the FIFA regulations in relation with Art. 57(2) FIFA Statutes: "*CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*"; this is to fill gaps in the RSTP or FIFA Statutes.

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[28] J.F. Vandellos Alamilla, "*Transfer Agreements*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[29] N.A. Santiago, "*National Transfers in the United States: Focus on Major League Soccer*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[30] J.F. Vandellos Alamilla, "*Transfer Agreements*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

4. Drafting an employment agreement

Parties in an employment contract shall comply not only with the regulations implemented by FIFA but also with the obligations and administrative formalities requested by the relevant domestic regulations in order to make the employment contract valid.

They should be aware that, unlike transfer agreements, the validity of an employment agreement cannot be made subject to the passing of medical examinations or to the issuance of a working permit (Art. 18.4 RSTP), nor can it be conditioned on the delivery of the International Transfer Certificate (hereafter "ITC").

The responsibility for duly registering a player and requesting the ITC relies on the new club. The latter applies for the ITC through the national association using the Transfer Matching System (TMS), while the releasing club and its national association have to insert specific information and documentation into the system.[31]

The **MLS** constitutes a peculiarity in the football industry, given that it completely disregards the FIFA Regulations. Employment contracts literally state that "FIFA Regulations do not apply" and players renounce all their rights under the FIFA RSTP. Furthermore, all employment contracts are not entered into by the clubs but rather by the MLS, which holds the players' registration rights.[32]

This means that while the player's employment contract terms must fit into the recipient club's *salary cap* (admitted in the **US** and, from January 2020 on, also in **China**),[33] there is no obligation to renegotiate the player's compensation with the club upon executing the player's transfer (loan or "trade"[34]) because he remains under the same employment contract concluded with the MLS itself.

4.1 Knowledge of the Legal Framework

The conclusion of an employment contract requires the parties to take into account the following array of regulations: (a) national legislation and, in particular, any mandatory provisions thereof; (b) collective bargaining agreements, if applicable;[35] (c) the FIFA regulations, including the Code of Ethics; for the Confederations,

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[31] S. Civale and L. Pastore, "*Employments Agreements of Football Players*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[32] N.A. Santiago, "*National Transfers in the United States: Focus on Major League Soccer*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[33] D. Wu, G. Marino, T. Pereda Rueda and R. Chu, "*National Transfers in China*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[34] "Trade" must be intended as the reassignment of a player from one team to another in exchange for another player or some other tradeable asset, such as *inter alia* a draft pick or a preferential right to sign a prospective player.

[35] For the detailed statistics on the countries which have collective bargaining agreements see FIFA "*Professional Football Report 2019*" available at https://img.fifa.com/image/upload/jlr5corccbsef4n4brde.pdf.

Member Associations and Professional Leagues (if applicable), the Statutes, Regulations and Decisions of these bodies.[36]

Despite such a comprehensive listing, from a practical point of view the FIFA RSTP, together with the domestic football regulations and the collective bargaining agreements (if applicable), have the greatest impact on football employment contracts.

It is always imperative for any legal advisor involved in the negotiation of an employment contract, to identify the applicable rules and take them into account at all times during both the negotiations phase and the performance of the contractual obligations.

Of course, a good knowledge of the FIFA regulations and of the relevant CAS/FIFA jurisprudence is essential to avoid onerous mistakes, which may eventually lead to disputes as well as both economic and sporting damages for the parties.

4.2 FIFA regulations v. national laws

As per Art. 2 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the DRC reads:

"*In their application and adjudication of law, the Players' Status Committee and the DRC shall apply the FIFA Statutes and regulations whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport*".

Thus, when deciding an employment-related dispute before the DRC, the FIFA Statutes and regulations are the primary sources of applicable law. However, the adjudicatory body shall also take into account the laws and regulations of the country concerned.

Pursuant to the FIFA Commentary, the deciding body has a discretionary margin to interpret and accordingly apply the guidelines provided by Art. 2.[37] In any case, by the wording of Art. 2 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the DRC, it is clear that, for disputes having an international dimension, FIFA's regulations prevail over any national law that may be applicable to a particular case.

Furthermore, the DRC traditionally sustains that FIFA's regulations prevail over any national law even when the latter has been specifically chosen by the parties.

In particular, the DRC emphasises that the main objective of the FIFA regulations is to create a standard set of rules to which all the actors within the football community are subject to and can rely on. This objective would not be

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[36] FIFA Circular Letter 1171, 2008.

[37] FIFA Commentary on the Regulations for the Status and Transfer of Players, comment under Art. 25.

achievable if the DRC had to apply the national law chosen by specific parties to every dispute brought to it.[38]

The supremacy of FIFA regulations over domestic laws appears to clash with Art. 22 of the FIFA RSTP, which explicitly allows players and clubs to refer employment-related disputes to domestic independent arbitration bodies or civil courts: as a matter of fact, such courts would be most likely to primarily apply domestic employment laws.

The new provision of art. 14 bis FIFA RSTP is particularly significant, specifically regarding outstanding salaries, giving preference to the terms of a collective bargaining agreement validly negotiated by clubs and players' representatives at national level.

Nonetheless, until now decisions issued by the FIFA DRC have systematically mirrored the supremacy of FIFA regulations.

It may be said in general terms that clubs who wish to terminate a contract with a player, do so when they are no longer interested in the player's services and generally wish to apply national law over FIFA Regulations, whereas if a player wants to move on the basis of national law, clubs prefer the application of the FIFA Regulations. The same can be said for players who – if they would like to prematurely leave the club – prefer the application of national law, whereas in the situation the club would terminate the contract and try to get rid of the player, they would prefer the application of the FIFA Regulations. This is an interesting debate, also keeping in mind that different dispute resolution fora and the fact that a club seems to always have the possibility to seek redress at FIFA under art. 22 a) of the FIFA RSTP, should the player move abroad without just cause, whereas a player can find himself bound to a NDRC, the latter being more likely to apply national law.

This happens because the dynamic and continuous evolution of the FIFA Regulations is increasingly reflective of the analysis of the football market, the jurisprudence of FIFA judicial and disciplinary bodies, and above all, the consultation and involvement of all football stakeholders.[39]

Nevertheless , it should be highlighted that in some countries such as **France**, the FIFA RSTP is not a principal regulation but is rather only applied in a supplementary manner and does not bind the French legislative, executive and judicial powers.[40] As mentioned above, the **USA**, do not apply the FIFA RSTP, nor does **Spain**, that has a specific and mandatory law governing the employment relationships of professional athletes.

In **China**, the disputes resolved by the CFA judicial bodies (regardless between domestic or foreign parties) are primarily subject to the CFA Regulations and subsidiarily Chinese law.

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[38] DRC 9 February 2017, no. 02171603, DRC 15 October 2015, no. 1015863.

[39] O. Ongaro, "*FIFA Regulations on the Status and Transfer of Players – the latest developments*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[40] A. Mialhe, A. Antonini and B. Arnaud, "*National Transfers in France"*, *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

In very limited and exceptional circumstances FIFA or CAS jurisprudence is taken into consideration by the CFA judicial bodies.

However, it has to be said that the CFA RSTP for example is practically a copy-paste of the FIFA RSTP, with some minor changes in order to comply with Chinese law.[41]

4.3 The form

Employment agreements must be in writing.

Many associations provide a standard employment contract which could be anything between a very short (**France** and **Italy)** and quite detailed and long document (**England**, **Germany**). These contract forms pick up the established rules of valid collective agreements (**Argentina**, **France**, **Germany**, **Italy**, **MLS**, **Portugal**) or they can be private, civil law agreements.

In other countries, there is a standard employment contract, however it is not mandatory to use (**Slovakia**) or mandatory standard contract which have not been agreed with the national stakeholders and are therefore imposed by Federations (**Malta**, **Serbia**). Finally, in some countries they predominantly use self-employed contracts with players being considered as independent contractors (**Czech Republic**, **Poland**, **Romania**, and **Croatia**).

In **Brazil** the standard CBF employment contract, which is mandatory for registration purposes is quite simple, but clubs can add "extra clauses". It is common that clubs also conclude private law employment contracts alongside the CBF standard one. A similar situation occurs in **Spain**.

In **Germany** the current standard employment agreement is composed of around 40 pages and there are translated versions in the remaining three official FIFA languages, i.e. English, French and Spanish.

In **China** the federation only provides a template for clubs' reference and holds no binding value. It is quite interesting to observe that players (even foreign ones) must put their fingerprints on each page to give validity to the contract.

Parties can decide whether to conclude an employment contract or a pre-contract. If they wish to conclude a pre-contract, it is advisable to specify it clearly in the relevant agreement because a pre-contract might/may be considered as a valid and binding employment contract if all the essential elements of the latter are duly compiled in written form.

In particular, they should also check the age of the player and, accordingly, verify (a) whether or not he/she is entitled to enter into an employment contract according to the laws of the country of the relevant club, and (b) the requirements for the player to sign a valid employment contract.[42]

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[41] D. Wu, G. Marino, T. Pereda Rueda and R. Chu, "*National Transfers in China*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[42] *Ibidem.*

4.4 The essentialia negotii

Important case laws have developed over the years as to the presence of *essentialia negotii* in any document to constitute a sufficiently binding obligation between a club and a player.[43]

In particular, the parties and their legal advisors should then focus on the basic elements of the employment contracts, i.e. the *essentialia negotii*, namely:

– the names of the parties: the player and the club shall be correctly identified;
– the financial terms: the employment contract shall at least state the fix salary due to the player in each football season.
– the duration: the employment contract to be valid shall clearly indicate the starting date and the expiry date of the employment relationship;
– a signature date;
– the signatures of the parties: the representative of the club shall be duly empowered to sign the contract; the signature of the player's legal guardians may be required if the player is an underage.

4.5 Remuneration

Employment contracts of players have specific provisions on remuneration, which might be fixed and/or variable in nature.

4.5.1 Fixed Remuneration

The contract may provide for the salary figure to remain the same for the duration of the contract, or to increase each football season (in which case it will likely include such increase to be conditional upon the club not being relegated), and/or to increase in the event of promotion to a higher league or decrease in the event of relegation to a lower league. Depending on the club's prospected performance it may be advisable to clearly determine the fixed remuneration to be paid during each and any season.

A player may receive a *signing on fee,* which under the English ***FA*** rules may be paid in equal instalments over the term of his/her playing contract.

In China, the CFA has introduced caps on the salary of players, which are different for domestic and foreign players. Moreover, such caps also include image right fees, signing-on fees, house allowance, transportation, remuneration in kind, stocks, bonds, etc.

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[43] See for instance Arbitrations CAS 2015/A/3953 & 3954 *Stade Brestois 29 & John Jairo Culma v. Hapoel Kiryat Shmona FC & Fédération Internationale de Football Association (FIFA)*, award of 30 November 2015.

In addition, there are additional limitations imposed by the CFA. For example, CSL clubs can invest a maximum of 1.1billion RMB per season, whereas salaries cannot surpass 60% of that amount.[44]

4.5.2 Bonuses

Besides a fixed remuneration, it is common practice to incorporate bonuses for the players in order to encourage them to achieve the best possible results in terms of individual and team performance.

When drafting such clauses, it is important to foresee and detail the specific circumstances triggering the payment of bonuses.

For example, in the event of a bonus for the player's participation in a match at his/her club, it will be necessary to (i) exclude or include friendly games, (ii) specify whether only games as a "starting eleven" will be taken into account,(iii) indicate whether a minimum playing time is required and, in this case, establish that the only authoritative document to determine playing time is the official game sheet. As regards the bonuses for qualifying for international/regional competitions, it will be useful to distinguish the group stages from the qualifying rounds.

Following the recently amended definition of TPO, the player is not considered as a third party.[45] Such a definition has a practical impact on employment agreements because now parties are clearly allowed to stipulate provisions that, in case of future transfer of the player, the club would pay him either a percentage of the transfer price or a lump sum, always proportional to the transfer compensation paid by the new club to the player's previous club.

Where not specifically forbidden, such as in **France**, players may also receive *loyalty bonuses* depending on the duration of their employment.

Bonus provisions in players' employment contracts typically include *appearance bonuses*, *positional bonuses* (linked to the club's final league position at the end of the season), *promotional bonuses* (if the club is promoted to a higher league at the end of a season), and *qualification bonuses* linked to the club's achievements in both domestic and European cup competitions, in terms of qualification and reaching certain stages of the competition, *match bonuses* linked to games played and bonuses for a win/draw/goals scored are also applicable to players. There are, of course, also collective bonuses that in **China** for instance have been established by the CFA for the period 2019-2021 in which the whole team are excluded from the salary cap (win-draw) bonuses.

Quite enlightening and innovative is the so-called *ethics bonus*, used in **France**. The French employment contract provides this special bonus for a player for his/her exemplary behaviour, drawing positive media coverage on the athlete

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[44] D. Wu, G. Marino, T. Pereda Rueda and R. Chu, "*National Transfers in China*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[45] See S. Malvestio and M. Motta, "*Third Party Ownership*", 2020.

and the club. This was implemented in order for clubs to optimize the co-operative attitude of their players so that their behavior in their professional lives, as in their personal lives, is likely to improve the club's image.[46]

4.5.3 Fringe benefits

The parties can also agree specific fringe benefits – such as car/accommodation, flight tickets, and, more importantly health and medical insurances – for the players and their families.

4.5.4 Gross/Net

It is market practice to negotiate football employment contracts by using net amounts as a benchmark, and this is a pretty unique feature of the football industry.

During the negotiations of an employment agreement, it is of utmost importance to identify the player's selected country of tax residence[47] for the entire duration of the contract and check the Conventions for the avoidance of Double Taxation and Bilateral Tax Treaties between the two countries (namely the country where the employer has its seat and the country where the employee has his/her fiscal residence).

Furthermore, is also prudent to verify whether the destination country has any preferential tax regimes for foreigners.

In **France** for instance, any individual of any nationality, even French, may benefit for eight years from the so-called "*repatriates scheme*" on the condition that they have not been a French tax resident during the past five years. Thanks to this scheme, 30% of a foreign player's regular pay is exempt from income tax. The express reference to this scheme in the employment contract's clauses is indispensable so that the player is able to enjoy its benefits.

In **Italy** a similar regime has been recently adopted in favour of Italian workers (included footballers) abroad willing to return back to Italy. Under certain circumstances they can benefit from substantial tax reductions.[48]

When these regimes exist, it is important they be adequately reported in the employment contract so that the player can receive the expected net remuneration.

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[46] See. A. Mialhe, A. Antonini and B. Arnaud, *"National Transfers in France", Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.
This ethical bonus is generally paid to the player on a monthly basis subject to the absence of any public comment, or any negative attitude toward the club and its members or supporters during matches or training sessions but also outside the game and/or during the player's working time, and when he is on international duty.

[47] See M. Tenore, "*International Tax Issues Related to Transfers of Football Players*", *Transfer of Players*, O.D. Bellia and M. Colucci eds, SLPC, 2020.

[48] *Ibidem.*

A further practical suggestion is to verify and possibly indicate in the employment contract the exact tax rate applicable in the club's country seat and thus, where it pays the taxes.

Moreover, in order to protect the interest of the player, the regular and timely delivery of tax certificates should be added, among the contractual obligations of the employer.[49]

A tax certificate is a document issued by the Tax Authority which shows the exact percentages and amounts paid by the club as taxes on the amounts paid to the player. Such document allows the employee to check whether the club has paid the taxes due and also to check if it did so at the "agreed/official" tax rate, looking at specific contractual provisions (if any). Additionally, by means of tax certificates the player can calculate the balance of the amount to be paid to the Tax Authority of his/her country of residence.[50]

Another issue related to taxation is linked to the compensation to be paid in case of the early termination of the employment contract. The question again is whether the compensation shall be paid net or gross, and the amount of taxes to be paid in each relevant country. Therefore, the contract should contain a settling clause for this issue.

As for the ***salary***, in **France** and **in Italy** it must be indicated as a gross amount and in case of a multiannual agreement, for each sporting season, preferably for each championship in case of promotion/relegation of the club.

As players usually demand to receive a net salary, clubs make use of a practical table prepared by the AIC (the Italian Players' Union) to approximately calculate the corresponding gross amount to be inserted in the employment agreement (the so-called "Tabella Lordo/Netto").[51] In any case, parties are free to produce and register an additional agreement specifying the NET amount with the League.

Finally, in some countries, such as **Poland** and **Croatia**, cases have emerged of players under a self-employed contract who are paid a net salary plus VAT by the club, but only upon receipt of a VAT invoice from the player.

5. Length of the agreement

The parties have to agree on a fundamental point, the length of a contract. As indicated by Art. 18, para. 2 RSTP, the minimum length of a contract shall be from the date of its entry into force to the end of the relevant sporting season, while the maximum length of a contract shall be five years (three years for players aged below 18). Contracts of any other length shall only be permitted if consistent with

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[49] S. Civale and L. Pastore, *"Employment Agreements of Football Players", Transfer of Players*, O.D. Bellia and M. Colucci eds, SLPC, 2020.

[50] *Ibidem.*

[51] L. Tettamanti and M. Spadini, "*National Transfers in Italy*", *Transfer of Players*, O.D. Bellia and M. Colucci eds, SLPC, 2020.

national laws, as it happens in **Spain**, where there are cases of players in the first division with eight year contracts. Furthermore, the validity of unilateral extension clause shall be assessed on a case by case basis. In general, the DRC's approach[52] considers the unilateral extension options reserved to the clubs as invalid. Such power excessively restricts the employees' freedom and gives the right to the club to terminate the contract or extend its duration. On the contrary, if the clause provides a mutual right for both parties to extend the contract, such clause might be deemed valid.

6. Language

International transfers of players will typically involve parties with at least two different nationalities, which often speak different languages.

It is important that the employment contract is drafted in a *language* that the player understands.

It is therefore quite common to draft international transfer agreements in two languages (the club's language and English) for ease of use.

In these cases, a specific contractual clause containing the clear indication of which language prevails in case of conflict between the two versions is fundamental in order to prevent problems during the contract execution, let alone in case of disputes.

However, if the contract does not specify which language prevails, or in case there are two identical contracts signed on the same day between the same parties but in different languages, it will be necessary to identify the real intention of the parties in order to resolve the conflict, taking into consideration, as usual, the specific circumstances of the case.[53]

7. Liquidated damage clauses/Indemnity clauses, buy out and release clauses

When entering into a contract, parties should also anticipate the possible consequences of the termination of a contract, especially with regard to the economic compensation and sporting sanctions they may face.

They should also agree on terms of the termination of the employment agreement, taking into account the principle of contractual stability as enshrined in the FIFA regulations. In particular, Art. 17 RSTP allows clubs and players to stipulate in their contract the amount of compensation due in case of unilateral breach of

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[52] See DRC decision n. 310607 of 18 March 2010 available at http://resources.fifa.com/mm/document/affederation/administration/drclabour/310607.pdf and DRC decision n. 06132616 of 13 June 2013 available at http://resources.fifa.com/mm/document/affederation/administration/02/25/89/13/06132616_english.pdf.

[53] S. Civale and L. Pastore, "*Employment Agreements in Football*", *Transfer of Players*, O.D. Bellia and M. Colucci eds, SLPC, 2020.

contract without just cause by the counterparty and include such a clause in their contract (so called liquidated damages clause).

Liquidated damages or indemnity clauses are quite practical because they stipulate the amount to be paid and save a party having to sue for general damages, which are quantified by the competent judge by reference to a number of variables and are, therefore, speculative in nature. The amount must represent a genuine pre-estimate of the loss generated by the breach.

Nevertheless, as rightly pointed out,[54] when drafting this kind of clause, legal counsels must be very careful because, in case of a dispute, a clause may be declared invalid when lacking reciprocity, proportionality and/or containing unbalanced terms.

Parties can also foresee a so-called *buyout clause*, which does not provide for damages but it gives the player the right to terminate the employment relationship at any moment by paying a pre-determined amount – although in practice, the amount is paid by the new club via the player. This, in turn, can lead to tax consequences for the player if the amount paid by the new club to the player is considered as taxable income.

In general the club is not obliged to transfer the player, and if an agreement on a suitable fee cannot be reached between clubs, a buyout clause can be triggered by the player. In such a case, the club cannot oppose or refuse the offer by any means. Usually this is a higher amount than the player's expected market value, although on occasion a player at a smaller club will sign a contract and insist on a low buyout fee to attract bigger clubs if ensuing performances generate interest from other clubs.

The aim of this clause for clubs is twofold: firstly, with its high amount, competing teams are discouraged from attempting to acquire the player if the current club shows no signs of wishing to sell him/her; and secondly it raises high stakes for the players in case they would think to disregard their contractual commitments.

In **Spain**, buyout clauses are common because Art. 16 of the RD 1006/1985 allows players to freely walk out of employment contracts by pre-establishing an amount to be paid to the club in such cases. However, such clauses are not compulsory. When the amount is not pre-established by the parties, players can still terminate their contracts but it will be for the judge to determine compensation in light of the relevant circumstances.[55] If wishing to terminate their contract, players are required to personally pay the buyout fee to their current club (via la Liga), with that fee being normally advanced to them by the new club. Since October 2016, the buyout fee advances to the players are no longer taxable, meaning only the fee itself has to be paid.

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[54] O. Ongaro, "*FIFA Regulations on the Status and Transfer of Players – The Latest developments*", *Transfer of Players*, O.D. Bellia and M. Colucci eds, SLPC, 2020.

[55] Royal Decree 1006/1985 of 26 June 1985 on the special employment relationship of professional athletes.

While in buy-out clauses the amount established corresponds to the 'consideration' (price) for the player to exercise his right to terminate the contract, in the *indemnity clauses*, the amount corresponds to a pre-determination of the damages that the club would suffer.

Release clauses oblige a club to accept an offer for the player if the underlying fee is over a certain amount.[56]

If the minimum amount set out in the contract is offered by a potential purchasing club, the player is entitled to negotiate with that club and in the event that the player agrees to his/her transfer to the new club, the former club is due to transfer the player against the pre-determined transfer compensation. Thus, no unilateral termination of the employment contract occurs.

It is interesting to observe that in **France**, release clauses are prohibited yet penalties clauses are permitted.

Penalty clauses protect the creditor's interest in the fulfilment of the footballer's contractual obligations. Such a clause is not expressly regulated in the RSTP. Therefore, Swiss law applies in the majority of the international contracts that are subject to the FIFA RSTP in order to define and interpret the modalities and content of such penalty clauses.

The penalty clause is a strong deterrent that encourages the debtor to fulfil its financial obligations towards the creditor. Nevertheless, the creditor needs to prove that the debtor actually failed to fulfil his/her obligations under the employment contract. But even if a breach of contract can be established, a penalty clause must be proportionate in order to be valid.

According to the established FIFA jurisprudence, the amount of the penalty should be proportionate in relation to the player's salary. The higher the salary of a player, the higher a penalty may be. This also means that a club cannot use an outstanding penalty as an excuse to disregard the employment contract itself.

Furthermore, under Swiss law, contractual penalties are valid, but CAS has the authority to reduce them if they are excessive.[57]

In **Brazil,** every employment contract must contain two types of penalty clauses, one in favour of the player and one in favour of the club.

The so-called "cláusula compensatória desportiva" is due by the club to the player in the event of unfair dismissal (or dismissal without a motive) or termination with just cause by the player. Its minimum threshold is the time remaining of the employment contract, with the maximum corresponding to 400 (four hundred) times the player's monthly salary at the moment of termination.[58]

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[56] CAS 2008/A/1519 *FC Shakhtar Donetsk v Mr. Matuzalem Francelino da Silva & Real Zaragoza SAD & FIFA*.

[57] S. Civale and L. Pastore, "*Employment Agreements of Football Players*", *Transfer of Players*, O.D. Bellia and M. Colucci eds, SLPC, 2020.

[58] As before 2011 the rule was that the club should always pay half of the residual value of the player's contract, it is very uncommon, if not impossible, to see parties deviating from the minimum threshold currently stipulated.

The so-called "*cláusula indenizatória desportiva*", in turn, is a type of buy-out clause due to the club by the player in the event he terminates his/her contract without just cause or if he/she resumes his/her professional activities with another club within 30 (thirty) months after. For instance, abandoning the club or retiring while a contract is still pending and valid.

The amount of the "*cláusula indenizatória desportiva*" may vary according to the national or international transfer of the player after the termination of his/her contract. For domestic transfers, the maximum amount shall not exceed 2,000 (two thousand) times the player's average monthly salary, while for international transfers no limit is established. In any case, be it in accordance with the Pelé Law or the FIFA RSTP (the latter, in case of international transfers), the new club is jointly and fully liable for paying the buy-out clause.

8. Image Rights agreements

In general, the more prestigious the clubs and players, the more important it becomes to deal with the subject of *image rights.*

Personal image rights are dealt with by specific agreements whereby players grant either directly or through image rights companies that belong to them or are controlled by them, all or some of the right to use their image , i.e. they authorise the club to make use of such rights for commercial exploitation.

Interestingly, in recent times some of the top tier clubs in Europe are making the signing of football employment contracts conditional upon the parallel signing of contracts for the exploitation of the footballer's image rights (either in full or in part).

Such agreements are beneficial for both parties. For football clubs, the benefits are obvious. By paying the agreed remuneration, they are entitled to use the name, image and other personal rights of football stars (as defined by the agreement) for commercial purposes, such as advertising, promotion, merchandising, social media activities, etc.

On the other hand, players earn a considerable remuneration (depending on their popularity and value) and at the same time the value of their image rights grows as a result of (i) the association with big clubs or big brands and (ii) the penetration and popularity in new markets, enabling them to receive higher remunerations for the same rights in the future and attract more brands.

That said, the practice of signing image rights agreements in parallel with employment contracts entails some negative aspects too.[59]

It is also not uncommon, especially in the lower level leagues, that image rights agreements are merely agreed on to reduce the payment of taxes, with cases having emerged in Cyprus where the payments received under the image

[59] For a detailed analysis of the Image rights agreements, see K. Zemberis, "*Image Rights*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

rights agreement would even be higher than the salaries received under the employment contract.[60]

A footballer might find himself in a difficult and problematic situation if the club does not respect its obligations arising either from the employment contract or from the image rights agreement, or both.

Thus, if the club is not fulfilling its financial obligations pursuant to the image rights contract, the player, as a principle, will not be able to simultaneously terminate all the contracts with the club , especially if his salary is properly paid. This means that the multiplicity of contracts may place the player in the awkward position of maintaining an employment bond with a club while pursuing a harsh litigation with it at the image rights level.

Likewise, should a club fail to comply with its (employment) contractual obligations and the employment contract is terminated due to a breach on behalf of the club, the player would be entitled to claim before sporting judicial bodies only due compensations from his/her employment contract.

Indeed, the sporting judicial bodies are not competent to decide on a genuine image rights agreement.

In light of the above considerations, it is essential to identify beyond any doubt the holders of the rights at stake (the player and/or a third party), the *commercial* (limitation of media interviews and marketing activities) and *territorial* (national or worldwide) *scope* of the agreement, the warranties granted to each party, the exclusivity or non-exclusivity of the image rights arrangement.

Equally important is to anticipate the *kind of exploitation* permitted, the *duration* and finally, the *consequences in case of violation*.

For several reasons, very often players entrust the exploitation of their image to specialised image rights companies. First, there is obviously a tax benefit since highly paid individuals are taxed in all countries higher than legal entities (it should be reminded that while tax evasion is illegal, tax planning is not) and second, big football stars can focus on their game while somebody else (in many case experienced managers) is taking care of their businesses on the commercial side.

Such matters ought to be assessed, defined and regulated in a separate contract, keeping in mind that the tax rate applicable to this kind of contract is different from the one applicable to employment agreements.

In that regard, in **Brazil** in order to reduce taxes and ancillary labour obligations, almost every club would try to pay most of its players' remuneration (including the least popular players) as image rights, reserving just a small part for salaries. Albeit image rights agreements have always been lawful, the use of such rights by Brazilian clubs was somewhat limited, making it easy for labour judges and the Federal Tax Service to detect fraud. In this regard, after decades of legal battles, in 2015 an amendment to the *Pelé Law* finally established that the maximum

[60] See in that regard See also: www.devereuxchambers.co.uk/resources/news/view/first-tier-tax-tribunal-determines-that-payments-under-a-premier-league-footballers-image-rights-agreement-taxable-as-earnings.

ratio between a player's image rights payment in relation to his/her global remuneration is 40% (forty percent).[61]

An image rights agreement is, in this sense, independent from the employment contract of a player in Brazil, having to be explicit in relation to the rights and obligations of the parties and even if concluded through a licensing company, shall be registered before the CBF.[62] However, it is worth noting that mandatory registration is not a condition for the validity of the agreement, but a duty recently introduced in the CBF RSTP to enhance transparency and facilitate the resolution of disputes – as matters involving image rights agreements can also be submitted to the CBF's national dispute resolution chamber (the so-called "CNRD").

In **England,** unless a player has assigned his/her image rights to a specialized company (in which case payments in respect of the club's use of such image will be dealt with in a separate image rights agreement), under the employment contract, players grant the right to their club for the term of the employment contract to exploit their image rights in a "club context". Such rights can be used in relation to the club's products and services, the League's licensed products, services and sponsors. This is subject to the use of the player's image (either individually or with up to two players) being no greater than the average usage of all regular first team players. The player's image should not be used to imply any brand or product endorsement by the player.

In **France,** the exploitation of image rights and the associated royalty must give rise to a separate contract between the club and the player. The basis for determining the amount of the fee must correspond to the revenue from the actual exploitation of the individual image in the areas of sponsorship, advertising and marketing of derivatives (revenues from TV rights and ticketing for club games are excluded from the scheme).

The collective bargaining agreement sets the limit on the fees liable to be paid to the player and the minimum remuneration under the employment contract above which the "Image Contract" may be concluded by the sportsman or professional coach.[63]

In **Spain** art. 7.3 of RD 1006/1985 cross refers to the rights set out in the relevant collective agreement or individual contract. The Footballers' collective agreement classified as salary if they are not ceded but instead exploited by the player in his or her own name (art. 28).

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[61] This provision shall not be confused with the so-called "*direito de arena*" stipulated in the Pelé Law, according to which 5% (five percent) of all broadcasting revenue obtained by clubs shall be distributed to the players taking part in the relevant match.

[62] Image rights agreements shall also be registered through CBF's electronic system, but differently from employment contracts and Training Contracts are not published in the BID.

[63] See Mialhe, Antonini and Arnaud, "*National Transfers in France*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020. The Authors underline that individual image entitlement limit may not exceed 50% of a certain wage remuneration insofar that the image rights compensation does not exceed 33.33% of the individual overall compensation. Furthermore, the royalties are not subject to VAT.

In **Germany,** the standard employment contract requires that each player grants the club the rights and permits to use and exploit the player's "commercialisation rights" which encompasses all his personality rights insofar as they relate to his/her capacity as player for the club. In contrast to other provision of the standard contract where the clubs enjoy a large freedom of legal drafting, the detailed regulations on the player's personality rights are thoroughly controlled by the DFL. Although contested by the national players' union association because the relevant rules of the above-mentioned provision have been considered too favourable to the clubs, national courts have considered the contractual duties regarding the player's commercialisation rights as appropriate to the parties' respective interests as long as they do not deprive the players of their right to use their names, data or image for their own personal purposes.[64]

In the **MLS** with the signature of the standard player agreement, each player grants and assigns the MLS the use or further assignment or licensing, the exclusive rights to his/her likeness (players, name, nickname, image, photograph, signature, specific attributes that identify him, etc.) for – within certain limits – promotional material for MLS, the player's team, and local and national sponsors. The MLS may even enter into sub-licensing agreements for these rights without needing further approval or consent from the player.[65]

9. Representation agreements with Intermediaries

Players and clubs may only appoint registered intermediaries, i.e. those individuals/companies that are listed in the registers of national football associations.[66]

The representation contract must be enclosed to the player's contract and sent to the relevant football association. The contract should mention the absence of any intermediary in the transfer deal.

Furthermore, the relevant information, namely the names of the club and player's intermediary/ies), together with the amounts of the commissions, must be registered in the TMS.

FIFA requires that the representation agreement is concluded before the intermediary participates in the relevant transaction. The relevant legal text specifies the relationship between the parties, and contains the following essential elements: "*the names of the parties, the scope of services, the duration of the legal relationship, the remuneration due to the intermediary, the general terms of payment, the date of conclusion, the termination provisions and the signatures of the parties. If the player is a minor, the player's legal guardian(s) signs*

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[64] J. Wilkens, *"National Transfers in Germany", Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[65] N.A. Santiago, "*National Transfers in the Unites States: Focus on Major League Soccer*", O.D. Bellia and M. Colucci eds, SLPC, 2020.

[66] For a critical and exhaustive analysis of the FIFA regulations on Working with the Intermediaries see A. Bozza and P. Capello, "*Intermediaries*", *Transfer of Players,* O.D. Bellia and M. Colucci eds,SLPC, 2020.

the representation contract in compliance with the law of the country of the player's domicile".

In general, concluding a written representation agreement prior to the relevant transaction is of crucial importance in terms of legal certainty. In the context of international transfers, it is also imperative that the representation agreement abides by the relevant intermediaries' regulations of the National Association of the country to which the player moves to. Various National Associations may have specific rules (e.g. in **England**, the maximum permissible duration of a representation agreement is 2 years) which can easily be overlooked in the rush to complete a transfer before the deadline.

In fact, an intermediary involved in a deal should always bear in mind that an issue of burden of proof (i.e. concerning the commission at stake) could arise at any time in a possible dispute with a club and/or a player. This means that a written representation agreement would be the only instrument to prove entitlement to a commission payment and/or involvement in a given transaction.

Finally, it is always advisable to include the scope of the services as a detailed description of the activities and services that an intermediary undertakes to provide for a client. In drafting this clause, the wording should be as precise and complete as possible in order to leave no room for ambiguity.[67]

10. Processing the relevant transfer and employment agreements

All relevant documentation and information concerning the international transfer of a player must be duly uploaded in the FIFA Transfer Matching System pursuant to Art. 1 para. 5 of Annex 3 RSTP. Any registration of a player without the use of ITMS will be deemed invalid.

Art. 31 para. 1 of Annex 3 of the RSTP lists the obligations of clubs. It states that clubs are responsible for entering and confirming transfer information in ITMS and where applicable, for ensuring that the recorded information matches with the legal requirements.

As a result of more recent introductions, such information includes the player's passport, proof of the last contract end date and the employment contract as well as the TPO declaration from the former club of the player. Especially in the lower end of the football market, the requirement for the new club to upload the TPO declaration from the former club can lead to problems when the former club leverages the issuance of said document against a final clearance or a waiver from the player to his outstanding salaries.

Strict regulatory time limits apply to avoid undue delay in the player's transfer. For instance, the association of the new club must request the ITC when its affiliated club has completed the transfer process in the system. The new association may at the very latest request the ITC up until the last day of the registration period.

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[67] M. Colucci, *The FIFA Regulations on Working with the Intermediaries*, II edition, SLPC, 2016.

The agreements need to be registered with the relevant sports association in order to be recognized and/or enforced under the national jurisdiction of each country.[68]

Moreover, some key domestic law rules apply to a footballer transfer.

In **England,** for instance, The FA's prior consent is required when a club proposes to acquire a player owned by a foreign club or a third party. Furthermore, the payment of any sum must be done via The FA's designated account and prior to the expiry of the player's initial employment contract.

All transfer documentation must be lodged with the relevant league and The FA within five days of execution.[69]

Furthermore, The FA provides the possibility to submit a "deal sheet" two hours before the deadline of the transfer window allowing the parties to confirm to the Premier League that a deal has been reached in order to give additional time (up to two hours after the deadline) in order to submit the remaining documentation.

It is very interesting to know that when FIFA has announced the establishment of a *clearing house* for the processing of all payments related to the transfers of players, The FA already had its own clearing house, which has seemingly been working quite well. In fact, all transfer fees, loan fees and contingent payments payable to a Premier League or EFL club must be paid by a buying club into a Compensation Fee Account of the Premier League or EFL Board. Once the payments are received in that account, the relevant Board pays the amounts due to the selling club. If the buying club is an international club, the amounts are paid into a clearing house run by the FA.[70]

In **Italy,** all contracts (transfer and employment) must be registered with the leagues otherwise they can be declared as null and void**.** Furthermore, the Leagues operate with a "clearing house" method, setting off credit-debt positions derived from the transfer transactions of their affiliated clubs. Every yearly instalment is divided into sub-monthly quotes and must be guaranteed by the respective clubs with bank sureties issued by Italian banks or insurance warranties issued by certified insurance companies with a minimum rating of A3 – Moody's / Fitch or A – by Standards & Poors.[71]

In **Spain**, all contracts (transfer and employment) must be registered in the Spanish FA ("Fenix System") and in LaLiga.

Pursuant to the CBF RSTP, the registration of both professional and amateur players in **Brazil** (including those coming from abroad) is entirely conducted

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[68] K. Morris, "*The Transfer Matching System*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[69] C. Couse and T. Gunawardena, "*National Transfers in England*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

[70] *Ibidem.*

[71] L. Tettamanti and M. Spadini, "*National Transfers in Italy*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

by electronic means, through a system developed and administered by CBF. To start the process, clubs have to submit copy of any contract to be registered, some personal and medical documents of the player concerned, as well as proof of payment of all applicable taxes and fees. All the documentation is then reviewed by the relevant State football federation and eventually handed over to the CBF for final approval.

If approved, the registration is concluded upon the publication of the player's name and contractual details in the "Boletim Informativo Diário" (the so-called "BID"), which is a bulletin published on a daily basis in CBF's website, open for public consultation.

In **China,** all the contracts signed between clubs, coaches and players are submitted to the CFA, including image rights agreements.

Furthermore, clubs are not allowed to enter into contracts without any substantial commercial value (so called "fake contracts"), such as image rights agreements without any real exploitation of the player's image but for the mere purpose of paying additional remuneration to the player with a lower tax rate.

In addition to that, the CFA issued an additional circular letter[72] at the end of 2018 and further policies by the end of 2019,[73] aimed to tackle *inter alia* the use of "yin and yang"[74] contracts by Chinese professional clubs. For this purpose, the CFA obliged the clubs to execute payments exclusively from bank accounts registered before the CFA and prohibited clubs from entering into the following contracts: a) commercial contracts with players or coaches without any or low commercial consideration; b) contracts establishing payments in cash or value in kind to players or coaches or establishing payments via third parties; c) contracts not approved by the CFA;[75] and d) contracts deemed as "yin and yang" contracts[76] by the CFA inspection group.

In **France,** in order to exercise control over the legality of all definitive and temporary transfers as well as employment contracts, the League has developed a software programme called *IsyFoot*, made available to professional clubs. This tool centralizes and standardizes a set of procedures and formalities to follow.

In **Germany,** all transfers of players to Bundesliga or a Bundesliga 2 club is processed via an online-based registration system called *TOR* (*Transfer Online Registration system*), where the club willing to register a new player shall

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[72] Circular Letter "*FA [2018] No. 891*".

[73] "*Notice of the Chinese Football Association on the policy adjustment of the 2020 professional league*", issued by the CFA on 31 December 2019.

[74] This is a Chinese expression referring to contractual schemes in which one contract is drafted for submission to authorities – mainly tax authorities – and the other contract includes the real financial terms.

[75] All contracts entered between clubs, coaches and players must be sealed by the CFA prior their filing.

[76] This is a Chinese expression referring to contractual schemes in which one contract is drafted for submission to authorities – mainly tax authorities – and the other contract includes the real financial terms.

enter the data necessary to identify the player and to allow the league to register the player for the new club.[77]

In **Portugal,** clubs can process the domestic and international transfers of players through the online platform called *SCORE*, whose operation is similar to that of FIFA TMS: clubs register the players in the electronic system of the league called *TRANSFER* by inserting the relevant information which is subsequently transferred in *SCORE*.

A club's use of this interface is a necessary prerequisite for the approval of the different agreements and therefore, the registration of its players.

Conclusion

The last two decades have seen a deep and wide evolution of the FIFA Regulations on the Status and Transfer of Players (the "Regulations").

The dynamic factors of this consistent though fragmented transformation have been on one hand the reception of the case law of the Dispute Resolution Chamber and the Players' Status Committee and, on the other hand, the integration of the positive results of the negotiations between FIFA and the football stakeholders, which have led to the latest edition of these Regulations.

Among the issues arising from, and integrated into, the various editions of the Regulations, the protection of contractual stability has been at the core of many of the amendments. Considering the vast amount of funds involved in transfers, both clubs and players, together with their legal representatives, were rightly entitled to expect more detailed and strengthened rules and disciplinary sanctions to govern the issues that provide a just cause to terminate their employment relationship. The collection of new rules on contractual stability has certainly upgraded the protection of players, as the weaker party, and provide clear consequences related to economic compensation and sporting sanctions due to unjust cause.

Of course, the rules relating to training compensation and solidarity mechanism have also been substantially upgraded in the context of international transfers. They were initially established with the aim of compensating clubs which train players, particularly after the changes to the transfer system following the intervention of the EU Court of Justice in the *Bosman* case.

In that regard, FIFA has recently established a Clearing House in order to effectively ensure the payment of solidarity contributions and training compensation to training clubs, with the potential to increase the amount of money distributed to these teams by up to four times. Furthermore, the new rules on the recording of the training clubs in footballer's certificates and registration processes aim to ensure that clubs receive their due compensation.

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[77] J. Wilkens, "*National Transfers in Germany*", *Transfer of Players,* O.D. Bellia and M. Colucci eds, SLPC, 2020.

Maybe the existence of disputable phenomena such as TPI and TPO, which finally have been completely banned, have introduced a serendipitous bonus for players who may now benefit from extra compensation from their own future transfers. This is due to the remodeling of the definition of "third party" under the Regulations, which has been narrowed to exclude players, and therefore allows them to exploit their economic rights.

Yet the FIFA regulatory evolution has not been exclusively focused on financial rules. The successive editions of the Regulations have seen an increasing trend of specific detailed provisions to enhance the protection of minors, which has become a priority for football as well as the entire sports world.

In 2001, the Regulations provided only a simple, unbinding code of conduct for clubs. Nearly 20 years later, the effective and constant protection of minors from financial exploitation and human trafficking, as well as their education and training for alternative working activities, are social requirements for clubs and associations. To these ends, FIFA has developed a detailed regulatory framework and expanded its scope, and recently added specific provisions regarding humanitarian and academic cases.

Furthermore, procedural provisions, establishing administrative clauses concerning the transfer of minors, allow FIFA to monitor the clubs' and associations' compliance with substantive requirements and to take the appropriate measures to correct irregularities and impose effective sanctions.

The above-mentioned matters represent only the main measures that have been adopted, and surely many others will emerge to upgrade the overall efficiency, transparency and ethics of the international transfer system.

Probably, it is still not perfect, but as with other human constructions, it can be improved upon, and FIFA as well as all stakeholders will strive to make the system ever more effective and just for both clubs and players.

ANNEX

NEGOTIATING A TRANSFER – CHECK LIST

This short checklist is provided as essential tool for clubs, players, and their legal advisors when negotiating the transfer of a player. It lays down the main considerations to make, the legal issues to take into account, as well as the major tasks to do when drafting transfer, employment, and image rights agreements.

The relevant Authors of this book have made a critical and in-depth analysis of each of the points hereafter analysed on the basis of the CAS and FIFA case law.

Transfer Agreements[1]

1. Identify the nature of the transfer agreement (i.e. definitive or temporary).

2. Verify the age and status of the player (i.e. amateur/professional) in order to anticipate possible costs on training compensation and/or solidarity payments. Request for a copy of the player's passport from the former Football Association.

3. Identify the parties to the transfer agreement (i.e. the releasing club; the new club and/or the player) their respective obligations, as well as possible rights of former clubs (e.g. sell-on clauses).

4. Establish the conditions to which the transfer agreement might be subject to (i.e. successful passing of the medical examinations; obtaining the players' visa/working permits; the signing of an employment contract between the player and the new club; the timely delivery of the ITC by the former club; the issuance of bank guarantees, etc.) and if so, their nature (i.e. condition precedent or condition subsequent).

5. Decide whether to include preferential rights (e.g. buy-back clause; option to transfer; rights of first refusal) always within the limits of Articles 18 bis (TPI) and 18 ter (TPO) RSTP.

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[1] J.F. Vandellós Alamilla, "*Transfer Agreements*", *Transfer of Players: A Practical Implementation of the FIFA rules*, O.D. Bellia - M. Colucci, SLPC, 2020.

6. Clarify whether the transfer fee is net or gross; identify which deductions can be applied to it (e.g. intermediation fees, solidarity payments, training compensation, bank commissions, taxes etc.); establish contingency payments for sporting performances; and if there is a reserve of a share over the economic rights in a possible future transfer of the player to a third club.

7. Decide on whether to include or not mechanisms to encourage the fulfillment of the obligations assumed under the transfer agreement such as acceleration clauses, penalties, interests for late payment, liquidated damages, bank guarantees, etc.

8. Identify the competent forum to hear any disputes related to the transfer agreement (FIFA Players' Status Committee, the CAS) and the applicable law to the agreement.

9. In case of loan agreements, determine: (a) the consequences of the premature termination of the employment contract between the player and the new club (i.e. obligation to come back to the former team or not, the impact on the loan fee); (b) the obligation of the new club to pay the remuneration of the player and (c) the obligation of the new club to contract an insurance company against the risk of injury during the term of loan.

10. Diligently comply with the obligations under the FIFA Transfer Matching System.

Employment Agreements[2]

1. Identify the applicable legal framework, i.e. (a) national legislation and in particular any mandatory provisions; (b) collective bargaining agreements, if applicable; (c) the regulations of FIFA.

2. Decide whether to conclude an employment contract or a pre-contract and made it clear in the relevant agreement. A pre-contract might be considered as a valid and binding employment contract if all the essential elements of the latter are included in it.

3. Check the age of the player and, if the player is under age, verify (a) whether or not he/she is entitled to enter into an employment contract according to the laws of the country of the club and (b) the requirements for the player to sign a valid employment contract.

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[2] S. Civale and L. Pastore, "*Employment Agreements*", *Transfer of Players: A Practical Implementation of the FIFA rules*, O.D. Bellia - M. Colucci, SLPC, 2020.

4. Verify whether, in the relevant country, specific formalities are requested by the applicable laws and regulations for the validity of the employment contract.

5. During the negotiations always act in good faith in order to avoid liability for *culpa in contrahendo*.

6. Focus on the basic elements of the employment contract, i.e. the *essentialia negotii*, namely:
   a) the names of the parties: the player and the club shall be correctly identified;
   b) the financial terms: the employment contract shall at least state the fix salary due to the player in each football season;
   c) the duration: the employment contract to be valid shall clearly indicate the starting date and the expiry date of the employment relationship;
   d) a signature date;
   e) the signatures of the parties: the representative of the club shall be duly empowered to sign the contract; the signature of the player's legal guardians might be required if the player is an underage.

7. Decide on whether to include additional bonuses (sign on fees/individual bonuses/team bonuses) and fringe benefit (car/accommodation/benefits for family/translator/driver/security/intermediaries' commission).

8. Clarify whether the amounts indicated into the agreement are net or gross. It is advisable to establish a specific obligation on the club to provide the player with the proof of payment of the tax paid and the relevant tax certificates.

9. Decide on whether to include or not mechanisms to encourage the fulfilment of the obligations assumed under the employment agreement such as acceleration clauses, penalties, default interest rate for late payment, liquidated damages, bank guarantees.

10. Consider the commercial aspects (image rights/limitation of media interviews and marketing activities).

11. Decide whether to include a buy-out clause, a release clause or termination clauses.

12. Comply with the obligations and administrative formalities requested by the relevant domestic regulations in order to make the employment contract valid and binding.

Image Rights Agreements[3]

1. Identify the owner of the rights (i.e., the player or a third party/company) and ensure that a respective warranty regarding ownership of rights is included in the agreement.

2. Identify the assigned/granted image rights and the scope of the agreement/ license (i.e., the permitted ways of use and exploitation of such rights, the media through which such exploitation is possible, etc.).

3. Establish the territorial scope of the agreement and of the assignment/ grant of the rights (national, regional, global).

4. Expressly mention if the assignment/grant of rights is exclusive or non-exclusive.

5. Provide for the remuneration of the holder of the rights for the assignment/ grant of such rights (including arrangements regarding VAT and other tax obligations).

6. Provide for the obligations of each party.

7. Establish the duration of the agreement and the period of the assignment/ grant of rights.

8. Foresee the consequences for the parties in case of violation of the agreement.

9. Establish the applicable law and the competent forum for the resolution of any disputes (taking always into consideration the capability of enforcing the decision if necessary).

10. When such agreements are executed in parallel to players' employment contracts, pay particular attention in ensuring that the two agreements can be functional without creating problems to each other (checking of laws and customs, respecting directions and guidance given by tax authorities, considering the appropriate forum for resolution of disputes, etc.)

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[3] See K. Zemberis, "*Image Rights*", *Transfer of Players: A Practical Implementation of the FIFA rules*, O.D. Bellia - M. Colucci, SLPC, 2020.

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