

PORTUGUESE FOOTBALL FEDERATION ADOPTS REGULATIONS ON INTERMEDIARIES

SPORTS LAW

Introduction

Following the approval of the new FIFA Regulations on Working with Intermediaries (*FIFA Regulations*)⁽¹⁾, which has come into force on 1 April 2015 and replace FIFA's Players' Agents Regulations (2008), the Portuguese Football Federation (*PFF*) adopted its internal regulations governing the intermediation activity – the PFF Regulations on Intermediaries (*PFF Regulations*) – effective as from 1 April 2015.

In accordance with FIFA, National Football Associations are required to implement and enforce [at least⁽²⁾] the minimum standards foreseen in the FIFA Regulations by adopting internal regulations incorporating the principles set out by FIFA, “subject to the mandatory laws and any other mandatory national legislative norms applicable to the associations.”⁽³⁾

Thus, in drafting its internal regulations, PFF was required to achieve a balance between the minimum standards contained in FIFA Regulations and the relevant national legislation governing intermediation activity in Portugal, in particular Laws no. 28/98, 26 June, no. 5/2007, 16 January, and no. 50/2007, 31 August.

This briefing aims at providing an overview on the new rules governing intermediation activity in Portugal established by the PFF Regulations.

The PFF Regulations – relevant provisions

As a rule, the PFF Regulations incorporate the minimum standards provided for in FIFA Regulations. However, in several cases the PFF used the prerogative provided for in Article 1 (3) of the FIFA Regulations, pursuant to which “[t]he right of associations

¹ Approved in the context of FIFA's Executive Committee meeting held on 21 March 2014. Please see FIFA's statement “FIFA Executive Committee approves Regulations on Working with Intermediaries”, available at <http://www.fifa.com/aboutfifa/organisation/administration/news/newsid=2301236/>.

² In accordance with Article 1 (3) of the FIFA Regulations “[t]he right of associations to go beyond these minimum standards/requirements is preserved.”

³ Article 1 (2) of the FIFA Regulations.

In drafting its internal regulations, PFF was required to achieve a balance between the minimum standards contained in FIFA Regulations and the relevant national legislation governing the intermediation activity, in particular Laws no. 28/98, 26 June, no. 5/2007, 16 January and no. 50/2007, 31 August.

to go beyond these minimum standards/requirements is preserved”, by including a number of provisions which, in the majority of cases, are intended to densify the content of the minimum requirements established therein. In addition, the PFF Regulations also contain some differences *vis-à-vis* FIFA Regulations, which are the result of the specifics of the Portuguese legal framework applicable to sports agents. In order to accommodate this *reality*, Article 1 (2) of the PFF Regulations expressly foresees that “[i]n case of conflict between these Regulations and FIFA Regulations on Working with Intermediaries, these PFF Regulations shall prevail”.

Below we highlight the main features of the PFF Regulations, in particular those provisions that go beyond FIFA Regulations or are addressed in a different way due to the applicable national legal framework:

Object, scope and definition of “intermediary”

The PFF Regulations govern the engagement of services to be provided by an intermediary to a player or a club, as the case may be, in the context of **(01) conclusion or renewal of employment contracts between a player and a club;** and **(02) temporary or definitive transfer agreements between two clubs** ⁽⁴⁾, and are applicable to intermediaries and to all the players and clubs affiliated in the PFF, Portuguese League for Professional Football and district and regional football associations ⁽⁵⁾.

In line with the above, an intermediary is defined as “a natural or legal person with legal capacity who, for remuneration or free of charge, represents a player or a club in negotiations with the purpose of execution of an employment contract or a transfer agreement” ⁽⁶⁾.

Engaging intermediaries

When selecting and engaging an intermediary, players and clubs should act with due diligence and, in particular, before the beginning of the provision of the relevant services, should confirm that the respective intermediaries are registered with the PFF and sign a representation contract ⁽⁷⁾.

Intermediaries may only act in the name and on behalf of one of the parties in the contractual relationship, with no exceptions ⁽⁸⁾, which is an important *deviation* from FIFA Regulations [in particular, from Article 8 (2) and (3)], as the Portuguese legal framework ⁽⁹⁾ does not allow intermediaries to represent both player and club,

⁴ Article 2 (1) of the PFF Regulations.

⁵ Article 3 of the PFF Regulations.

⁶ Article 4 of the PFF Regulations.

⁷ Article 5 (2) of the PFF Regulations.

⁸ Article 5 (3) of the PFF Regulations.

⁹ Article 22 (2) of Law no. 28/98.

The PFF Regulations on Intermediaries govern the engagement of services to be provided by an intermediary to a player or a club, as the case may be, in the context of (01) conclusion or renewal of employment contracts between a player and a club; and (02) temporary or definitive transfer agreements between two clubs (), and are applicable to intermediaries and to all the players and clubs affiliated in the PFF, Portuguese League for Professional Football and district and regional football associations.

even if such conflict of interest is properly disclosed by the intermediary, and the player and the club give their express written prior consent.

Likewise, intermediaries cannot act in the name and on behalf of underage football players⁽¹⁰⁾, a prohibition which is in line with the provisions of Article 37 (2) of Law no. 5/2007.

Clubs, players and intermediaries are not allowed to propose to any other party involved in a transaction (directly or indirectly), that such transaction becomes dependent on, or conditioned by, the agreement of the player with a particular intermediary⁽¹¹⁾.

Furthermore, in what regards the persons that cannot be engaged as intermediaries, it should be noted that the definition of “Club” contained in the PFF Regulations also includes sports companies⁽¹²⁾.

Registration of intermediaries

Pursuant to Article 6 of the PFF Regulations, without prejudice to the intermediary obligation to previously request registration whenever involved in a transaction, such registration may also be requested for a whole sporting season in which case the PFF shall issue the respective supporting document.

Registered intermediaries, when carrying out their activity, are allowed to use the designation “Intermediary registered in the PFF”⁽¹³⁾, but cannot, however, in any case, use PFF’s brands, logos or any other PFF’s distinguishing marks⁽¹⁴⁾.

Considering the PFF Regulations provisions and the applicable national legal rules⁽¹⁵⁾, which require that **(01)** sports agents that intend to carry out intermediation activity should be registered before competent sports federation, and **(02)** therefore they should be duly accredited when performing such activity, **we deem that the registration by an intermediary under the new regulations should be requested before the PFF at the moment prior to entering into a representation contract and participating into a transaction**⁽¹⁶⁾.

Requisites for registration of intermediaries

Regarding requisites for intermediary registration or renewal of registration, apart from the Intermediary Declaration foreseen in FIFA Regulations (which, in the PFF Regulations, has some minor differences), the intermediaries must submit the following additional elements⁽¹⁷⁾: **(01)** copy of civil and fiscal

¹⁰ Article 5 (4) of the PFF Regulations.

¹¹ Article 5 (5) of PFF Regulations.

¹² Article 1 (4) of the PFF Regulations. This refinement is in line with Article 25 (a) of Law no. 28/98, which lists the persons that are not allowed to carry out sports agent activity due to conflict of interests and takes into consideration that, in the Portuguese jurisdiction, clubs that intend to participate in professional competitions must adopt the form of a sports company (please see Decree-Law no. 10/2013, 25 January).

¹³ Article 6 (4) of the PFF Regulations.

¹⁴ Article 6 (5) of the PFF Regulations.

¹⁵ Articles 22 (1) and 23 of Law no. 28/98 and Article 37 (1) of Law no. 5/2007.

¹⁶ This solution seems to be in line also with Article 9 (2) para. a) of the PFF Regulations, where it is established that a representation contract should contain the registration number of the intermediary.

¹⁷ Article 7 (1) of the PFF Regulations.

Intermediaries may only act in the name and on behalf of one of the parties in a contractual relationship, with no exceptions, which is an important deviation from FIFA Regulations.

identification; **(02)** a declaration on honour that there are no contractual relationships with Leagues, Associations, Confederations or with FIFA, which may give rise to a potential conflict of interests; **(03)** updated criminal record; **(04)** copy of civil liability insurance policy suitable for carrying out the intermediation activity, which must cover liability for damages up to an amount of €50,000; **(05)** statement on non-existence of intermediary insolvency situation; and **(06)** certification issued by competent authorities that tax and social security obligations are fulfilled. All this documentation should be drafted in Portuguese ⁽¹⁸⁾.

In addition to violent and financial crimes, persons convicted for **(01)** crimes related to racism, to violence and xenophobia in sports, up to five years after serving the relevant sentence, unless different sanction is applied by judicial decision, **(02)** doping related crimes or unsporting behaviour crimes ⁽¹⁹⁾, up to five years after serving the relevant sentence, unless different sanction is applied by judicial decision, and/or **(03)** for any crime punishable with a sentence of imprisonment in excess of three years, up to five years after serving the relevant sentence, unless different sanction is applied by judicial decision, **MAY NOT carry out intermediary activity** ⁽²⁰⁾.

If the intermediary is a legal person, in order to be registered, one of its legal representatives must also be registered as an intermediary with the PFF ⁽²¹⁾.

A fee of €1,000 is due for registration as an intermediary or renewal of registration ⁽²²⁾, except for players' agents previously licensed by the PFF until March 2015 wishing to carry out intermediation activity, who are exempted to pay the registration fee during sporting seasons 2014/15, 2015/16 and 2016/17 ⁽²³⁾.

Representation contract

In addition to the minimum details foreseen in FIFA Regulations ⁽²⁴⁾, the representation contract should also contain the registration number of the intermediary ⁽²⁵⁾ and, pursuant to Article 9 (2) para. c) of the PFF Regulations, **the duration of representation contracts may not exceed two years, nor be subject to automatic renewal.**

¹⁸ Article 7 (3) of the PFF Regulations.

¹⁹ Crimes related to behaviours capable of affecting the truth, loyalty and correction of the competition and its result in the sports activity, foreseen in Law no. 50/2007.

²⁰ Article 7 (2) of the PFF Regulations

²¹ Article 7 (4) of the PFF Regulations.

²² Article 7 (5) of the PFF Regulations.

²³ Article 14 (2) of the PFF Regulations.

²⁴ Pursuant to Article 5 (2) of the FIFA Regulations (and also Article 9 (2) of the PFF Regulations) the representation contract must contain the following minimum details: (01) the names of the parties; (02) the scope of services; (03) the duration of the legal relationship; (04) the remuneration due to the intermediary; (05) the general terms of payment; (06) the date of conclusion; (07) the termination provisions; and (08) the signature of the parties.

²⁵ Article 9 (2) para. a) of the PFF Regulations.

Representation contracts must be concluded in four copies – one copy for each party, one for the PFF and one for the Portuguese Professional Football League, when the contracts are related to players or clubs who participate in the respective competitions ⁽²⁶⁾. In addition, in representation contracts with players, their signature must be certified in presence and the contract must mention that the player was provided with a copy.

Furthermore, intermediaries have to deposit, with the PFF, representation contracts entered into with players or clubs; such deposit cannot take place after the registration of the transaction ⁽²⁷⁾.

Lastly, players, clubs and intermediaries should immediately inform PFF of any assignment, early termination, subcontracting, amendment or any other situation affecting the deposited representation contracts, within 10 days after the circumstance that caused the amendment ⁽²⁸⁾. The assignee intermediary also have to be registered with the PFF ⁽²⁹⁾.

Disclosure and publication

In terms of disclosure and publication, the rules contained in the PFF Regulations ⁽³⁰⁾ are in line with the equivalent FIFA provisions (*idus est*, Article 6 of FIFA Regulations).

Payments to intermediaries

PFF Regulations governing this matter are equivalent to Article 7 of the FIFA Regulations. There is, however, one relevant difference related to the maximum limits applicable to the total remuneration to be paid to intermediaries, which is in principle capped at 5 %, as the case may be ⁽³¹⁾, **save if otherwise agreed in writing between the parties**. This non-mandatory limit is aligned with Article 24 (2) of Law no. 28/98, which also imposes a non-mandatory limit of 5% of the global amount of the relevant contract for sports agents' remuneration. It is however clear that the parties are perfectly free to establish in the representation contract the intermediary remuneration that they deem fit, as long as such remuneration is set out in writing.

In accordance with the new PFF Regulations on Intermediaries, the duration of representation contracts may not exceed two years, nor be subject to automatic renewal.

²⁶ Article 9 (2) of the PFF Regulations.

²⁷ Article 9 (3) of the PFF Regulations.

²⁸ Article 9 (4) of the PFF Regulations.

²⁹ Article 9 (4) of the PFF Regulations.

³⁰ Article 10 of the PFF Regulations.

³¹ Article 11 (3) of the PFF Regulations. The total amount of remuneration per transaction due to the intermediaries by players or clubs, as the case may be, is capped at 5% of (01) a player's basic gross income for the entire duration of the relevant employment contract, in the case of intermediaries who have been engaged to act on a player's behalf, (02) a player's basic gross income for the entire duration of the relevant employment contract, in the case of intermediaries who have been engaged to act on a club's behalf in order to conclude an employment contract with a player, and (03) the eventual transfer fee paid in connection with the relevant transfer of a player, in the case of intermediaries who have been engaged to act on a club's behalf to conclude a transfer agreement.

We also highlight that, in the case of intermediaries who have been engaged to act on a club's behalf to conclude a transfer agreement, the PFF Regulations expressly foresee the possibility of intermediary remuneration be subject to future terms ⁽³²⁾.

Conflicts of interest

Prior to engaging the services of an intermediary, players and clubs shall use all the efforts to ensure that no conflicts of interest exist or are likely to exist either for the players or clubs or for the intermediaries ⁽³³⁾. As mentioned above, intermediaries may only act in the name and on behalf of one of the parties in the contractual relationship; thus even in case of prior written consent by the concerned players and clubs, an intermediary may not be engaged to represent both the parties (contrary to the provisions of Article 8 (2) of FIFA Regulations).

Sanctions

In what regards sanctions framework, the PFF Regulations mentions PFF's competence to apply penalties to any of the parties that breaches the rules foreseen therein ⁽³⁴⁾, but does not densify the applicable infringements. In this context, one may presume that possible infringements of the PFF Regulations will be dealt with under the PFF Disciplinary Regulations.

Conclusion

The analysis of the PFF Regulations allows us to conclude that the PFF has taken into due account the risks of intermediation activity being carried out by persons that may not meet all the necessary requirements for this purpose, considering the wide set of registration requirements necessary to become an intermediary (which, recognising FIFA's view, seems to try to avoid abuses), together with the obligations that intermediaries, players and clubs are subject to.

The analysis of the PFF Regulations on Intermediaries allow us to conclude that the PFF has taken into due account the risks of intermediation activity being carried out by persons that may not meet all the necessary requirements for this purpose.

³² Article 11 (3) para. c) of the PFF Regulations.

³³ Article 12 of the PFF Regulations.

³⁴ Article 13 (1) of the PFF Regulations.

From a purely legal perspective, the PFF Regulations seem to be a balanced set of rules that manage to combine the minimum standards of FIFA Regulations and the Portuguese legal framework applicable to intermediation activity.

However, and despite PFF's Regulations as above detailed, we still believe that FIFA's option to change the system that was implemented and working well may produce adverse effects and may be responsible for serious cases of players' exploitation. We hope that the future proves us wrong.

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