



## Third Party Ownership of Player's Economic Rights

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## Overview

- The 20th century witnessed the development of Sports as cultural, social and economic phenomenon. Sports started to be a leisure activity and transformed rapidly into a multimillion industry. Despite such transformation being observable in almost all sports, the zenith of this phenomenon occurred in professional football, the reason why under this Practice Note we will follow such sport industry rules and its legal challenges closely.
- The degree to which modern football become a multimillion industry can be seen clearly by the evolution of the transfer market. Year after year, the value of players economic rights and the amount of money flowing into the player transfer market continues to grow exponentially. Transfer payment records are broken frequently and stand for a shorter period of time. Perhaps most significantly, despite the continued concern and protestation at these increases, there are few indications that the fees are set to stabilise or even decrease in the near future. By the contrary, if we look into the ten highest transfer fees in male's professional football, eight occurred in the last three years. In 2016 the total sum invested in the transfer market was USD 4.80 billion, but in 2018 it reached up to USD 7.03 billion.
- As the value of football transfers started to increase, numerous investors saw in football an (easy) way of enhancing their wealth, taking advantage of the lightning appreciation that the economic player's rights could experience, thus creating a new juridical figure known as Third Party Ownership (TPO). At the beginning of this century, such practice gained visibility and economic relevance in Europe.
- This Practice Note will cover Third Party Ownership of Player Economic Rights.

## Definitions

- *FIFA*: Fédération Internationale de Football Association which means in English International Federation of Association Football. This Swiss law Association aggregates the different national football associations which are responsible for organising and supervising football.
- *Player Economic Rights*: Financial compensation due to a Club when assigns to another Club the federative rights of a certain football player that is under a valid labour contract. Naturally the player must also accept performing his sport ability for that other club. Economic rights result from the federative rights. The federative rights arise from the inscription of a player in a national football association under the name of a Club and subject to a previous agreement between that Club and Player (namely a labour contract) The federative rights cannot be divided and belong to one Club that may sell such rights to another Club as long as the player has a valid labour contract with such Club.
- *Third Party Ownership (TPO)*: Third-party investments in the economic rights of professional football players, potentially in order to receive a share of the value of any future transfers of those players
- *Transfer Window*: The two annual registration periods fixed by the relevant national association allowing clubs to register new players within such national association.
- *CAS*: Court of Arbitration for Sport.

## Practical Guidance

Third Party Ownership (TPO) is the name given to the financial operation by which a football club sells part (or the totality) of the economic rights of a football player to a third party investor. In 2015, FIFA addressed this topic, by defining TPO as “third-party investments in the economic rights of professional football players, potentially in order to receive a share of the value of any future transfers of those players”. This definition describes the TPO business in European football.

This business is born from the joint willingness of Clubs and Investors, on the one hand, Clubs need more money, to acquire new players, on the other hand, the Investor has the money and in exchange for an investment the Investor will receive a percentage (or the totality) of the economic rights of a specific player.

Naturally, the Investor acquires the economic rights with the perspective of receiving a higher sum when the player is transferred to another Club, maximising in this way the investment made (in many cases a valorisation of more than 100% in one or two years).

It is not difficult to see the risks that such type of investment may cause to the competition integrity as well as to the players because they can be subject to an enormous pressure to accept a transfer for another club to allow the investor to recover its investment and gain profit. Another critic to TPO is that this business treats players like merchandise or an asset, breaching its human rights. Additionally, TPO was criticised due to the harmful consequences that could arise to clubs by resorting to such type of financing.

Due to these arguments, in 2014 FIFA approved an amendment to the Regulation on the Status and Transfer of Players prohibiting TPO with the following terms:

- Article 18ter - Third-party ownership of players' economic rights
- 1. No club or player shall enter into an agreement with a third party whereby a third party is being entitled to participate, either in full or in part, in compensation payable in relation to the future transfer of a player from one club to another, or is being assigned any rights in relation to a future transfer or transfer compensation.
- 2. The interdiction as per paragraph 1 comes into force on 1 May 2015.

- 3. Agreements covered by paragraph 1 which predate 1 May 2015 may continue to be in place until their contractual expiration. However, their duration may not be extended.
- 4. The validity of any agreement covered by paragraph 1 signed between one January 2015 and 30 April 2015 may not have a contractual duration of more than one year beyond the effective date.
- 5. By the end of April 2015, all existing agreements covered by paragraph 1 need to be recorded within the Transfer Matching System (TMS). All clubs that have signed such agreements are required to upload them in their entirety, including possible annexes or amendments, in TMS, specifying the details of the third party concerned, the full name of the player as well as the duration of the agreement.

FIFA also defined Third Party as “a party other than the two clubs transferring a player from one to the other, or any previous club, with which the player has been registered.” (definition No. 14 under Regulation on the Status and Transfer of Players).

However, since 2008 FIFA already had a rule with the objective of ensuring that the Clubs were free from any exterior influence in matters concerning employment, transfers, policies and performance of the sporting team (article 18bis of the Regulations on the Status and Transfer of Players). For instance, this article tackled the right that third parties have under a TPO agreement in forcing a Club to sell the economic rights of the player.

As expected, FIFA's ban on TPO was challenged before the Court of Arbitration for Sport and, in appeal, by the Swiss Federal Supreme Court.

In summary, a Belgian football Club entered in two agreements with a company by which the latter acquired the ownership of the economic rights of certain players in exchange for the payment of a sum agreed by the parties.

The Disciplinary Committee of FIFA started disciplinary proceedings against the Club and issued a decision condemning the latter to pay a fine of CHF 150.000 (one hundred and fifty thousand swiss francs) and forbid it of registering new players for the next four Transfer Windows. The Club filed an appeal before FIFA's Appeal Committee, nevertheless the appeal was rejected, and the Disciplinary Committee's decision was confirmed.

Pursuant to FIFA rules, the Club then filed an appeal against the Appeal Committee's decision to the Court of Arbitration for Sport (CAS) claiming that articles 18bis and 18ter of FIFA's Regulation on the Status and Transfer of Players were illegal because:

- these articles were in breach of the European Union Laws (namely the laws regarding the free movement of persons, services and capitals and competition law) as well as the Swiss Law;
- breached the European Convention on Human Rights, in concrete article 8 and article 1 of the first additional Protocol to this Convention; and
- the Swiss Federal Court had already ruled on the legality of the TPO agreement in another case.

The CAS final award was issued on the 15 May 2017 and, in summary, made the following considerations:

- The restrictions embodied in articles 18bis and 18ter of FIFA's Regulation on the Status and Transfer of Players are legal because they are justified by legitimate objectives like ensuring the integrity of the competitions, preventing conflicting interests and public confidence in a honest competition, as well as clubs autonomy. Additionally, these restrictions have been considered balanced and proportional to achieve such objectives.
- Concerning the European Union and Swiss competition law, the CAS decided that FIFA's rules do not have the objective or the power to restrict competition, and they only intend to regulate the transfer market, moreover pursuing justified objectives.
- The Arbitrators have also decided that the Club did not explain how article 8 of the European Convention on Human Rights, under the heading “Right to respect for private and family life”, could be breached by article 18ter of FIFA Regulations on the Status and Transfer of Players.<sup>[1 p.7]</sup> CAS also ruled the claim on the violation of article 1 of FIFA Regulations on the Status and Transfer of Players, of the first additional Protocol of the European Convention on Human Rights was not supported by any specific argument.
- Regarding the Swiss Federal Court decision that allegedly confirmed the legality of the TPO, the Arbitrators noted that such judgement ruled on different FIFA's rules because when such judgement was issued article 18ter of FIFA Regulations on the Status and Transfer of Players did not exist yet. Moreover, that Swiss Federal judgement does not evaluate the legality of TPO contract according to article 18bis and 18ter of FIFA Regulations on the Status and Transfer of Players and the validity of such rules.

In conclusion, CAS judged article 18bis and 18ter of FIFA Regulations on the Status and Transfer of Players as lawful according to the European Union and Swiss Law, and consequently, the decision rendered by FIFA's Appeal Committee was legal. Nevertheless, CAS decided that the sanctions applied to the Club were not proportional and reduced the prohibition of registering new players to three transfer windows, instead of the previous four, though sustaining the fine of CHF 150.000 . For further details on CAS Award, please consult the full document on CAS web page, jurisprudence tab, CAS Case No. 2016/A/4490, or [link](#)<sup>[2 p.7]</sup>.

The CAS Award was later challenged in front of Swiss Federal Supreme Court, however the appeal was dismissed with the following grounds:

- CAS is a legitim and impartial Arbitral Tribunal, structural and financially independent of the sports associations, namely FIFA;

- the competition laws concerned (European and/or Swiss) cannot be considered as forming part of the public policy, as defined in [article 190\(2\)\(e\) of Switzerland's Federal Code on Private International Law](#)<sup>[3 p.7]</sup>; and
- the TPO ban is not an illicit limitation to economic freedom and does not breach article 27(2) of Swiss Federal Law No. 210/1907, the [Swiss Civil Code](#)<sup>[4 p.7]</sup>.

To learn further details on Swiss Federal Supreme Court judgement, please consult [here](#)<sup>[5 p.7]</sup>.

## Conclusion

The TPO presently is banned from football, although this matter is still under discussion in European Courts. In fact, the legal procedures following FIFA's decision against the Belgian Club did not take place only in the CAS and in Swiss Courts, since the Club also resorted to the Belgians Courts. In August 2018, the Brussels Court of Appeal decided that according to the Belgian Law the arbitration clause included in FIFA statutes was vague and did not define the legal relationship adequately, therefore such arbitral clause was inapplicable. Thus, the Court of Appeal ruled favourably on Belgian Tribunals jurisdiction to hear a dispute regarding FIFA's rules (contrary to FIFA Statutes that determine the recourse to ordinary courts of law is prohibited, unless provided for in FIFA regulations - FIFA Statutes, article 59 of FIFA Regulations on the Status and Transfer of Players, under the heading Obligations relating to Dispute Resolution). Belgian Court's judgement regarding the legality of articles 18bis and 18ter of FIFA Regulations on the Status and Transfer of Players has not been issued yet.

## Recent amendments

Recently, and relevant to this Practice Note, is FIFA's Regulations on the Status and Transfer of Players (in force from the 1 June 2019) concerning the definition of "third party" pointing out that players themselves are not considered as third parties to their own transfers. Presently, the notion of third party is "a party other than the player being transferred, the two clubs transferring the player from one to the other, or any previous club, with which the player has been registered".

## Related Content

### Legislation

#### *European Union*

- [Treaty on the Functioning of the European Union](#)<sup>[6 p.7]</sup>
- [European Convention on Human Rights](#)<sup>[7 p.7]</sup>

#### *Switzerland*

- [Switzerland's Federal Code on Private International Law](#)<sup>[5 p.7]</sup>
- [Swiss Civil Code](#)<sup>[4 p.7]</sup>

### Regulations

- FIFA Regulations on the Status and Transfer of Players
- [FIFA Statutes](#)<sup>[8 p.7]</sup>

### Case decisions

#### *International*

- [CAS Award on 2016/A/4490](#)<sup>[2 p.7]</sup>
- [Swiss Federal Supreme Court judgement on Case No. 4A\\_260/2017](#)<sup>[5 p.7]</sup>
- [Brussels Court of Appeal interlocutory decision Case No. 2018/6348](#)<sup>[9 p.7]</sup>

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### **Biography**

- Essa Al Sulaiti is a practising Attorney and Arbitrator in the State of Qatar. Drawing on prior experience under reputable Welsh and Qatari law firms, Mr. Al Sulaiti founded the Essa Al-Sulaiti Law Firm in 2015 to effectively align his practice with a personal mission: addressing the emerging legal demands of Qatari and international businesses operating in Qatar. Essa's work includes a broad range of corporate and commercial advisory services with a focus on dispute resolution. Essa worked closely with various local and international companies to advise on Corporate, M&A and Construction matters.
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- Ricardo is a Senior Legal Counsel at Essa Al Sulaiti Law Firm, and specializes in Corporate & Commercial, Construction, Labour and Sports Law. He has more than 15 years of work experience as a Legal Counsel and a Lawyer for several Portuguese and European companies operating in different fields as Construction, Transport of Commodities, Agency and Distribution and Governmental Institutions, as well as Sport Bodies and athletes in international legal proceedings.
- Ricardo speaks a total of four different languages, including Portuguese, which is his mother tongue, English, French and Spanish.

## Notes

1. <sup>^</sup> [p.3] <https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-2018-2925437.pdf?cloudid=c83ynehmkp62h5vgwg9g>
2. <sup>^</sup> [p.3] [p.4] [http://jurisprudence.tas-cas.org/Search/results.aspx#k=\(Title:%222016%2FA%2F4490%22\)](http://jurisprudence.tas-cas.org/Search/results.aspx#k=(Title:%222016%2FA%2F4490%22))
3. <sup>^</sup> [p.4] [p.4] [https://www.hse.ru/data/2012/06/08/1252692468/SwissPIL%20%D0%B2%20%D1%80%D0%B5%D0%B4.%202007%20\(%D0%B0%D0%BD%D0%B3%D0%BB.\).pdf](https://www.hse.ru/data/2012/06/08/1252692468/SwissPIL%20%D0%B2%20%D1%80%D0%B5%D0%B4.%202007%20(%D0%B0%D0%BD%D0%B3%D0%BB.).pdf)
4. <sup>^</sup> [p.4] [p.4] <https://www.admin.ch/opc/en/classified-compilation/19070042/index.html#>
5. <sup>^</sup> [p.4] [p.4] [https://www.bger.ch/ext/eurospider/live/fr/php/aza/http/index.php?lang=fr&type=highlight\\_simple\\_query&page=1&from\\_date=&to\\_date=&sort=relevance&insertion\\_date=&top\\_subcollection\\_aza=/2017&rank=1&azaclir=aza&highlight\\_docid=aza%3A//20-02-2018-4A\\_260-2017&number\\_of\\_ranks=5](https://www.bger.ch/ext/eurospider/live/fr/php/aza/http/index.php?lang=fr&type=highlight_simple_query&page=1&from_date=&to_date=&sort=relevance&insertion_date=&top_subcollection_aza=/2017&rank=1&azaclir=aza&highlight_docid=aza%3A//20-02-2018-4A_260-2017&number_of_ranks=5)
6. <sup>^</sup> [p.4] <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>
7. <sup>^</sup> [p.4] [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)
8. <sup>^</sup> [p.4] <https://resources.fifa.com/image/upload/the-fifa-statutes-2018.pdf?cloudid=whhncbdzio03cuhmwfxa>
9. <sup>^</sup> [p.4] <http://sportlegis.com/2018/09/10/brussels-court-of-appeal-decision-in-the-matter-doyen-et-al-v-fifa-et-al-legality-of-the-arbitration-clause-in-the-fifa-statutes/>