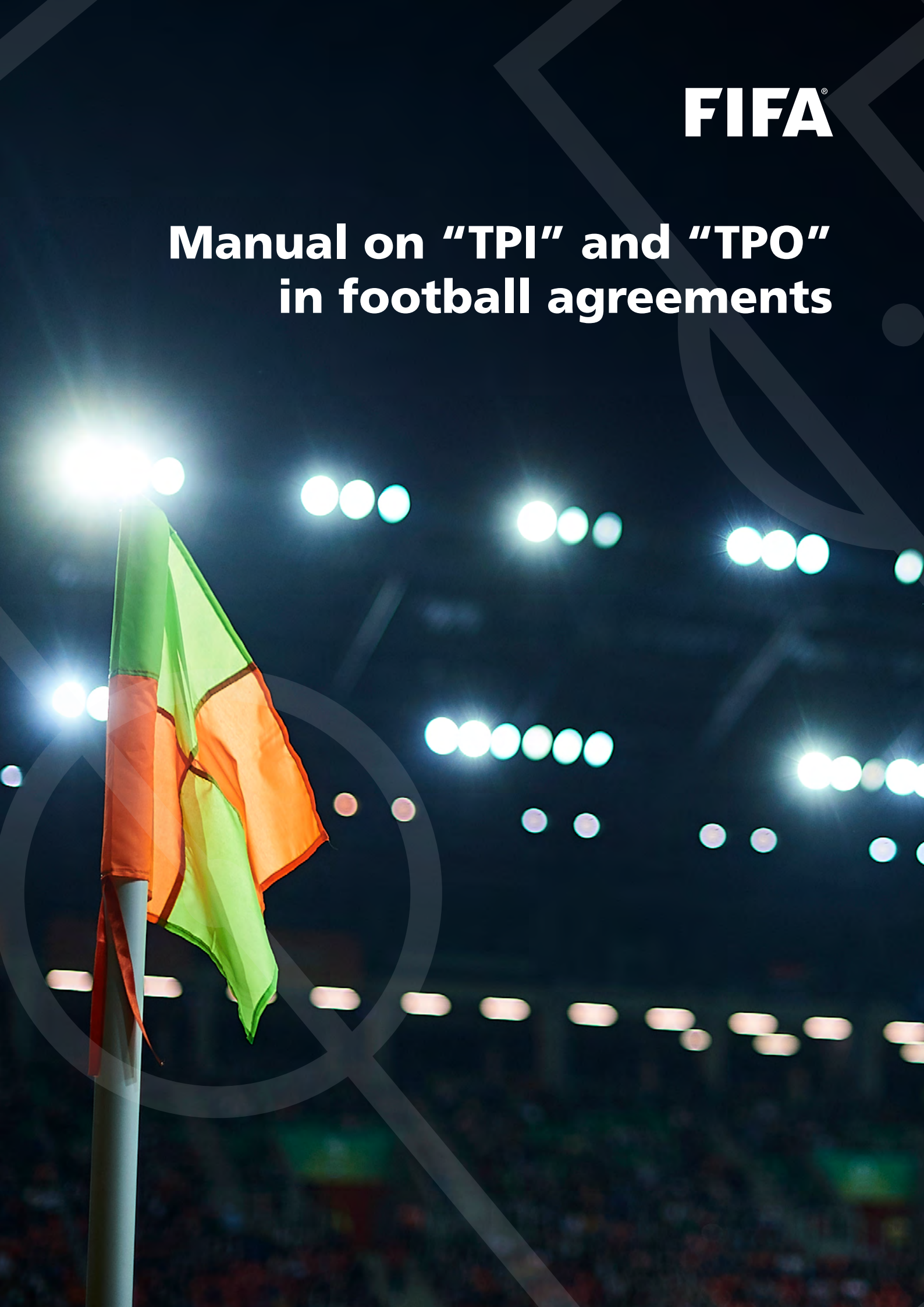


**FIFA<sup>®</sup>**

**Manual on "TPI" and "TPO"  
in football agreements**







# **Manual on "TPI" and "TPO" in football agreements**

# TABLE OF CONTENTS

<b>1</b>	<b>INTRODUCTION</b>	<b>6</b>
<b>2</b>	<b>REGULATORY FRAMEWORK</b>	<b>8</b>
<b>2.1</b>	<b>ARTICLE 18BIS OF THE FIFA RSTP</b>	<b>9</b>
2.1.1	GENERAL CONSIDERATIONS AND BACKGROUND INFORMATION	9
2.1.2	ANALYSIS AND REGULATORY CONTENT	11
2.1.3	COURT OF ARBITRATION FOR SPORT (CAS)	13
2.1.4	CLUBS SANCTIONED BY FIFA JUDICIAL BODIES FOR A BREACH OF ARTICLE 18BIS	18
2.1.5	SANCTIONS	20
<b>2.2</b>	<b>ARTICLE 18TER OF THE FIFA RSTP</b>	<b>22</b>
2.2.1	GENERAL CONSIDERATIONS AND BACKGROUND INFORMATION	22
2.2.2	ANALYSIS AND REGULATORY CONTENT	23
2.2.3	CONSIDERATIONS FROM COURTS AND TRIBUNALS	25
2.2.4	THE PLAYER IS NOT A THIRD PARTY TO HIS/HER OWN TRANSFER	29
2.2.5	CLUBS SANCTIONED BY FIFA JUDICIAL BODIES FOR A BREACH OF ARTICLE 18TER	32
<b>2.3</b>	<b>ARTICLE 4 PARAGRAPH 3 OF ANNEXE 3 TO THE FIFA RSTP</b>	<b>34</b>
<b>3</b>	<b>JURISPRUDENCE ON TPI AGREEMENTS</b>	<b>36</b>
<b>3.1</b>	<b>CLUB-CLUB AGREEMENTS</b>	<b>37</b>
<b>3.1.1</b>	<b>CLUB-CLUB AGREEMENTS NOT SANCTIONED BY FIFA JUDICIAL BODIES</b>	<b>37</b>
<b>3.1.2</b>	<b>CLUB-CLUB AGREEMENTS SANCTIONED BY FIFA JUDICIAL BODIES</b>	<b>42</b>
3.1.2.1	Clauses restricting the new club with respect to the future transfer of the player	44
3.1.2.1.1	Prohibition on transferring the player without the other club's consent	44
3.1.2.1.2	Higher sell-on fee if the player is transferred to a competitor club (or subject to a high penalty fee)	53
3.1.2.1.3	Prohibition on transferring the player to a competitor club (or subject to a high penalty fee)	56
3.1.2.1.4	Prohibition on transferring the player until the transfer fee is paid in full	63
3.1.2.1.5	Authorisation required to loan the player	65
3.1.2.1.6	Prohibition on assigning the player's economic rights to another party without the other club's consent	66
3.1.2.1.7	Both clubs are entitled to negotiate the transfer of the player	67



<b>3.1.2.2</b>	<b>Clauses related to the employment relationship between the club and the player</b>	<b>68</b>
3.1.2.2.1	Inability to freely negotiate the terms of engagement of the player/obligation for the club to prevent the player becoming a free agent	68
<b>3.1.2.3</b>	<b>Clauses linked to selection in matches</b>	<b>75</b>
3.1.2.3.1	Ensure that the player transferred (on loan) is fielded regularly	75
<b>3.1.2.4</b>	<b>Clauses obliging the club to communicate certain information</b>	<b>83</b>
3.1.2.4.1	Obligation to inform about a player's injury	83
3.1.2.4.2	Obligation to disclose every transfer offer	84
<b>3.1.2.5</b>	<b>Obligations to transfer a player under certain conditions</b>	<b>85</b>
3.1.2.5.1	Obligation to accept an offer for a specific transfer fee (or pay a penalty fee)	85
3.1.2.5.2	The club has no say in the future transfer of the player	93
3.1.2.5.3	Obligation to transfer the player in the event of relegation	94
3.1.2.5.4	Obligation to release the player for training and friendly matches	95
<b>3.2</b>	<b>AGREEMENTS BETWEEN THIRD PARTIES AND CLUBS</b>	<b>98</b>
<b>3.2.1</b>	<b>CLAUSES RESTRICTING THE NEW CLUB WITH RESPECT TO THE FUTURE TRANSFER OF THE PLAYER</b>	<b>100</b>
3.2.1.1	Prohibition on transferring the player (or recruiting any players) without the third party's consent	100
3.2.1.2	Prohibition on transferring the player to a direct competitor in the national league (or any other team in the country)	104
3.2.1.3	The club cannot decide when to transfer the player	105
3.2.1.4	Authorisation required to loan the player/inability to freely negotiate the terms of a loan	106
3.2.1.5	Prohibition on transferring the player for less than a minimum transfer fee, subject to a penalty	109
<b>3.2.2</b>	<b>CLAUSES RELATED TO THE EMPLOYMENT RELATIONSHIP BETWEEN THE CLUB AND THE PLAYER</b>	<b>110</b>
3.2.2.1	Inability to freely negotiate the terms of engagement of the player/obligation for the club to prevent the player becoming a free agent	110
3.2.2.2	Hindrances to the conclusion of transfer agreements/employment contracts	120
3.2.2.3	Obligation to maintain an insurance policy to insure against the risk of the player's injury or death	124
<b>3.2.3</b>	<b>CLAUSES LINKED TO SELECTION IN MATCHES</b>	<b>128</b>
3.2.3.1	Ensure that the player is fielded regularly	128
<b>3.2.4</b>	<b>CLAUSES OBLIGING THE CLUB TO COMMUNICATE CERTAIN INFORMATION</b>	<b>130</b>
3.2.4.1	Obligation to disclose every transfer offer	130

<b>3.2.5</b>	<b>OBLIGATION TO TRANSFER A PLAYER UNDER CERTAIN CONDITIONS</b>	<b>134</b>
3.2.5.1	Obligation to accept a transfer offer for the player (or acquire the third party's economic rights/pay a penalty fee)	134
3.2.5.2	Obligation to transfer the player before a certain date, subject to a penalty fee	145
3.2.5.3	The club has no say in the future transfer of the player	150
<b>3.2.6</b>	<b>CLAUSES GRANTING THE THIRD PARTY OTHER TYPES OF INFLUENCE</b>	<b>152</b>
3.2.6.1	Joint selection of new players to reinforce the club's squad	152
3.2.6.2	The third party has the right to negotiate the future transfer of the player	156
3.2.6.3	The club and the third party to mutually decide on the market value of the player	157
3.2.6.4	The third party can oblige the club to purchase its share of the player's economic rights	160
3.2.6.5	The third party to buy players for the club, cover their expenses, retain their economic rights and hold the decision to transfer them	161
<b>4</b>	<b>JURISPRUDENCE ON TPO AGREEMENTS</b>	<b>162</b>
4.1	DECISIONS REGARDING ARTICLE 18TER PARAGRAPHS 1 AND 2	164
4.2	DECISIONS REGARDING ARTICLE 18TER PARAGRAPH 4	172
4.3	DECISIONS REGARDING ARTICLE 18TER PARAGRAPH 5	174
<b>5</b>	<b>CONCLUSIONS AND PRACTICAL RECOMMENDATIONS</b>	<b>179</b>
<b>6</b>	<b>FINAL REMARKS</b>	<b>193</b>



**Club-club agreements NOT sanctioned by FIFA judicial bodies\***



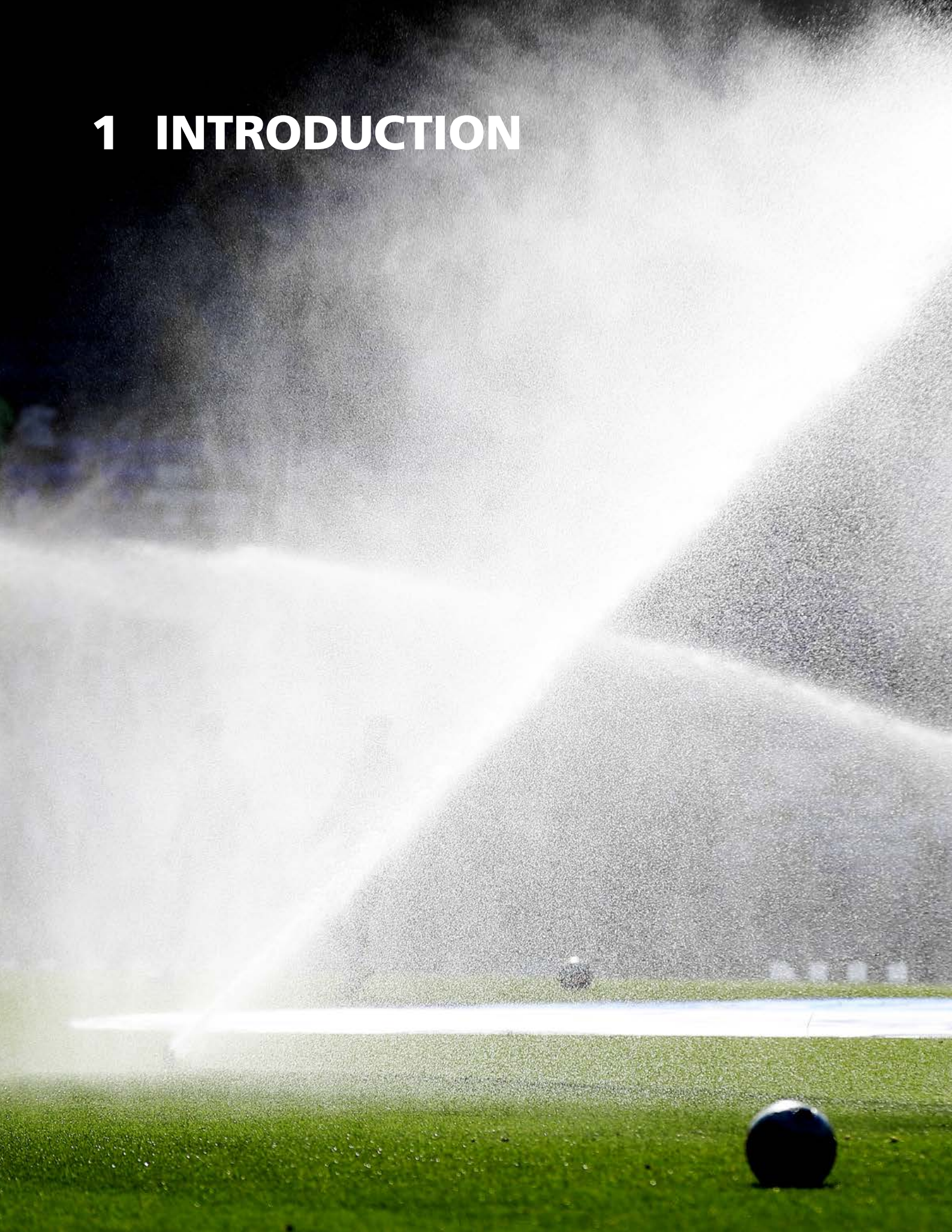
**Club-club agreements sanctioned by FIFA judicial bodies**

\* Please note that the wording of some of the clauses and decisions throughout this and subsequent sections has been edited slightly for the sake of intelligibility and consistency.





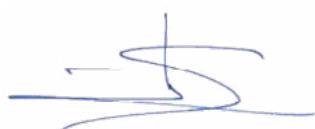
# 1 INTRODUCTION



This Manual seeks to offer practical insights into the decisions of the FIFA judicial bodies<sup>1</sup> concerning the concepts of third-party influence (TPI) and third-party ownership of players' economic rights (TPO).<sup>2</sup> These are respectively regulated by articles 18bis and 18ter of the FIFA Regulations on the Status and Transfer of Players (hereinafter "FIFA RSTP" or "RSTP").

In recent years, following extensive discussions about these concepts and their scope of application, a large number of decisions – especially concerning TPI – have been rendered by the FIFA judicial bodies, enabling them to consolidate their approach towards such types of violations.

This Manual provides an analysis on the scope of articles 18bis and 18ter and their regulatory framework.



*Emilio García Silvero*  
Chief Legal & Compliance Officer

The document also comprises a comprehensive list of contractual agreements that have been examined throughout the years by the FIFA judicial bodies, followed by a brief explanation of the analysis made and the reason why the competent bodies considered that a violation of either article 18bis or article 18ter was committed (or not) by the relevant party.

The idea behind this practical guide is to help clubs, when drafting contractual agreements, to steer clear of practices and/or provisions that could be considered against the spirit of articles 18bis and 18ter.

We are convinced that the publication of this Manual would be highly beneficial for the whole football family and, in particular, for football clubs.

Please feel free to reach out to us to share your comments or queries to [TMShelpdesk@fifa.org](mailto:TMShelpdesk@fifa.org).

It is time for kick-off, so please read on and enjoy.



*Jacques Blondin*  
Head of Regulatory Enforcement

<sup>1</sup> The FIFA Disciplinary Committee and FIFA Appeal Committee.

<sup>2</sup> Where applicable, reference is also made to CAS and other court decisions.



## 2 REGULATORY FRAMEWORK





## 2.1 ARTICLE 18BIS OF THE FIFA RSTP

### 2.1.1 GENERAL CONSIDERATIONS AND BACKGROUND INFORMATION

Firstly, in its capacity as the governing body of world association football, one of FIFA's objectives, according to article 2 (g) of the FIFA Statutes, is *"to promote integrity, ethics and fair play with a view to preventing all methods or practices, such as corruption, doping or match manipulation, which might jeopardise the integrity of matches, competitions, players, officials and member associations or give rise to abuse of association football"*.

In order to ensure that this objective is accomplished, FIFA has made a conscious effort to eradicate those activities and practices that pose an imminent threat to association football's integrity and are liable to tarnish its reputation and hinder the preservation of football's essential values.

In recent decades, the game of football has grown quickly, becoming more of a business, resulting in a steady increase in the transfer fees negotiated between clubs and in higher salaries being paid to players.

The said growth has attracted greater investment in the game of football, in particular via sponsors, TV rights and marketing. It has also caught the attention of companies and entrepreneurs all over the world, for whom the game of football has started to become an attractive prospect.

Against this backdrop, some clubs started to open their doors to investment from stakeholders outside the world of football. While some of this investment went towards the development of clubs, the funding focused, to a considerable extent, on financing the signing of players. Through such arrangements, clubs gained access to money that was not previously available to them in order to acquire the federative and economic rights of players and thereby sustain their competitiveness while, in principle, minimising

their financial risk. However, in actual fact, by getting involved in this type of transactions, the clubs took on substantial (financial) risk vis-à-vis the investors.

In light of this growing investment from new stakeholders, the responsibility of FIFA's bodies also increased, specifically in view of one of FIFA's primary objectives: safeguarding football's integrity. Therefore, while it is important to allow clubs to find new means of investment, it is equally important to prevent football from losing its credibility in the public eye.

The proliferation of the aforementioned businesses in the world of football was detrimental in terms of, among others, the autonomy of clubs to determine their policies and their independence in the decision-making process regarding the recruitment and transfer of players.

The prevailing interests of third-party investors seemed at odds with the principle of contractual stability, which has been recognised as being of paramount importance in football from the perspective of clubs, players and the public in general.

Contractual relations between players and clubs must be governed by a regulatory system that is tailored to the specific needs of football, strikes the right balance between the respective interests of players and clubs and preserves the regularity and proper functioning of sporting competition.<sup>3</sup>

The transfer of players in general is an area that is likely to give rise to conflicts of interest, bringing about the risk of match manipulation. Such practices also create the risk of interference with clubs' freedom and independence in recruitment and transfer-related matters, compromising football's integrity and reputation as well as its essential values.

<sup>3</sup> FIFA circular no. 769, 24 August 2001.

Moreover, the specificity of sport, which has been expressly recognised by the European Commission as a legitimate objective, requires that the outcome of games remain uncertain and that the competitive balance between clubs taking part in the same competitions be preserved. In addition, this specificity also refers to the sport structure, including the autonomy and diversity of sport organisations, a pyramid structure of competitions from grassroots to elite level, organised solidarity mechanisms between the different levels and operators, the organisation of sport on a national basis and the principle of a single federation per sport.<sup>4</sup>

Therefore, in line with the need to respect and protect the specificity of sport, clubs must remain independent and autonomous in order to freely take any decisions that they deem appropriate in relation to their sporting needs. Accordingly, any influence on clubs (from other clubs or from parties outside football), either directly or by means of owning a percentage of a player's economic rights, is considered contrary to the defence of the specificity of sport.

Moreover, and in keeping with the above, article 20 paragraph 2 of the FIFA Statutes provides that every member shall ensure that its affiliated clubs can take all decisions on any matters regarding membership independently of any external body. This obligation applies regardless of an affiliated club's corporate structure.

As a consequence of all the above, FIFA decided to exercise its regulatory power by firstly amending the FIFA RSTP in order to include article 18bis (which entered into force on 1 January 2008).

Initially, article 18bis was put in place, among others, to draw a very clear line between, on the one hand, the legitimate involvement of third parties in football, and on the other, third-party investment with the purpose of gaining the ability to directly influence a club's independence, its policies in employment- and transfer-related matters or even the performance of its teams.

Then, in October 2009, FIFA created the Transfer Matching System<sup>5</sup> – TMS – indicating in article 1 paragraph 1 of Annexe 3 to the RSTP that TMS *"(..) is designed to ensure that football authorities have more details available to them on international player transfers. This will increase the transparency of individual transactions, which will in turn improve the credibility and standing of the entire transfer system"*. TMS has been an extremely powerful tool in increasing transparency and respect for the regulations in all kinds of transfer-related matters.

Subsequently, the evolution of the transfer market, the improved overview provided by TMS of the different types of club-to-club transfer and contractual agreements, and the further growth of football as a business<sup>6</sup> made FIFA aware of the fact that the prohibited influence on clubs could also come directly from other clubs, and not only from parties outside football. Consequently, FIFA decided to amend the wording of article 18bis in the 2015 version of the RSTP.

As a clear consequence of all the above, it is undeniable that the overriding objective pursued by FIFA through the abovementioned provisions of the FIFA Statutes and the FIFA RSTP is to increase transparency and contractual stability and to tighten the monitoring and control of player transfers and related transactions.

<sup>4</sup> Paragraph 4.1 of the White Paper on Sport (COM/2007, 391 final, 11 July 2007).

<sup>5</sup> The use of TMS for the international transfer of professional male players became mandatory on 1 October 2010.

<sup>6</sup> The more football becomes a business, the more risks appear to endanger the integrity of the sport.

## 2.1.2 ANALYSIS AND REGULATORY CONTENT<sup>7</sup>



→ Wording of article 18bis (since 1 January 2015):

1. No club shall enter into a contract which enables the counter club/counter clubs and vice versa, or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams.
2. The FIFA Disciplinary Committee may impose disciplinary measures on clubs that do not observe the obligations set out in this article.

Under the initial wording of the provision that entered into force on 1 January 2008, a club could be sanctioned for allowing “*any other party to [a] contract or any third party*” to influence it.<sup>8</sup> Nevertheless, the said wording did not provide the FIFA judicial bodies with a legal basis to sanction the counterparty that was enabled to exert the prohibited influence.<sup>9</sup>

With the minor but important amendment to the provision in the 2015 version of the FIFA RSTP (i.e. the inclusion of “*vice versa*”), approved by the FIFA Executive Committee on 19 December 2014 (at the same time that article 18ter was implemented),<sup>10</sup> FIFA sought to empower the adjudicating bodies to also sanction those clubs that set out to influence other clubs. Therefore, by virtue of this expansion,

the “*influencer*” as well as the “*influenced*” were prohibited from engaging in such conduct and subject to sanctions by the FIFA Disciplinary Committee.

This amendment, which bore out FIFA’s strengthened intention to tackle any sort of influence on clubs, led TMS Compliance to start undertaking more detailed scrutiny and systematic analysis of the transfer agreements concluded between clubs. The automatic consequence of this approach was the detection of several types of clauses and provisions included in clubs’ transfer agreements in potential violation of article 18bis.

Article 18bis prohibits all scenarios whereby any person or entity acquires the ability to influence in employment

<sup>7</sup> Outlined by the FIFA Disciplinary Committee and the FIFA Appeal Committee in their decisions related to TPI.

<sup>8</sup> FIFA’s initial idea behind the implementation of article 18bis was to protect clubs from the influence of parties outside football.

<sup>9</sup> Wording of article 18bis from 1 January 2008 until 31 December 2014: “No club shall enter into a contract which enables any other party to that contract or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams.”

<sup>10</sup> FIFA circular no. 1464, 22 December 2014.

and transfer-related matters a club's independence, its policies or the performance of its teams, including the club's capacity to independently determine conditions and policies concerning purely sporting issues such as the composition and performance of its teams.

The prohibition is directed exclusively at clubs and, therefore, clubs are responsible for ensuring that no party acquires the ability to influence them, and that they do not acquire such an ability, in the areas stipulated.

Moreover, this prohibition covers *"the counter club/ counter clubs and vice versa, or any third party"*. The wording of the provision is broad in order to encompass all types of influence on clubs and prohibits clubs from enabling anyone (whether a party to the relevant agreement or not) to acquire the ability to influence in employment and transfer-related matters their independence, their policies or the performance of their teams. Therefore, clubs are not allowed to enter into this type of agreements at all, since the scope of article 18bis paragraph 1 applies to any person or entity.

In this sense, it is undeniable that entering into these kinds of contracts also jeopardises the transparency of (international) transfers, while undermining the integrity of competitions and the transparency of football itself.

Furthermore, article 18bis aims to protect clubs' independence from third parties or other clubs whose interests may not be aligned with the influenced clubs' sporting success. In this context, the ability to influence or be influenced by clubs is also likely to give rise to conflicts of interest, paving the way for, inter alia, match manipulation and match-fixing practices. Such types of conduct also put at risk clubs' freedom and independence in recruitment and transfer-related matters, compromising football's integrity and reputation as well as its most essential values.

The investment in football has increased considerably in recent years and, as a result, FIFA's commitment to safeguarding football's integrity has gained further importance.

Consequently, and by means of article 18bis of the FIFA RSTP, the FIFA judicial bodies have the duty to protect the integrity of the game of football and to avoid any sort of undue influence in the game, particularly with regard to employment and transfer-related matters.

In summary, any possible situation whereby someone acquires the ability to influence a club's independence, its policies or the performance of its teams, whether directly or indirectly, in employment and transfer-related matters cannot be tolerated and is absolutely forbidden.

### 2.1.3 COURT OF ARBITRATION FOR SPORT (CAS)



According to article 49 of the FIFA Disciplinary Code,<sup>11</sup> “decisions passed by the Disciplinary and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes”.

By means of articles 57 and 58 of the FIFA Statutes,<sup>12</sup> FIFA recognises the competence of CAS to:

- ➔ resolve disputes between FIFA, member associations, leagues, clubs and players, etc.; and
- ➔ hear appeals against, among others, final decisions passed by FIFA’s judicial bodies.

#### CAS decisions related to article 18bis<sup>13</sup>

The table below sets out, in chronological order, the decisions that CAS has rendered in relation to article 18bis of the FIFA RSTP.

Decision	Club involved	Other party to the proceedings
CAS 2014/O/3781 & 3782	Sporting Clube de Portugal Futebol	Doyen Sports
CAS 2016/A/4490	RFC Seraing	FIFA
CAS 2017/A/5463	Sevilla FC	FIFA
CAS 2018/A/6027	Sociedade Esportiva Palmeiras	FIFA
CAS 2019/A/6301	Chelsea Football Club Limited	FIFA

For the purposes of the present chapter, only those CAS decisions that have dealt with the application of article 18bis, the legitimacy of the objectives in pursuit of which it was introduced and its compatibility with European Union law will be analysed (CAS 2016/A/4490 and CAS 2017/A/5463).

A detailed examination of the particular considerations made by CAS in relation to the specific agreements and clauses entered into by clubs in potential breach of article 18bis will be carried out throughout this document, where the respective agreement and/or clause is analysed.

<sup>11</sup> 2019 edition.

<sup>12</sup> 2018 edition.

<sup>13</sup> Prior to the decisions on article 18bis, CAS had recognised that the “economic rights” of a player “being ordinary contract rights, [could] be partially assigned and thus apportioned among different right holders”: cf. CAS 2004/A/635 RCD Espanyol de Barcelona SAD v. Club Atlético Vélez Sarsfield and CAS 2004/A/662 RCD Mallorca v. Club Atlético Lanus.

### General CAS considerations regarding article 18bis:<sup>14</sup>

- Regarding the objectives pursued through article 18bis

→ The provision seeks to prevent the interests of other parties (including other clubs) from influencing the operations or sporting policy of football clubs, and ultimately to avoid conflicts of interest that could affect the integrity of the game.<sup>15</sup>

→ The conduct described and prohibited in article 18bis of the RSTP involves contractually granting another party the capacity to “*have effects on*” or “*predominate over*” (i.e. the “*ability to influence*”) the independence, policies or performance of a club through employment and transfer-related matters.

Therefore, a contract falls foul of this prohibition if it grants the other party the real ability to have an effect on, determine or impact the behaviour or conduct of a club in relation to such matters (employment and/or transfers), in such a way as to restrict the club’s independence or autonomy, thereby conditioning its sporting policies or its ability to manage such matters and/or the performance of its teams.

→ A club is guilty of the prohibited conduct not only if the other party has materially influenced

its independence or policies in these areas (i.e. when an effect has taken place), but also when the contract in question effectively enables or entitles the said party to have an influence on the club in such matters and/or capacities, regardless of whether or not this influence actually materialises.

→ Notwithstanding the above, given the limiting or restrictive effects that article 18bis of the RSTP has on certain fundamental faculties and rights of clubs (*inter alia*, their freedom to conduct a business and freedom of contract), this prohibition must be interpreted restrictively. The prohibition must only be considered to have been flouted in such situations in which the other party has been granted a real ability to exert effective influence, rather than a hypothetical or theoretical one, as would be the case for conventional contractual provisions lacking in specific and effective binding content.

This precept must be applied in a reasonable manner, on a case-by-case basis and never deductively, with the benefit of any doubt being given to clubs (*in dubio pro reo*).

<sup>14</sup> CAS 2016/A/4490 RFC Seraing v. FIFA and 2017/A/5463 Sevilla FC v. FIFA.

<sup>15</sup> CAS 2016/A/4490 RFC Seraing v. FIFA: “La Formation arbitrale considère que cette pratique fait naître de nombreux risques et notamment: des risques liés à l’opacité des investisseurs en cause qui échappent à tout contrôle des organes de régulation du football et qui peuvent en tout liberté, procéder à des cessions de leur investissement, non contrôlées; des risques d’atteinte à la liberté professionnelle et aux droits des joueurs en pouvant influencer dans un intérêt spéculatif, sur leur transfert; des risques de conflits d’intérêts, voire de truquage ou de manipulation des matches, contraires à l’intégrité des compétitions, puisqu’un même investisseur peut réaliser des TPO dans plusieurs clubs relevant de la même compétition; des risques à l’éthique puisque l’objectif poursuivi est un intérêt financier spéculatif, exclusif de considérations d’ordre sportif et même moral. Sur l’existence de tels risques que s’est fondée la décision en référé rendue le 24 juillet 2015 par le Tribunal de première instance francophone de Bruxelles sur la demande de RFC Seraing et Doyen Sports de faire interdiction à la FIFA de mettre en œuvre et d’appliquer la circulaire portant adoption de la modification du RSTJ relative à l’introduction de l’article 18ter, pour admettre que l’interdiction des TPO résulte de constats vraisemblables quant aux risques associés à ces pratiques et que les objectifs poursuivis par la FIFA par l’adoption des articles 18bis et 18ter du RSTJ étaient les objectifs de légitimes invoqués par celle-ci (Tribunal de première instance francophone de Bruxelles, 24 juillet 2015, 15/67/C, §§ 95 et s.).”



- Regarding the application of article 18bis and its binding nature

→ It is clear from the literal interpretation of the aforementioned extract that article 18bis is meant to prevent anyone (whether a party to the contract concerned or not) from acquiring the ability to exert undue influence on football clubs. The quality of the person or legal entity enabled by the football club to exercise undue influence as external (meaning outside football) is irrelevant.<sup>16</sup>

→ For the obvious sake of legal certainty, the mandatory application of article 18bis of the FIFA RSTP and its enforceability cannot be contingent upon the understanding or knowledge of this provision by its target audience. From the point that the article had come into force on 1 January 2008, it had become wholly binding.

→ The fact that the FIFA disciplinary bodies went many years without investigating or sanctioning conduct that might have violated the prohibition laid down in article 18bis of the RSTP, and the consequences that this could have when determining and/or imposing potential sanctions, is certainly to be taken into account when determining any potential sanction.

Nevertheless, it does not in any way detract from the mandatory application and enforceability of article 18bis of the FIFA RSTP.

<sup>16</sup> CAS 2018/A/6027 Sociedade Esportiva Palmeiras v. FIFA.

- Regarding the compatibility of article 18bis with European Union Law

→ The article is fully consistent with Union law because the prohibition that it lays down impinges on the rights and freedoms in question to a proportionate, reasonable degree and is ultimately fully justified since it pursues legitimate aims, which include preserving the independence and autonomy of football clubs in relation to their transfer and employment policies.

→ The prohibition laid down in article 18bis of the FIFA RSTP does not constitute a disproportionate or unjustified restriction of rights. This is even more the case considering the specificity of sport, as laid out in article 165 of the Treaty on the Functioning of the EU (TFEU),<sup>17</sup> which is undoubtedly a key factor in establishing the scope of validity of the rule in question.<sup>18</sup>

→ It does not represent a restriction of the free movement of capital in EU territory in relation to the financing of football clubs, since this rule does not prohibit third-party investment in football clubs or their financing by [the] said third parties, but

rather simply prohibits a specific type of investment (that would potentially allow the third party in question to effectively control or influence in employment and transfer-related matters the club's independence, its policies or the performance of its teams).<sup>19</sup>

→ [It i]n no way restricts the free movement of workers within the European single market (or if it does, it does not do so disproportionately or unjustifiably), as the freedom to transfer and hire players cannot be considered to be restricted, and therefore it also does not limit players' rights to work or to provide their services to European football clubs.

→ It also does not violate the freedom to provide services (in this case, financial or investment services for football clubs) within the European market, because such services can be freely provided so long as they do not lead to the investor or funder gaining unlawful influence on the football club in question.

<sup>17</sup> Article 165 of the TFEU: "[...] The Union shall contribute to the promotion of European sporting issues, while taking account of the specific nature of sport, its structures based on voluntary activity and its social and educational function [...] 2. Union action shall be aimed at: [...] developing the European dimension in sport, by promoting fairness and openness in sporting competitions and cooperation between bodies responsible for sports [...]"

<sup>18</sup> CAS 2016/A/4490 RFC Seraing v. FIFA: "[...] La Formation arbitrale, qui souscrit par ailleurs aux solutions dégagées par la Commission européenne et la CJUE à cet égard, considère comme établi que les objectifs invoqués par la FIFA pour justifier les mesures en cause et leurs effets restrictifs, sont des objectifs légitimes au sens de la jurisprudence de l'UE relative aux libertés garanties par le TFUE."

<sup>19</sup> CAS 2016/A/4490 RFC Seraing v. FIFA: "Les articles 18bis et 18ter n'interdisent pas aux investisseurs tiers au sens du RSTJ, de financer les clubs de football, mais interdisent uniquement les financements qui soit, confèrent à l'investisseur le pouvoir d'influer sur l'indépendance et la politique d'un club (c'est-à-dire pas simplement d'avoir un impact indirect sur la gestion d'un club comme pourrait le faire l'octroi d'un prêt à rembourser, mais de pouvoir entraver directement l'autonomie de gestion d'un club en pouvant lier certaines de ses décisions), soit impliquent une indemnité ou un droit contingent au transfert ou à l'indemnité de transfert de joueurs ou encore à sa relation de travail (salaire, durée d'emploi, etc.). Les mesures en cause n'interdisent ainsi que certains schémas de financement, et n'interdisent pas les autres types de financements des clubs de football. Il est donc loisible aux investisseurs souhaitant investir des capitaux dans les clubs de football de le faire suivant les multiples autres schémas de financement possibles. Les mesures n'interdisent pas non plus le financement par des tiers au sens du RSTJ, des opérations de transfert, les financements d'opérations de transfert spécifiques restent possibles, pour autant qu'ils ne contreviennent pas aux articles 18bis et 18ter du RSTJ."

→ It does not restrict competition within the single market – which would be incompatible with article 101 of the TFEU<sup>20</sup> – given that the alleged restriction does not affect competition among football clubs (since all clubs can access funding mechanisms that do not violate the prohibition laid down in article 18bis of the FIFA RSTP), and, in any case, even if such a restriction did exist, it would be justified by the fact that it pursues a legitimate aim.<sup>21</sup>

→ It does not, for the same reason, constitute an abuse of a dominant position,<sup>22</sup> which would contravene article 102 of the TFEU,<sup>23</sup> since the rule does not affect trade between member states, apply dissimilar conditions to equivalent transactions or, in sum, give rise to any of the practices prohibited under European competition law.



In summary, CAS has considered that article 18bis does not violate, limit, restrict or unlawfully affect any of the fundamental freedoms of the EU and nor is it in any way responsible for infringing any of the prohibitions set out by European competition law,<sup>24</sup> and that in any case, this rule seeks to achieve a legitimate aim that is in line with the specificity of sport.

The compatibility of article 18bis with European Union law has also been confirmed by the Swiss Federal Supreme Court and the Brussels Court of Appeal. Further analysis of these decisions can be found in section 2.2 below.

<sup>20</sup> Article 101 of the TFEU: “The following shall be prohibited as incompatible with the internal market: all agreements between undertakings, decisions by associations of undertakings and concerted practices which may affect trade between Member States and which have as their object or effect the prevention, restriction or distortion of competitions within the internal market.”

<sup>21</sup> The Meca-Medina ruling, CASE C-519/04 P.

<sup>22</sup> CAS 2016/A/4490 RFC Seraing v. FIFA: “[...] La Commission européenne a décidé que la FIFA était une ‘association d’associations d’entreprises’ au sens de l’article 101 du TFUE (alors article 81 du TCE). Il s’agit d’une association de droit suisse et elle est elle-même constituée de clubs qui sont des entreprises au sens de l’article 101 du TFUE, étant donné que le football est une activité économique dont les clubs sont les acteurs en organisant des rencontres avec d’autres équipes, lesquelles sont commercialisées sur différents marchés (Commission européenne, 28 mai 2002, IV/36583-SETCA-FGTB/FIFA, § 30).”

<sup>23</sup> Article 102 of the TFEU: “Any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it shall be prohibited as incompatible with the internal market in so far as it may affect trade between Member States.”

<sup>24</sup> In CAS 2016/A/4490 RFC Seraing v. FIFA, CAS found no evidence that articles 18bis and 18ter ran counter to:

- (i) articles 45, 56, 63, 101 and 102 of the TFEU, and articles 15 and 16 of the Charter of Fundamental Rights of the European Union;
- (ii) the rights to protection of property and economic freedom as enshrined in the European Convention on Human Rights and specifically Additional Protocol 1;
- (iii) articles 5 and 7 of the Swiss Federal Act on Cartels and Other Restraints of Competition;
- (iv) European and Swiss competition law in general; and
- (v) articles 26 and 27 of the Swiss federal constitution.

2.1.4 CLUBS SANCTIONED BY FIFA JUDICIAL BODIES FOR A BREACH OF ARTICLE 18BIS



The following list, divided by confederation and respective national association, details all the clubs that have been sanctioned so far by the FIFA judicial bodies for entering into contractual agreements with other clubs or third parties in breach of article 18bis.

As shown below, to date,<sup>25</sup> a total of 68 clubs have been sanctioned for violating article 18bis of the RSTP.<sup>26</sup>

Clubs sanctioned for breaching article 18bis: breakdown by confederation



<sup>25</sup> Data correct as at 1 August 2020.

<sup>26</sup> Some of these clubs have been sanctioned more than once by the FIFA Disciplinary Committee for violations of article 18bis.

### Clubs sanctioned for breaching article 18bis: breakdown by country



### Main considerations and conclusions

**ARTICLE 18BIS**

<p>38 of the 68 clubs sanctioned are European (55%). South America ranks second for number of clubs sanctioned (total of 20).</p>	<p>Brazil (7 clubs), is the country that has had the most clubs sanctioned, followed by Spain and Portugal (6 each) and Italy, England and Paraguay (4 each). The 6 countries account for 45% of the clubs sanctioned worldwide.</p>	<p>85% of the clubs sanctioned worldwide are European or South American (58 out of 68).</p>	<p>The OFC is the only confederation that has yet to see a club sanctioned.</p>
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### 2.1.5 SANCTIONS

When establishing the sanction to be imposed, the FIFA judicial bodies, based on art. 24 of the FIFA Disciplinary Code, take into account both subjective and objective elements of the offence, including all aggravating and mitigating circumstances. Moreover, the FIFA judicial bodies will take into account whether the offender provided assistance and substantial cooperation in uncovering or establishing a breach of the FIFA rules.

Likewise, the degree of the offender's guilt is another aspect that will have an impact on the determination of the sanction.

In exercising their discretionary powers, the FIFA judicial bodies may scale down the disciplinary measure to be imposed or even dispense with it entirely.

Recidivism is an aggravating circumstance. Based on art. 25 par. 1 lit. d) of the FIFA Disciplinary Code, in cases of violation of art. 18bis RSTP recidivism occurs if another offence of a similar nature and gravity is committed after the notification of the previous decision within three years.



All of the above clubs were sanctioned with fines ranging between CHF 10,000 and CHF 187,500. It should be noted that the magnitude of such fines depends on several factors, including but not limited to:

- the number of clauses in breach of article 18bis;
- the severity of the clause(s), i.e. the seriousness of the violation(s), and the degree of influence exerted;
- the level/training category of the club;
- whether the club acquired the ability to influence or granted the other party the ability to influence;<sup>27</sup>
- whether there was also a breach of article 18ter;<sup>28</sup>
- previous offences;
- the degree of collaboration and/or the club's endeavours to remedy the breach; and
- any other mitigating/aggravating circumstances.

<sup>27</sup> In recent decisions, the FIFA Disciplinary Committee has made a distinction between the influencing and influenced clubs' respective responsibilities in relation to article 18bis, deeming the influencer's behaviour to be more reprehensible.

<sup>28</sup> In some decisions, a breach of article 18ter, in addition to breaches of article 18bis and of article 4.3 of Annexe 3 to the RSTP, was also taken into account when determining the fine.





## 2.2 ARTICLE 18TER OF THE FIFA RSTP

### 2.2.1 GENERAL CONSIDERATIONS AND BACKGROUND INFORMATION<sup>29</sup>

Article 18ter paragraph 1 of the FIFA RSTP aims to prevent the phenomenon of speculative investment by persons or entities from inside or outside the football structure. Such speculative investment results in a stake in a player's transfer value and the right to a future claim against clubs contingent upon the player being transferred under contract, while these persons or entities cannot be held accountable.

It is self-evident that the primary objective of such third parties is to generate the largest possible return on their investment. With these third parties having no genuine interest in football, other than the potential financial return a transfer generates, they will inevitably acquire (or try to acquire) the ability to influence the transfer of players under contract and the terms and conditions of such transfers. Such influence can be exerted on various aspects, including but not limited to the transfer fee, the transfer date, the identity of the engaging club or the conditions of the employment contract between the club and the player.

In this sense, it is undeniable that entering into contracts that grant a third party a percentage of a player's economic rights not only jeopardises the transparency of (international) transfers but also puts

the integrity of competitions and the transparency of football at risk. Furthermore, when powerful entities own the economic rights of players who compete in the same leagues or competitions, the threat of match manipulation and conflicts of interest increases considerably.

In this regard, it is important to recall FIFA's objectives, as set out in the FIFA Statutes. According to article 2 (a), one of these objectives is *"to improve the game of football constantly and promote it globally in the light of its unifying, cultural and humanitarian values, particularly through youth and development programmes"*.

It must be noted that article 18ter of the FIFA RSTP does not preclude clubs from obtaining financial aid; on the contrary, it merely limits the power of disposal of the economic rights of players.

Finally, since TPO has become a global phenomenon in recent years, it requires a uniform and worldwide approach, not only through the regulatory powers of FIFA but also through the sanctioning powers of the FIFA judicial bodies.

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<sup>29</sup> Outlined by the FIFA Disciplinary Committee and the FIFA Appeal Committee in their decisions related to TPO.



## 2.2.2 ANALYSIS AND REGULATORY CONTENT

→ Wording of article 18ter of the FIFA RSTP (also in force since 1 January 2015):



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.
6. The FIFA Disciplinary Committee may impose disciplinary measures on clubs or players that do not observe the obligations set out in this article.

Firstly, the prohibition contained in article 18ter of the RSTP is, without a doubt, directed at both clubs and players (*"No club or player shall enter into an agreement with a third party whereby..."*). Clubs and players have an obligation not to conclude agreements with third parties that could be in violation of the prohibition stipulated in the provision concerned.

Should the FIFA Disciplinary Committee conclude that an agreement is in breach of the RSTP, clubs or players may be sanctioned (cf. article 18ter paragraph 6).

Third parties are defined in definition number 14 of the FIFA RSTP as *"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”.*<sup>30</sup>

Furthermore, article 18ter paragraph 1 is aimed at preventing third parties from profiting from the transfer of a player. No club or player may sign agreements that entitle a third party *“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 [to be] assigned any rights in relation to a future transfer or transfer compensation”.*

Article 18ter paragraph 2 stipulates that the prohibition came into force on 1 May 2015, with a transitional period from 1 January 2015 until 30 April 2015. In the same sense, article 18ter paragraph 3 establishes that any agreements entered into before 1 May 2015 could *“continue to be in place until their contractual expiration. However, their duration [could] not be extended”.*

Moreover, article 18ter paragraph 4 clarifies that *“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”.*

Consequently, and in line with the aforementioned provisions, no third-party ownership agreement falling within the scope of the prohibition could be entered into by clubs or players after 1 May 2015 without breaching article 18ter paragraph 1. Any third-party ownership agreement concluded between 1 January and 30 April 2015 would have to limit its duration to a maximum of one year without the possibility of an extension.

Also, clubs had the obligation to upload all TPO agreements *“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”* (cf. article 18ter para. 5).

As a consequence, any club and/or player that does not observe the obligations set out in article 18ter of the FIFA RSTP is subject to disciplinary measures by the Disciplinary Committee in accordance with article 18ter paragraph 6.

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<sup>30</sup> Definition number 14 was updated in the June 2019 version of the FIFA RSTP, following the consideration of the FIFA Disciplinary Committee in the decisions concerning SV Werder Bremen (Germany), Panathinaikos FC (Greece), CSD Colo-Colo (Chile) and Club Universitario de Deportes (Peru) that a player should not be considered a third party with respect to his/her own transfer. Cf. FIFA media release of 26 June 2018.



### 2.2.3 CONSIDERATIONS FROM COURTS AND TRIBUNALS

#### CAS decisions related to article 18ter



In a nutshell, and as already mentioned in the section “CAS decisions related to article 18bis” above, CAS, the Swiss Federal Supreme Court and the Brussels Court of Appeal have also considered that the introduction by FIFA of the prohibition under article 18ter of the FIFA RSTP does not violate, limit, restrict or unlawfully affect any of the fundamental freedoms of the EU and nor does it infringe any of the prohibitions set out by European competition law.

Decision	Club involved	Other party to the proceedings
CAS 2016/A/4490	RFC Seraing	FIFA

### The Swiss Federal Supreme Court



The Swiss Federal Supreme Court ruled on the compatibility of article 18bis and article 18ter of the RSTP with Swiss and European law in its decision on the appeal filed by the Belgian club RFC Seraing against the arbitral award CAS 2016/A/4490, declaring that the limitations or restrictions imposed by these provisions do not infringe upon the fundamental freedoms invoked by FC Seraing.

Specifically, in its decision of 20 February 2018<sup>31</sup> the Swiss Federal Supreme Court stated that:

The violation of art. 27(2) CC is not automatically contrary to substantive public policy; there still must be a grave and clear-cut violation of a fundamental right. A contractual restriction of economic liberty is not considered to be excessive or undue under art. 27(2) CC unless it places the obliged party at the mercy of its contractual counterparty's whims, suppresses its economic freedom, or limits it to such an extent that the basis of its very existence is endangered (cf. Judgement 4A\_312/2017 of 27 November 2017 paragraph 3.1 and the precedents cited therein).

The conditions established by this case law are not fulfilled in the present case. By prohibiting TPO, FIFA is restricting the economic freedom of clubs, but is not suppressing it. Clubs remain free to pursue investment, as long as they do not secure it by assigning the economic rights of players to third-party investors. The Appellant itself acknowledges that the suppressed freedom only concerns 'certain types of investment'. Moreover, if this violation of art. 27(2) CC was so detrimental to the economic freedom of clubs, one must ask how professional clubs established in countries that have already prohibited TPO – such as France and England – still find the funds necessary to operate, which they nevertheless manage to do to great effect.

<sup>31</sup> Judgement 4A 260/2017, 144 III 120.



## The Brussels Court of Appeal



The Brussels Court of Appeal acknowledged in its decision dated 12 December 2019 the full effect of res

judicata – a final judgment no longer subject to appeal – of the CAS award 2016/A/4490 RFC Seraing v. FIFA and of the subsequent Swiss Federal Supreme Court judgement, confirming the validity of the disciplinary decisions rendered by the FIFA judicial bodies.

On top of that, the Brussels Court of Appeal confirmed that no convincing arguments had been put forth to cast doubt on the legitimate objectives pursued by FIFA in including the prohibitions set out in articles 18bis and 18ter of the FIFA RSTP.

## Considerations of additional EU public authorities regarding TPO

- Resolution of the **European Parliament** on an integrated approach to sport policy (2017):
  - ➔ [...] there is a growing, worrying trend of third-party ownership in team sports in Europe whereby players, who are often very young, are partially or integrally owned by private investors and can no longer determine the future paths of their careers;
  - ➔ [...] athletes, in particular minors, must be protected from abusive practices such as third-party ownership, which raise numerous questions of integrity and broader ethical concerns; [the European Parliament] supports decisions of governing bodies to ban third-party ownership of players, and calls on the Commission to consider the prohibition of third-party ownership under EU law and to invite the Member States to take additional measures to address the rights of athletes;
- Statement of former **EU Commissioner** responsible for sport, Androulla Vassiliou (2014):
  - ➔ Third-party ownership is another important element relating to good governance. It raises a number of questions on integrity as well as broader ethical concerns.

### Additional court decisions regarding article 18ter

Additional proceedings relating to the prohibition of TPO and the legality and application of article 18ter have been brought before national courts, national authorities responsible for ensuring compliance with competition law and the European Commission.

→ Another judgment was rendered by the Brussels Court of Appeal on 10 March 2016 in the context of the dispute between Doyen and RFC Seraing (appellants) and FIFA, UEFA, FIFPRO and the Belgian Football Association (respondents), confirming the ruling issued on 25 July 2015 by the President of the Brussels Court of First Instance, which rejected in particular the requests made by Doyen and RFC Seraing to suspend the implementation of the TPO ban by FIFA, the Belgian FA and UEFA.

In the decision, the Court of Appeal outlined the lack of evidence that the ban on TPO contravened EU law, emphasising, inter alia, the opacity of TPO, the absence of control by governing bodies and the significance of this worldwide phenomenon and of the amounts of money involved, as well as the environment's proneness to corruption and other fraudulent practices. For these reasons, it held that a prima facie finding that the ban on TPO infringed EU competition law was impossible to make.

→ Substantive proceedings were underway before the Paris Tribunal de Grande Instance and oppose Doyen Sports against FIFA, UEFA, the French Football Association and the French Professional Football League.

→ Complaints against FIFA for violation of competition law were lodged with the European Commission by, among others, the Spanish Professional Football League, the Portuguese Professional Football League and RFC Seraing.

→ Proceedings were initiated before the Swiss Competition Authority following a complaint by the Spanish Professional Football League against FIFA for violation of federal law on cartels and other restrictions of competition resulting from the ban on TPO.

To date, no sporting or national court has found articles 18bis and 18ter of the FIFA RSTP to be in breach of European competition law or against the fundamental principles and freedoms of the EU.

## 2.2.4 THE PLAYER IS NOT A THIRD PARTY TO HIS/HER OWN TRANSFER



On 26 June 2018, FIFA issued a media release announcing that the FIFA Disciplinary Committee had decided in the cases of SV Werder Bremen (Germany), Panathinaikos FC (Greece), CSD Colo-Colo (Chile) and Club Universitario de Deportes (Peru) that players were not to be considered a “*third party*” in the sense of definition number 14 and article 18ter of the RSTP.<sup>32</sup>

In these cases, the four clubs had entered into agreements with some of their players that entitled the players to receive a specific amount of compensation – a lump sum or a percentage – in the event of their future transfer to another club.<sup>33</sup>

- In particular, the FIFA Disciplinary Committee ruled in the following terms:

→ [...] the Committee emphasises that a player who signs an employment contract with a club is entitled – like any worker – to strive to obtain the best possible remuneration and economic gains while at the same time being able to pursue an improvement at the professional level as an athlete. The objective of a player is to progress at the individual level, through the improvement of his football techniques, as well as at a collective level, being part of a team from which he can learn while contributing with his sporting qualities with the ultimate goal of improving the club’s performance and, ideally, winning as many trophies as possible.

The FIFA Disciplinary Committee considered that such amounts promised to players are to be seen as part of the remuneration due under their employment relationships with their clubs. Consequently, players cannot be considered a third party with respect to their own future transfers and, therefore, the fact that they may receive specific compensation – regardless of it being a lump sum or a percentage – in relation to their future transfer to a new club is not considered a violation of FIFA’s rules on third-party ownership of players’ economic rights.

The Committee also considers that it is mainly the player who, through his work, effort, perseverance and daily discipline, arouses interest from other clubs and therefore generates his own surplus value. Therefore, although clubs and their technical services also have a significant hand in the good performance of a player, the latter is primarily responsible for his own development and is the main cause for the interest of other clubs and their ultimate decision to pay a certain sum to secure his services.

<sup>32</sup> It should be noted that, prior to these decisions, the FIFA Disciplinary Committee had concluded that players could be considered third parties in the sense of definition number 14 of the FIFA RSTP. For instance, in the decision dated 20 July 2017 against the Belgian club RSC Anderlecht, an agreement signed between one of the players and the club, whereby the player would be entitled to receive a percentage of his own transfer fee, was deemed to be in breach of article 18ter of the FIFA RSTP. The same conclusion had previously been reached by the FIFA Disciplinary Committee in its decision dated 4 September 2015 against RFC Seraing.

<sup>33</sup> In the agreement signed between Colo-Colo and Universitario de Deportes to transfer a player to the Chilean club, the player was entitled to receive 10% of the agreed transfer fee. In the case of Panathinaikos, the Greek club concluded an employment contract with a player, including the following clause: “In the event that the player is transferred from Panathinaikos to a third club, the player will be entitled to receive 12.5% of the net amount that Panathinaikos receives as a transfer fee.”

In view of the above, contractual stability, which – from the point of view of a worker – basically consists of the right to keep his employment during the time initially agreed with his employer, is not endangered by the mere fact that the player himself grants (together with his current club) his consent for his contract to be terminated due to his possible transfer to another club. This differs totally from the situation in which an external agent to the contractual relationship, normally without having any type of sporting or professional interest, has the power to decide when and where a player must be transferred, which is, in the eyes of the Committee, exactly the sort of situation that the legislative body wished to prevent by inserting article 18ter paragraph 1 of the RSTP.

Therefore, the Committee considers that the fact that it is the player himself, as the object of the transfer, who will receive a percentage of the value of his own transfer – subject to the express consent to the transfer of both the current club and the player – does not jeopardise the contractual

- As a consequence of that decision, the definition of “third party” was amended in the June 2019 version of the FIFA RSTP, establishing that a third party is:

→ a party other than the player being transferred, the two clubs transferring the player from one to the

stability, autonomy or independence of the club, nor does it limit its determination of its own policies in any way.

In view of the foregoing, the Committee considers that the amount determined in a transfer agreement (or an employment contract) to be paid to the player for his future transfer – which constitutes a share in the value of his future transfer – must be considered part of his remuneration in accordance with the employment relationship with his club. Therefore, the Committee concludes that, in this scenario, a player who is the object of a transfer must not be considered “a third party” within the meaning of definition 14 and article 18ter of the RSTP.

It should be clarified that the Committee is not determining that players can never be considered third parties according to the RSTP, but only that they will not be considered as such insofar as the amounts they receive correspond to a part of the value of their own transfer to another club.

other, or any previous club, with which the player has been registered.



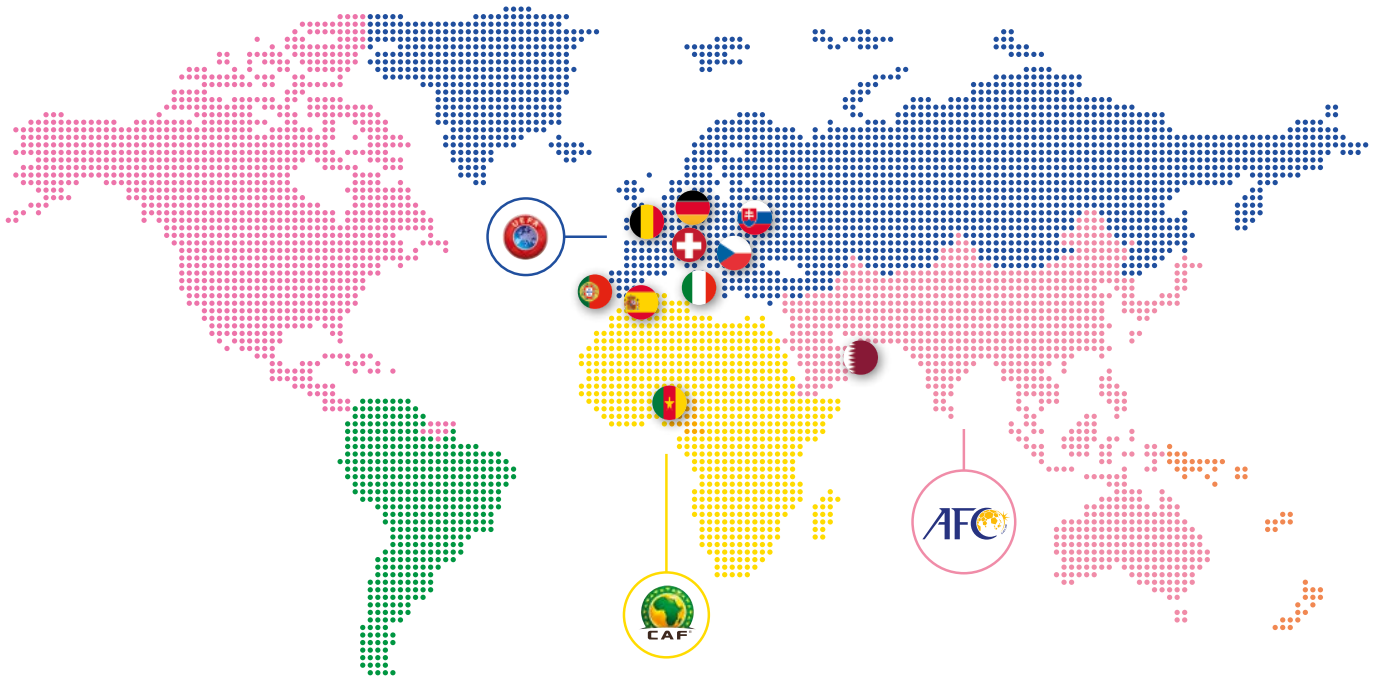
2.2.5 CLUBS SANCTIONED BY FIFA JUDICIAL BODIES FOR A BREACH OF ARTICLE 18TER (PART 1)<sup>34</sup>



The following list, divided by confederation and respective national association, details the clubs that have been sanctioned by the FIFA judicial bodies for entering into contractual agreements with third parties in breach of article 18ter.

As shown below, to date,<sup>35</sup> a total of 13 clubs have been sanctioned for a violation of article 18ter of the RSTP.<sup>36</sup>

Clubs sanctioned for breaching article 18ter: breakdown by confederation

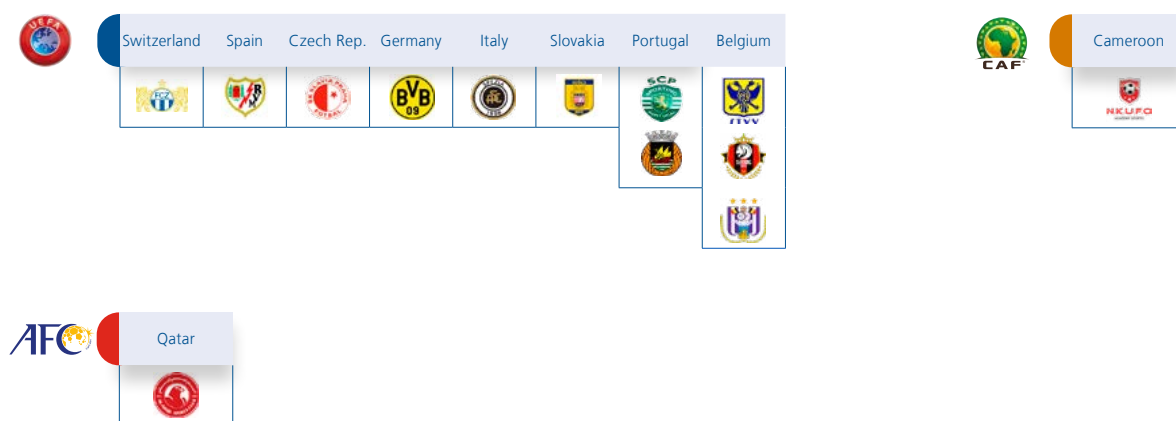


<sup>34</sup> Part 2 of the section “Clubs sanctioned by FIFA judicial bodies for a breach of article 18ter” includes the specific considerations of the FIFA judicial bodies regarding article 18ter in the different agreements entered into by clubs with third parties. It can be found in chapter 4 of this document.

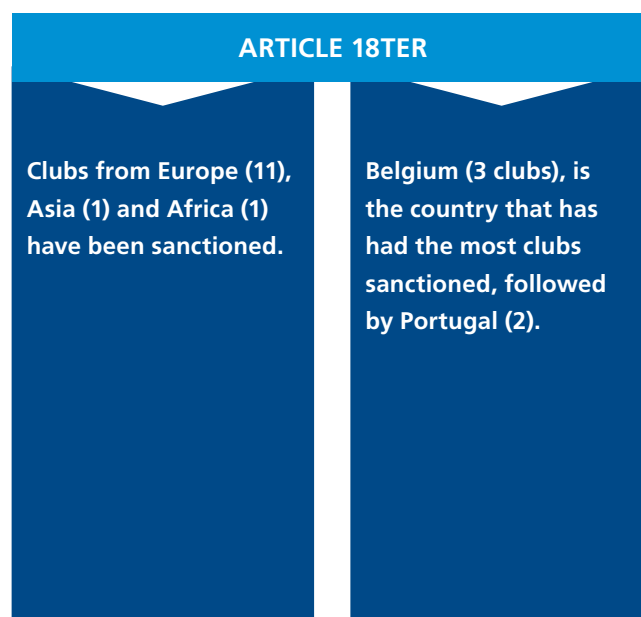
<sup>35</sup> Data correct as at 1 August 2020.

<sup>36</sup> Some of these clubs have also been sanctioned by the FIFA Disciplinary Committee for violations of article 18bis.

## Clubs sanctioned for breaching article 18ter: breakdown by country



## Main considerations and conclusions



## 2.3 ARTICLE 4 PARAGRAPH 3 OF ANNEXE 3 TO THE FIFA RSTP

Annexe 3 refers to TMS, a web-based data information system with the primary objective of simplifying the process of international player transfers as well as improving transparency and the flow of information.<sup>37</sup>

The use of TMS is a mandatory step for all international transfers of professional and amateur players (both male and female) within the scope of 11-a-side football.

According to article 4 paragraph 3 of Annexe 3, when creating a transfer instruction in TMS, clubs must provide certain compulsory data, including completing the declaration on third-party payments and influence and the declaration on third-party ownership.<sup>38</sup>

### • Declaration on third-party ownership of players' economic rights

This declaration refers to all TPO agreements (as defined in article 18ter paragraph 1 of the FIFA RSTP) entered into by the club and/or the player.

- "Yes" should be declared in cases where the club or the player entered into a TPO agreement at any time in the past, even if it has already been uploaded into the third-party agreement library.

- If clicking "No", the club must upload documents signed by the player and by the former club confirming that there is no third-party ownership of the player's economic rights<sup>39</sup> under the relevant document types: "Proof that there is no TPO from the player" and "Proof that there is no TPO from the former club".<sup>40</sup>

### Declaration on third-party ownership of player's economic rights

Has your club or the player entered into an agreement with a third party (defined as any party other than the player being transferred, the two clubs transferring the player between each other or any previous club with which the player has been registered) whereby the third party is entitled to participate, in full or in part, in compensation payable in relation to the future transfer of the player from one club to another, or is being assigned any rights in relation to a future transfer or transfer compensation?

- Yes  
 No

<sup>37</sup> Cf. point 13 of the Definitions section of the FIFA RSTP.

<sup>38</sup> Other compulsory data (among others): the instruction type (engage/release), whether the transfer is on a permanent basis or on loan, whether there is a transfer agreement with the former club, the player's name, the player's former club and the former association.

<sup>39</sup> Cf. article 8.2 paragraph 1 of Annexe 3 to the FIFA RSTP.

<sup>40</sup> As an exception to this rule, if the player was previously registered as an amateur, the new club is not required to upload "Proof that there is no TPO" signed by the former club.

- **Declaration on third-party influence**

Upon entering a transfer instruction, the club must either declare “Yes” or “No” to the declaration on third-party influence on clubs.

By incorrectly declaring that there is no third-party influence, clubs fail to disclose full and correct information in TMS, in breach of the aforementioned article. This is an offence subject to an administrative sanction procedure (ASP) to be opened by TMS Compliance and a factor also taken into consideration by the FIFA judicial bodies when rendering decisions related to TPO/TPI.

An infringement of article 18bis and article 18ter implies a breach of article 4 paragraph 3 of Annexe 3 and therefore, the decisions of the FIFA judicial bodies sanctioning a club for a breach of article 18bis (or article 18ter) also find clubs guilty of an infringement of article 4 paragraph 3 of Annexe 3 to the FIFA RSTP.

The position of the FIFA Disciplinary Committee has in this respect been reinforced by CAS.

#### Declaration on third-party influence on clubs

Has your club entered into a contract which enables the counter club/counter clubs, and vice versa, or any third party (defined as any party other than the player being transferred, the two clubs transferring the player between each other or any previous club with which the player has been registered) to acquire the ability to influence in employment and transfer-related matters your club’s independence, your club’s policies or the performance of your teams?

Yes

No

# 3 JURISPRUDENCE ON TPI AGREEMENTS

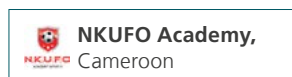
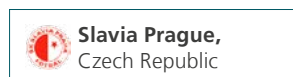




### 3.1 CLUB-CLUB AGREEMENTS

#### 3.1.1 CLUB-CLUB AGREEMENTS NOT SANCTIONED BY FIFA JUDICIAL BODIES

##### 1. Decision of the FIFA Disciplinary Committee dated 7 March 2019



- Slavia Praha engaged a player from NKUFO Academy Sports.

- Clause 6 of the agreement stated as follows:

→ The parties have also agreed that Academy [NKUFO Academy Sports] is entitled to receive a share from the next transfer of the Player, calculated as follows:

- Academy will receive 25% of the selling PLUS from transfer fees of over EUR 500,000;
- Academy will receive 35% of the selling PLUS from transfer fees of between EUR 400,000 and 499,000;
- Academy will receive 50% of the selling PLUS from transfer fees of between EUR 300,000 and 399,000;
- [...]

The term 'selling PLUS' means the transfer fee after deducting all payments already paid to Academy. For the avoidance of any doubts, examples of calculations are listed in Annexe 2 to this contract.

If Academy delivers to SK Slavia an offer from a third club with a higher transfer fee, the selling PLUS will be calculated on the basis of this higher proposal even if SK Slavia decides to sell the Player to the club offering a lower transfer fee.

- Furthermore, clause 7 was drafted in the following terms:

→ The parties have also agreed that a total amount of EUR 150,000 (one hundred and fifty thousand euros) will be paid to Academy by SK Slavia for every extension/renewal of the contract with the

Player. This amount will not be paid in the event that Slavia utilises the option set out in point II. paragraph 2 of the player's professional contract.



The FIFA Disciplinary Committee "was not comfortably satisfied that such clauses would be in contradiction with article 18bis of the RSTP" and therefore no sanction was imposed on the clubs.

## 2. Decision of the FIFA Disciplinary Committee dated 26 October 2019<sup>41</sup>



- On 21 July 2017, Atlético Madrid signed an agreement with Wolverhampton Wanderers to loan a player to the English club for a fixed transfer fee of EUR 1,575,000. The deal also included a release (buy-out) fee of EUR 14,000,000.
- Clause 12 of the loan agreement read as follows:

→ Automatic exercise of option & permanent transfer:  
It is agreed that Wolves shall be obliged to serve a notice in writing (the 'Notice') to AM [Atlético Madrid] exercising the option upon satisfaction of one of the following conditions:

- I. Wolves achieving promotion to the Premier League in the 2017/18 EFL Championship season (whether automatically or via the EFL Championship Play-Offs);
- II. The Player scoring no fewer than 15 goals for Wolves in EFL Championship league fixtures only in the 2017/18 season;
- III. The Player making 35 starting appearances for Wolves [...]

For clarification purposes, it is sufficient for one of the aforementioned conditions to be met in order for Wolves to be obliged to exercise the purchase

option. I.e. if Wolves is promoted to the Premier League for the 2018/2019 season, even in the event that the Player does not score 15 goals or make 35 starting appearances, Wolves is compelled to exercise the purchase option; in the event that Wolves is not promoted to the Premier League, but the player does score 15 goals or make 35 starting appearances (either of these events), Wolves is compelled to exercise the purchase option.

Once any of the above conditions have been fulfilled, Wolves or AM will inform each other to this effect. The mere communication that a condition has been met will automatically imply the exercise of the purchase option, without further formalities.

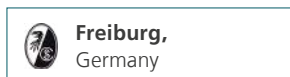
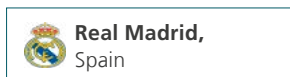
In the event that, once the purchase option has been triggered, Wolves then refuses to exercise it or make the payments, the Parties agree a penalty in favour of AM of EUR 15,000,000.



The FIFA Disciplinary Committee decided "to dismiss all charges" against both clubs. Since none of the parties requested the motivated decision, the reasoning of the FIFA Disciplinary Committee is not available.

<sup>41</sup> The grounds of the decision were not requested by the parties. Therefore, only the terms of the decision are available.

### 3. Decision of the FIFA Disciplinary Committee dated 17 October 2019



- On 22 May 2019, Real Madrid and Freiburg agreed to transfer a player to the German club.
- Clause 3 of the agreement stated:

→ In the event that FREIBURG agrees to transfer the PLAYER's permanent registration [...] and FREIBURG receives a transfer fee from such transfer, FREIBURG shall pay REAL MADRID the amount received from this transfer up to a maximum of EUR 2 million, plus 30% of the net excess transfer fee received from the said transfer [...]

→ If FREIBURG and the PLAYER receive an official offer to purchase the federative rights of the PLAYER until the end of their employment contract on 30 June 2021 which they are both willing to accept, FREIBURG shall communicate to REAL MADRID all the terms of such offer.

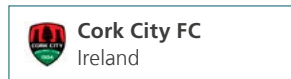
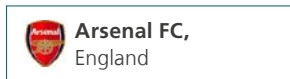
REAL MADRID shall then have seven (7) calendar days to accept or refuse the offer. Should REAL MADRID not answer in such period, the offer shall be considered refused.

The parties are aware that the timeframe for REAL MADRID to accept or refuse the offer may not be obeyed if the offer is received less than seven (7) days before the closure of the transfer window in the offering party's country of origin. Therefore, the parties agree that the timeframe defined above is reduced to three (3) days, if the offer is received less than eight (8) days but more than four (4) days prior to the closure of the transfer window in the offering party's country of origin and twelve (12) hours if the offer is received by FREIBURG within the last three (3) days of the transfer window in the offering party's country of origin.



The FIFA Disciplinary Committee decided "to dismiss all charges" against both clubs considering that it was not in a position to conclude that said clause would offer Real Madrid the possibility to influence Freiburg in transfer-related matters its independence, its policies or the performance of its teams.

#### 4. Decision of the FIFA Disciplinary Committee dated 23 July 2020



- On 6 February 2020, Arsenal and Cork City signed an agreement for the loan of a player to the Irish club. The clubs agreed on a loan fee of GBP 8'000 and a "performance fee" of GBP 15'000.
- Clause 5.3 of the loan agreement stated:
  - It is agreed that, if conditions set out at any of clauses 5.3 (A) to (D) below are satisfied, the Performance Fee shall be reduced based on the number of Starting Appearances made and the total number of minutes played by the Player during the Loan Period, as follows:
    - (A) to £10,000 (ten thousand pounds) (plus any applicable VAT) in the event the Player makes a minimum of eight Starting appearances and plays for a minimum total period of 800 minutes in First Team Competitive matches during the Loan Period; or
    - (B) to £8,000 (eight thousand pounds) (plus any applicable VAT) in the event the Player makes a minimum of 10 Starting appearances and plays for a minimum total period of 1000 minutes in First Team Competitive matches during the Loan Period; or
    - (C) to £ 4,000 (four thousand pounds) (plus any applicable VAT) in the event the Player makes a minimum of 13 Starting appearances and plays for a minimum total period of 1300 minutes in First Team Competitive matches during the Loan Period; or
    - (D) to £0 (such that the Performance Fee payable to Arsenal is zero) in the event the Player makes a minimum of 16 Starting appearances and plays for a minimum total period of 1500 minutes in First Team Competitive matches during the Loan Period"



The Committee wishes to express that it agrees with Arsenal's view that the loan system, in principle, helps and encourages the development of players, in particular, the younger ones. However, it is important to bear in mind that this does not imply that the club of origin shall be entitled to impose measures or conditions on the assignee club to ensure the development of those players.

The Committee is of the opinion that the protection of the interests of both clubs involved in the loan transfer of a player is grounded in the very nature of this type of contracts, in which one of the parties (i.e. the club of origin) wishes to loan a player to other club so that he has the chance to play more minutes and gain experience. Likewise, the assignee club can use the player in order to achieve its sporting goals.

Notwithstanding the above, the Committee observes that in this particular case, the parties agreed on a loan and performance fee. Indeed, Cork accepted that the loan of the Player would have costed a maximum of GBP 23,000 (i.e. GBP 8,000 as loan fee and GBP 15,000 as performance fee). The Committee believes that the possibility for Cork of having the performance fee reduced appears to be an incentive rather than a possible external influence of Arsenal on Cork's decisions.

In addition, the Committee finds that the total fee, as well as the potential deductions, are relatively modest. Moreover, the Committee notes that Arsenal bore the salary of the Player. Additionally, the Committee deems important to underline that, at the time of the loan, the Player was only 20 years old, and considers that Arsenal had legitimate interests in trying to encourage Cork to field the Player as much as possible in order to ensure his sporting evolution.

Following the above deliberations, the Committee proceeds to ascertain whether the contents of the Clause contravenes the provision laid out in article 18bis of the Regulations. In this particular case, the Committee considers that, although the conditions set out in the Clause could affect somehow the decisions taken by Cork in relation to the Player, they do not enable Arsenal to exercise a real influence on Cork.



### 3.1.2 CLUB-CLUB AGREEMENTS SANCTIONED BY FIFA JUDICIAL BODIES<sup>42</sup>

#### Examples of clauses considered by FIFA judicial bodies<sup>43</sup>

The following is a non-exhaustive<sup>44</sup> list of contractual constructions that the FIFA judicial bodies have found to be in contravention of article 18bis. Each set of examples is followed by a brief explanation as to the reason why the FIFA Disciplinary Committee and/or the FIFA Appeal Committee considered that a breach had been committed.

Due to practical reasons, only an individualised analysis of the clauses is referred to in this Manual. Nevertheless, the reader must bear in mind that the FIFA judicial bodies also conduct an overall and systematic interpretation of each contract before reaching any decision.

In this respect, it is worth noting that certain contractual agreements purposely include a clause acknowledging the club's independence in transfer and employment-related matters and affirming that the counterparty to the agreement will not exert – or be entitled to exert – any influence over the club.<sup>45</sup> When evaluating the global content of the agreement, however, a systematic analysis has led the FIFA judicial bodies to conclude that this type of overprotective disclaimer has no weight whatsoever in comparison to the true intention of the parties.



#### Clauses restricting the new club with respect to the future transfer of the player

- Prohibition on transferring the player without the other club's consent
- Higher sell-on fee if the player is transferred to a competitor club
- Prohibition on transferring the player to a competitor club (or subject to a high penalty fee)
- Prohibition on transferring the player until the transfer fee is paid in full
- Authorisation required to loan the player
- Prohibition on assigning the player's economic rights to another party without the other club's consent
- Both clubs are entitled to negotiate the transfer of the player



#### Clauses related to the employment relationship between the club and the player

- Inability to freely negotiate the terms of engagement of the player/obligation for the club to prevent the player becoming a free agent

<sup>42</sup> For the purposes of this Manual, the FIFA judicial bodies' decisions are analysed from the perspective of the clauses in violation of article 18bis. Therefore, a club that has only been sanctioned once may appear repeatedly insofar as multiple types/categories of clause that were present in the agreement in question were analysed by the FIFA judicial bodies.

<sup>43</sup> All the decisions notified by the FIFA Disciplinary Committee since 1 January 2019 can be found at [fifa.legal.com](http://fifa.legal.com). Where a decision contains confidential information, FIFA may decide, ex officio or at the request of a party, to publish an anonymised or a redacted version.

<sup>44</sup> Please note that, to date, not all of the transfer agreements entered by clubs in TMS have been reviewed. Therefore, there may be other contractual clauses entered into by clubs (not included in this Manual) that could be considered by the FIFA judicial bodies to be in breach of article 18bis.

<sup>45</sup> E.g. CAS 2017/A/5463 Sevilla FC v. FIFA, paragraph 6 clause 10.14: "Doyen hereby acknowledges: [...] that the Club is an independent entity that is authorised to make decisions regarding disciplinary measures or any other decisions regarding the employment contract or the transfer of the Player, and that it will not have any sporting influence on the Club, its staffing, contractual or transfer policies, nor on the performance of its teams."



### Clauses linked to selection in matches

- Ensure that the player transferred (on loan) is fielded regularly



### Clauses obliging the club to communicate certain information<sup>46</sup>

- Obligation to inform about a player's injury
- Obligation to disclose every transfer offer



### Obligations to transfer/release a player under certain conditions

- Obligation to accept an offer for a specific transfer fee
- The club has no say in the future transfer of the player
- Obligation to transfer the player in the event of relegation
- Obligation to release the player for training and friendly matches

## How many clubs have been sanctioned for entering this type of clauses in transfer agreements?

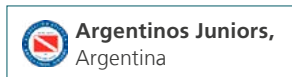
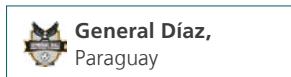
	Prohibition on transferring the player without the other club's consent	13	Number of clubs sanctioned
	Higher sell-on fee if the player is transferred to a competitor club	5	
	Prohibition on transferring the player to a competitor club (or subject to a high penalty fee)	13	
	Prohibition on transferring the player until the transfer fee is paid in full	3	
	Authorisation required to loan the player	1	
	Prohibition on assigning the player's economic rights to another party without the other club's consent	1	
	Both clubs are entitled to negotiate the transfer of the player	1	
	Inability to freely negotiate the terms of engagement of the player/obligation for the club to prevent the player becoming a free agent	10	
	Ensure that the player transferred (on loan) is fielded regularly	12	
	Obligation to inform about a player's injury	2	
	Obligation to disclose every transfer offer	1	
	Obligation to accept an offer for a specific transfer fee	16	
	The club has no say in the future transfer of the player	2	
	Obligation to transfer the player in the event of relegation	1	
	Obligation to release the player for training and friendly matches	3	

<sup>46</sup> The types of clauses under this category have always been investigated by the FIFA administration together with other clauses potentially in breach of article 18bis. No investigation has been initiated against a club when this type of clause has appeared to be the only one possibly in breach of article 18bis.

### 3.1.2.1 Clauses restricting the new club with respect to the future transfer of the player

#### 3.1.2.1.1 Prohibition on transferring the player without the other club's consent

##### 1. General Díaz (Paraguay) and Argentinos Juniors (Argentina)<sup>47</sup>



- General Díaz transferred the federative rights and 50% of the economic rights of a player to Argentinos Juniors. The agreement stipulated the following:

→ The parties agree that AAAJ [Argentinos] shall have no right to transfer THE PLAYER, whether permanently or temporarily on loan, without the express written consent of GENERAL DÍAZ. In the event that AAAJ breaches the provisions of this clause to the detriment of GENERAL DÍAZ, AAAJ shall pay GENERAL DÍAZ fifty (50%) of the net amount received for the transfer or the sum of Three Million United States Dollars (USD 3,000,000) net, whichever amount is greater, by way of compensation, within 30 days of the breach.

If the breach of AAAJ was due to the temporary leasing of the federative rights, it shall be obliged to compensate GENERAL DÍAZ in an amount equivalent to Three Hundred Thousand United States Dollars (USD 300,000) net for each year of the loan, regardless of the amount at which the loan was effectively agreed upon, or fifty (50%) of the loan fee, whichever amount is greater.



#### Considerations of the FIFA Disciplinary Committee:

It is clear that this clause prevents AAAJ from acting independently. The Club, according to the said clause, cannot proceed to transfer the Player, in any manner whatsoever, without obtaining the express consent of General Díaz in advance. In the event that the Club does not obtain the consent of General Díaz, it will be obliged to pay a significant amount of money. In other words, if the Club intends to transfer the Player for whatever reason, it cannot do so without the consent of General Díaz. In such a situation, General

Díaz will have the last word (unless the Club pays an amount of money to not be subject to this obligation) demonstrating that the sports and/or economic policy of AAAJ is under the clear influence of General Díaz. The Committee considers that such a requirement allows General Díaz to influence AAAJ in "transfer-related matters", inasmuch as the future transfer of the Player is contingent upon on the intervention of General Díaz.

→ The section of the agreement entitled "Transfer of the Player – offers" included the following: "Both parties undertake to mutually agree and expressly state, in writing, the acceptance or not of any offer made by a third party for the transfer of THE

PLAYER. AAAJ and GENERAL DÍAZ, after agreeing upon the terms and conditions of the transfer data sheet, permit, federative rights or professional sports services of THE PLAYER..."

<sup>47</sup> Decisions of the FIFA Disciplinary Committee dated 16 May 2019.

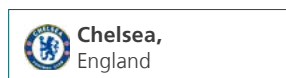


### Considerations of the FIFA Disciplinary Committee:

In general terms, a truly independent club would at no time be obliged to inform another club about the offers it receives for one of its players, let alone have to “mutually” accept with the other club an offer made by a third party. Again, this clause has to be considered

as having a clear impact on the independence of AAAJ. The latter cannot decide in total freedom on its sports and/or economic policy, given that the club General Díaz has to intervene at every moment in the decision-making process.

## 2. Ajax (Netherlands), Rangers (Scotland) and Chelsea (England)<sup>48</sup>



- Chelsea engaged one player from Ajax and one player from Rangers. Both agreements contained some identical clauses:  
(5.1 (c) Ajax and 6.1 (c) Rangers) and (5.1 (f) Ajax and 6.1 (f) Rangers)

### Clause 5.1 (c)/6.1 (c)

→ The transferor hereby represents and warrants to Chelsea that: [...]

(c) It shall continue to retain the Player’s registration unencumbered until 30 June 2016 or on such other date as Chelsea directs that the Player’s registration be transferred to it on a permanent basis, and will not transfer the Player’s registration to any other club on a temporary basis without Chelsea’s written consent.

### Clause 5.1 (f)/6.1 (f)

→ The transferor hereby represents and warrants to Chelsea that: [...]

(f) neither it, nor any of its advisors, agents or intermediaries shall, either directly or indirectly, solicit, accept or engage in any discussion or negotiation in relation to any offer from any other club for the temporary or permanent transfer of the Player’s registration without Chelsea’s express prior written consent. [...]

<sup>48</sup> Chelsea decision with grounds dated 22 February 2019, Ajax decision dated 13 August 2019 and Rangers decision dated 20 September 2019.



### Considerations of the FIFA Disciplinary Committee in the Ajax decision:

The Club is prevented from loaning the player to another club without Chelsea's prior written consent. In fact, clause 5.1 (f) prevented Ajax from even engaging in discussions or negotiations for possible temporary or permanent transfers of the player without Chelsea's prior written consent.

In this respect, the Committee considers that clubs, in order to be considered truly independent, must be free to negotiate and loan their players with no need to obtain prior approval from another club. As a result,

the Committee considers that, by the existence of these clauses, Ajax was influenced in its employment and transfer-related matters, thus affecting its independence.

For the sake of clarity, the Committee wishes to emphasise that a club is guilty of the prohibited conduct when the contract in question effectively enables or entitles the club to have an influence on the other club in such matters and/or capacities, regardless of whether or not this influence actually materialises.



### Considerations of the FIFA Disciplinary Committee in the Rangers decision:

Clause 6.1 (c) clearly limits the freedom of Rangers in transfer-related matters. In particular, the Club is prevented from loaning the respective player to another club without Chelsea's prior written consent. In fact, clause 6.1 (f) prevented Rangers from even engaging in discussions or negotiations for possible temporary or permanent transfers of the respective player without Chelsea's prior written consent.

The Club argued that these clauses were without effect as the player was an amateur, i.e. not under contract with the Club, and as such, could leave freely. At first sight, the Committee concurred with such line of argumentation, in the sense that, in principle, only professional players could be loaned to another club (cf. article 10 of the RSTP).

However, the Committee wishes to qualify this point by recalling that, should [Rangers] not have signed this agreement with Chelsea, it could have concluded an employment contract with the player covering the period up to the transfer to Chelsea (in August 2017), and then loaned the player to a third club during this period – and this, without jeopardising the

said upcoming transfer to Chelsea –. In sum, Rangers could have faced the situation where it was interested in transferring the respective player on loan – e.g. to allow the player to have more possibilities to play and develop before being transferred to Chelsea, or even to monetise its prior investment in the player – and yet been prevented from doing so independently, as a result of the agreement concluded with Chelsea.

In this respect, the Committee considers that clubs, in order to be considered truly independent, must be free to negotiate and loan their players with no need to obtain prior approval from another club. As a result, the Committee considers that, by the existence of these clauses, Rangers was influenced in its employment and transfer-related matters, thus affecting its independence.

For the sake of clarity, the Committee wishes to emphasise that a club is guilty of the prohibited conduct when the contract in question effectively enables or entitles a club to be influenced by another club in such matters and/or capacities, regardless of whether or not this influence actually materialises.





### Considerations of the FIFA Disciplinary Committee in the Chelsea decision:

The Committee wishes to point out that clauses 5.1 (c)/6.1 (c) clearly limit the freedom of Ajax/Rangers in transfer-related matters. Both clubs are prevented from loaning the respective players to another club without Chelsea's prior written consent. In fact, clauses 5.1 (f)/6.1 (f) prevent Ajax/Rangers from even engaging in discussions or negotiations for possible temporary or permanent transfers of the respective players without Chelsea's prior written consent.

Therefore, Ajax/Rangers could have faced the situation where they were interested in transferring the respective player on loan – e.g. to allow the player to have more possibilities to play and develop – and yet been prevented from doing so independently. An independent club would not be subject to such a limitation.



Chelsea appealed the decision of the Disciplinary Committee before the FIFA Appeal Committee.<sup>49</sup>

### Considerations of the FIFA Appeal Committee in the Chelsea decision:

The Committee notes that clause 5.1 (c) of the Rangers agreement and clause 6.1 (c) of the Ajax agreement prevented the respective clubs from loaning the player at stake without the consent of Chelsea.

Additionally, according to clause 5.1 (f) of the Rangers agreement and 6.1 (f) of the Ajax agreement, Chelsea's consent was required also for simply engaging in discussions or negotiations for the possible loan of the players.

The Committee has no doubt that these clauses entitled Chelsea to influence the policies of Rangers

and Ajax, since it could prevent them from loaning the player to another club. In this respect, the Committee considers that clubs, in order to be considered truly independent, must be free to negotiate and loan their players with no need to obtain the authorisation from another club.

Once again, the Committee considers that these clauses entitled the Appellant to influence both Rangers and Ajax in transfer-related matters. Indeed, the said clubs would be obliged to release the players upon request of Chelsea, regardless of whether it was in their sporting interest to keep them with their team.

<sup>49</sup> Ajax and Rangers did not appeal the respective decisions of the FIFA Disciplinary Committee.



Chelsea appealed the decision of the Appeal Committee before CAS.

#### Considerations of CAS in the Chelsea decision:<sup>50</sup>

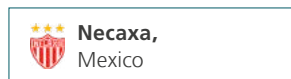
In the Sole Arbitrator's opinion, to have contractual rights vis-à-vis a club for just a single player normally does not amount to having the level of influence on another club required to trigger the application of Article 18bis, para. 1, RSTP, i.e. *"the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams"*. In the vast majority of cases the proper interpretation of the terms *"independence"*, *"policies"* and *"performance of teams"* requires much more than a contractual obligation related to one player. In the Sole Arbitrator's view, unless a single player is so exceptionally important for a given club that an agreement like the ones at hand can demonstrably influence that club's sporting and economic behaviour, there must be a network of similar agreements for various players that, aligned together, can truly influence the *"independence"*, *"policies"* or *"performance of teams"* of a club.

The Sole Arbitrator cannot uphold that the Rangers and Ajax Agreements gave the Appellant that level of influence, considering that FIFA (who bears the burden of proof) submitted no evidence that players 18 and 46 – even with the benefit of hindsight – could be of so exceptional importance for Rangers and Ajax, respectively, to influence these clubs' independence, policies or performance of teams. In addition, in applying Article 18bis, para. 1, RSTP one must also consider, on a case-by-case basis, the relative standing, prominence and market power of the involved clubs. It would be illogical, after all, to consider that important clubs such as Rangers or Ajax, well-known on the European stage, could be influenced in their *"independence"*, *"policies"* or *"performance of teams"* based just on the obligations respectively undertaken in reference to players 18 and 46.

In light of the above, the Sole Arbitrator holds that the Appellant did not violate Article 18bis, para. 1, RSTP in relation to those two agreements.

<sup>50</sup> CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA.

### 3. Colo-Colo (Chile) and Necaxa (Mexico)<sup>51</sup>



- Colo-Colo transferred to Necaxa the federative rights and 70% of the economic rights of a player. The agreement included the following clause:

→ In the event that Club Necaxa agrees the transfer of the player with a third party and it has a value equal to or greater than USD 1,200,000 (the Minimum Transfer Fee), CSD Colo Colo shall be obliged to execute it in the terms agreed on by Club Necaxa.

In view of the above, as of this date Club Necaxa may not temporarily and/or permanently transfer the federative and economic rights of the player for an amount below the Minimum Transfer Fee without:

- (i) the terms and conditions of the transfer being previously and expressly approved by Colo Colo; and
- (ii) jointly and in the same act CSD Colo Colo agreeing to temporarily and/or permanently

transfer the thirty percent (30%) of the economic rights that it holds in relation to the player.

[...] Finally, in the event that Club Necaxa, during the term of the three-year employment contract that it has undertaken to sign with the Player, and without the prior written consent of CSD Colo Colo, terminates the Player's employment contract in advance and the object of said termination of the contract is not the transfer of the Player's federative and/or economic rights but merely to make the Player a free agent, Club Necaxa shall be required to pay CSD Colo Colo the sum of USD 300,000 within 30 days of the date of the contract being terminated.



#### Considerations of the FIFA Disciplinary Committee:

The Committee notes that, in general terms, a truly independent club would not be obliged at any time to obtain the prior consent of another club in order to transfer one of its players for a specific fee (in casu less than USD 1,200,000), let alone to pay an amount to another club because it wishes to terminate an employment contract with one of its players before the term of the contract is concluded.

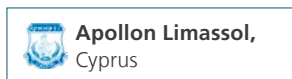
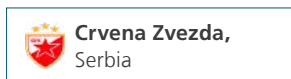
According to CSD Colo-Colo, this clause was mistakenly introduced, but at no time does it argue that the said clause does not lead to an influence that is inextricably linked, restricting itself instead to explaining the supposed reason for its existence.

The Committee is thus of the opinion that the said clause contains conditions and restrictions on the freedom and independence of Club Necaxa, since CSD Colo-Colo acquired the effective ability to influence Club Necaxa in matters relating to transfers, given that Club Necaxa is not at liberty to make a unilateral decision on the transfer of the player if the fee is less than USD 1,200,000.

Consequently, in the event of receiving an offer that meets these financial conditions, and even if it wishes to accept it, Club Necaxa will first of all have to seek the approval of CSD Colo-Colo, which has the right to object to the transfer regardless of Club Necaxa's decision. There is no doubt that a club having to act in such a way is not a club that enjoys complete independence.

<sup>51</sup> Decisions of the FIFA Disciplinary Committee dated 24 June 2019.

#### 4. Crvena Zvezda (Serbia) and Apollon Limassol (Cyprus)<sup>52</sup>



- Crvena Zvezda (“Red Star”) sold 70% of the economic rights of a player to Apollon Limassol. The agreement included the following clauses:

→ Red Star shall not be entitled to pledge, assign, delegate or otherwise transfer any of its rights or obligations under this agreement without prior written consent from Apollon.

Apollon shall be entitled to pledge, assign, delegate or otherwise transfer any of its rights or obligations under this agreement without prior written consent from Red Star.

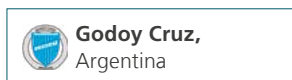


#### Considerations of the FIFA Disciplinary Committee:

There is no place for doubt for the Committee that these two clauses allow Apollon to exert influence on Red Star. Not only does the latter need Apollon’s prior written consent (again) “to pledge, assign, delegate or otherwise transfer any of its rights or obligations under this agreement” but more strikingly still, Apollon, on the contrary is perfectly entitled to do so, without any kind of approval from Red Star.

The Committee is of the opinion that apart from the fact that this gives rise to an unfair advantage for Apollon over Red Star, which could be disrupting in the exercise of this agreement, this creates a real sense of domination and control from Apollon. Indeed, not being able to dispose freely of its rights over an agreement is a grave encroachment on contractual liberty and on the principle of free will inherent to any party to a contract.

#### 5. Atlético Peñarol (Uruguay) and Godoy Cruz (Argentina)<sup>53</sup>



- Peñarol transferred a player to Godoy Cruz, with a 50% sell-on fee agreed in favour of Peñarol. The agreement contained the following:

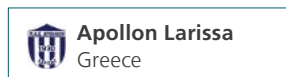
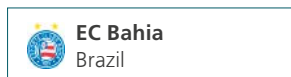
→ The transfer of THE PLAYER’s registration and/or the loan of his services to another club, whether domestic or foreign, in any form or by any means, shall only be carried out with the express and

verifiable agreement of all of the signatories herein. Godoy may not transfer the player AT ANY TIME without express written authorisation from Peñarol, or else it will be subject to a fine...

<sup>52</sup> Decisions of the FIFA Disciplinary Committee dated 7 March 2019.

<sup>53</sup> In the decisions dated 29 January 2020, the FIFA Disciplinary Committee found that both clubs entered into an agreement containing clauses in breach of article 18bis and, consequently, sanctioned both clubs. Nevertheless, the grounds of the decisions were not requested by either of the parties. Therefore, only the terms of the decisions are available.

## 6. EC Bahia (Brazil), Juazeirense (Brazil) and Apollon Larissa FC (Greece)<sup>54</sup>



- EC Bahia transferred the federative rights and 50% of the economic rights of a player to Juazeirense. Subsequently, Juazeirense transferred the player on loan to Apollon Larissa (being EC Bahia also part of the loan agreement). The following clause was included in the loan agreement:

→ The CLUB, or another professional football club that belongs to ONE THREE ISG, undertakes not to transfer the PLAYER to third clubs during the term of this Agreement without obtaining formal and express consent of JUAZEIRENSE and BAHIA.



### Considerations of the FIFA Disciplinary Committee<sup>55</sup>:

The Committee is convinced that this clause limits the freedom of Larissa in transfer-related matters. In fact, it appears to be clear that in case Larissa would want to transfer the Player to a third club, it could only do so with the authorization of EC Bahia and Juazeirense

The Committee wishes to emphasize that a club is to be found in breach of art. 18bis of the Regulations whenever it concludes a contract in which any of its provisions enables or entitles another club to influence the former's independency in transfer related and employment matters, at any level and regardless of whether or not the said influence materializes. Therefore, the sole act of concluding a contract of the mentioned characteristics would amount to a breach of art.18bis of the RSTP.

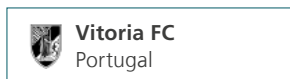
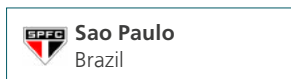
Furthermore, the Committee adds that the will or intention of a club to amend a contract or clause that is considered to be in breach of article 18bis of the RSTP, does not exonerate the said club from its responsibility towards the potential infringement of the mentioned article 18bis of the RSTP.

In sum, it is clear for the Committee that by means of the Clause, EC Bahia was granted the ability to influence in transfer-related matters the independence, the policies and the performance of Larissa's teams and hence, considers that the Club is in breach of article 18bis of the Regulations.

<sup>54</sup> Decisions of the FIFA Disciplinary Committee dated 4 May 2020

<sup>55</sup> The influencer's behaviour is more reprehensible than the one of the influenced

## 7. Sao Paulo (Brazil) and Vitoria FC (Portugal)<sup>56</sup>



- Sao Paulo transferred a player to Vitoria against a sell-on fee of 40% in favor of Sao Paulo.

→ A potential negotiation by VITÓRIA DE SETÚBAL regarding the transfer of the player upon receipt of another athlete as a form of sports or financial compensation (“exchange”), will only be admitted with the express written consent from SPFC, which

is obliged to express its position in relation to the business in progress, within up to 5 (five) days of its communication, being true that in no moment the silence will be considered as an agreement by SPFC.

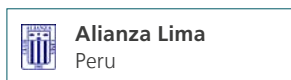


### Considerations of the FIFA Disciplinary Committee<sup>57</sup>:

The Committee firmly believed that clause 2.1.7. limited the freedom of Vitória FC in employment and transfer-related matters. The same reasoning applies to the situation in which Vitória FC wished to transfer the Player in exchange of another one, since the abovementioned club had first to obtain permission from São Paulo FC before proceeding with the transfer. In light of the foregoing, the Committee first recalled [...] that art. 18bis of the RSTP is addressed to clubs, which have the duty to ensure that they do not influence or are in any way influenced by the counter club or a third-party. Then, the Committee insisted on the fact that a violation of art. 18bis of the RSTP occurs whenever a club enters into a contract by means of which it acquires the ability to influence, at any level and irrespective of

whether or not such influence materializes, another club. Therefore, the mere fact of concluding a contract with the characteristics described above would constitute a breach of art. 18bis of the RSTP. As result, the Committee concluded that art. 18bis was fully applicable to São Paulo FC as the latter was a club and considered that, by the mere existence of clause 2.1.7. in the Agreement, the Brazilian club influenced Vitória FC as the latter could not freely determine its employment and transfer policy regarding the Player. Finally, the Committee found that although the parties had amended the original Agreement by declaring clause 2.1.7. “non-effective/ cancelled”, the Club could under no circumstances be exonerated from its responsibility for the violation of art. 18bis of the RSTP.

## 8. Alianza Lima (Peru) and Tigres de la UANL (Mexico)<sup>58</sup>



- Tigres de la UANL transferred a player to Alianza Lima, keeping 50% of the player’s economic rights. The following clause was included in the transfer agreement:

→ By virtue of the 50% of the economic rights that Tigres will keep, Alianza Lima commits itself not to transfer, on a temporary or permanent basis,

the rights of the player without the prior written authorization from Tigres.

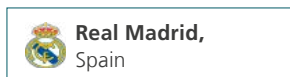
<sup>56</sup> Decisions of the FIFA Disciplinary Committee dated 18 May 2020

<sup>57</sup> the influencer’s behaviour is more reprehensible than the one of the influenced

<sup>58</sup> In the decisions dated 15 June 2020, the FIFA Disciplinary Committee found both clubs liable for a breach of article 18bis. However, only the terms of the decisions are available.



## 3.1.2.1.2 Higher sell-on fee if the player is transferred to a competitor club (or subject to a high penalty fee)

1. Manchester City (England) and Real Madrid (Spain)<sup>59</sup>

- Manchester City transferred a player to Real Madrid. The following clause was included in the agreement:

→ In the event that REAL MADRID transfers the registration of the Player to a third party club (a 'Third Party Club') on a permanent basis (a 'Further Transfer'), then REAL MADRID shall pay to MCFC [Manchester City] an amount (the 'Sell-on Fee') equal to 15% of the amount by which the consideration received by REAL MADRID as a result

of such Further Transfer (net of taxes) exceeds the amounts received by MCFC under this Agreement (net of taxes) (the 'Profit') save that, in the event that the relevant Third Party Club is a club in the region of Greater Manchester, the relevant Sell-on Fee shall be 40% of the Profit.

**Considerations of the FIFA Disciplinary Committee:**

The Committee is of the firm opinion that this clause limits the freedom of Real Madrid in transfer-related matters. In fact, it appears to be clear that Real Madrid would have to pay Manchester City a much higher sell-on fee (40% instead of 15%) should it decide to transfer the Player to a club *"in the region of Greater Manchester"*.

Therefore, it is evident that in a scenario in which Real Madrid receives two similar and/or identical offers for the transfer of the Player, it would be more inclined to accept the one not coming from a "Greater Manchester" club, this, in order to make the most profitable transaction from a purely financial point of view.

The Committee notes that the Club argued that the clause would only apply if Real Madrid decided to transfer the Player in the future. Therefore, the clause may not have any effect as Real Madrid may never

transfer the Player or the transfer fee payable may not exceed the sum which it paid to Manchester City.

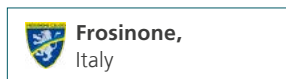
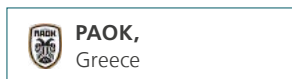
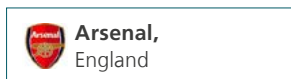
In this respect, the Committee underlines that clubs, in order to be considered truly independent, must be free to transfer their players. In the case at hand, the Committee considers that, by the mere existence of this clause, Real Madrid is influenced in its transfer-related matters as demonstrated above.

The Committee deems that it is necessary to distinguish between the influencing club's and the influenced club's responsibility in relation to article 18bis of the RSTP. In this sense, the Committee considers that the influencer's behaviour is more reprehensible than that of the influenced party. In the matter at hand, the Committee notes that Manchester City is the influencing club as it was only in Manchester City's interest to impose such a clause.<sup>60</sup>

<sup>59</sup> On 27 March 2020, the FIFA Appeal Committee confirmed the decisions of the FIFA Disciplinary Committee dated 17 October 2019, although reduced the fine since it considered that the influence was limited to a very specific geographical area. Case pending at CAS.

<sup>60</sup> It is important to highlight the distinction made by the FIFA Disciplinary Committee between the influencing club and the influenced club when it comes to their responsibility in relation to article 18bis.

## 2. Arsenal (England), PAOK (Greece) and Frosinone (Italy)<sup>61, 62</sup>



- Arsenal transferred a player to PAOK and another player to Frosinone. The agreements respectively included the following highly similar clauses:

➔ Future transfer of the Player: If PAOK agrees to transfer, on a permanent basis, the registration of the Player to another football club (the 'Future Transfer'), PAOK shall pay to Arsenal an amount in cash (the 'Future Transfer Compensation') equal to (a) in the event of a Future Transfer to a football club in the UK, 40% (forty per cent), or (b) in the event of a Future Transfer to a football club outside the UK, 30% (thirty per cent), [...]

➔ Future transfer of the Player: If Frosinone agrees to transfer, on a permanent basis, the registration of the Player to another football club (the 'Future Transfer'), Frosinone shall pay to Arsenal an amount in cash (the 'Future Transfer Compensation') equal to (a) in the event of a Future Transfer to a football club that is regulated by a national football association in the United Kingdom (UK), 30% (thirty per cent) or (b) in the event of a Future Transfer to any other football club, 25% (twenty-five per cent), [...]



### Considerations of the FIFA Disciplinary Committee:<sup>63,64</sup>

The Committee is of the firm opinion that these two clauses limit the freedom of Paok FC and Frosinone in transfer-related matters. In fact, it appears to be clear that Paok FC and Frosinone would have to pay Arsenal a higher sell-on fee (40% instead of 30% in the case of Paok FC and 30% instead of 25% in the case of Frosinone) should they decide to transfer the relevant player to a club in the United Kingdom. Therefore, it is evident that in a scenario in which Paok FC and/or Frosinone receive two similar and/or identical offers for the transfer of the relevant players, one being from a club in the United Kingdom and the other one coming from a club outside the United Kingdom, Paok FC and Frosinone would be more inclined to accept the offer

coming from the club outside the United Kingdom, as it would make the operation most profitable from a purely financial point of view.

In this context, the Committee would like to address the argument brought forward by the Club, according to which article 18bis of the RSTP is predominantly focused on preventing influence over clubs by third parties and that whenever such influence is considered to be indirect or immaterial no breach should arise.

In addition, the Committee observes that the Club also claims that when the relevant clauses were agreed, there were no clear guidelines or instructions

<sup>61</sup> Decisions of the FIFA Disciplinary Committee dated 26.02.2020

<sup>62</sup> When applying the respective sanctions, the FIFA Disciplinary Committee noted the differing responsibility between the influencing club and the influenced clubs, as well as the fact that Arsenal had entered two different agreements including a clause in breach of article 18bis.

<sup>63</sup> On 24.06.2020, the FIFA Appeal Committee confirmed the decisions of the FIFA Disciplinary Committee

<sup>64</sup> The influencer's behaviour is more reprehensible than the one of the influenced

from FIFA pointing out that this type of clauses could constitute a violation of art.18bis of the RSTP and therefore, Arsenal had legitimate expectation that it was not breaching the Regulations.

To this respect, the Committee would like to draw Arsenal's attention to the wording of article 18bis of the Regulations (cf. point II/4 ut supra), in which it is made very clear that clubs are prevented from concluding contracts which enable a third party or the counter club/clubs to acquire the ability to influence in the club/s employment and transfer-related matters. Therefore, this prohibition does not only concern third parties but the counter club (s) as well and it covers any kind of situations, clauses and/or agreements in which a club is granted the ability to influence another club.

Furthermore, the Committee notes that the Club claims that the relevant clauses do not prohibit or restrict Paok FC and/or Frosinone from transferring the relevant players to any other third club and that neither

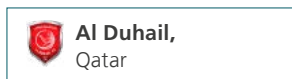
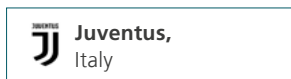
do they enable Arsenal to interfere in any way in the said transfers.

With regard to the above-mentioned argument from the Club, the Committee underlines that in order for clubs to be considered fully independent, they shall not be subject to any kind of conditions when deciding, amongst others, where, how and when to transfer their players. In the case at hand, the Committee considers that, by the mere existence of these clauses, Frosinone and Paok FC are influenced by Arsenal in employment and transfer-related matters.

In sum, the Committee considers that the relevant clauses undoubtedly grant Arsenal the ability to influence in employment and transfer-related matters the independence, policies and the performance of Paok FC and Frosinone's teams, and therefore concludes that Arsenal is liable for the breach of article 18bis par. 1 of the RSTP.

3.1.2.1.3 Prohibition on transferring the player to a competitor club (or subject to a high penalty fee)

1. Juventus (Italy) and Al Duhail (Qatar)<sup>65</sup>



- Juventus transferred a player to Al Duhail. The agreement contained the following clause:

→ Al Duhail’s representations and warranties.

Al Duhail hereby represents and warrants to Juventus that: (...)

until 30 June 2021 the Player will not be registered with one of the top Italian Clubs playing in Serie A (i.e. SSC Napoli, AC Milan, FC Internazionale, AS Roma, SS Lazio) and with the French club PSG.

In case of breach of the representation and warranty under (d) above, Al Duhail shall pay to Juventus a net amount of Euro 5,000,000 immediately upon the registration of the Player with one of the above Clubs mentioned under (d).



**Considerations of the FIFA Disciplinary Committee:<sup>66</sup>**

It appears to be clear from the reading of the said clause that Al Duhail SC would have to pay Juventus FC a net amount of EUR 5,000,000 should it decide to transfer the Player to one of the following clubs: SSC Napoli, AC Milan, FC Internazionale, AS Roma, SS Lazio and PSG. Therefore, it is evident that in a scenario in which Al Duhail SC receives two similar and/or identical offers for the transfer of the Player, it would be more inclined to accept the one not coming from the aforementioned clubs, this, in order to make the most profitable transaction from a purely financial point of view. As such, the Committee is of the firm opinion that, through this clause, Juventus FC is limiting the freedom of Al Duhail SC in employment and transfer-related matters.

In this context, it comes to the attention of the Committee that Juventus FC considers this clause to be a way of ensuring the legitimate transfer of

the player in question and “*not a transfer bridge to another club*”. As a matter of fact, Juventus FC states that the said clause was proposed and included by the club Al Duhail SC as a mere guarantee, agreed upon with Juventus FC, just after the latter was “*forced and influenced*” by both Al Duhail SC and the player to accept the transfer.

In this regard, the Committee wishes to highlight that, regardless of the intention of the club(s) when drafting the said clause, the mere act of granting Juventus FC the possibility of influencing Al Duhail SC’s decision-making process on its transfer and employment matters is prohibited.

Furthermore, the Committee wishes to further clarify that a club is guilty of the prohibited conduct whenever the contract in question effectively offers one of the parties the ability to exert any kind of influence

<sup>65</sup> Decisions of the FIFA Disciplinary Committee dated 20 September 2019.

<sup>66</sup> The Committee deemed it necessary to distinguish between the influencing club’s and the influenced club’s responsibility in relation to art. 18bis, noting that the influencer’s behaviour is more reprehensible than that of the influenced party. The Committee noted that Juventus FC was the influencing club as it was only in its interest to impose such a clause.

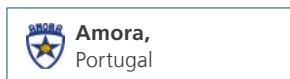
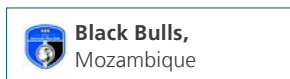
on the counter club in relation to employment or transfer-related matters, regardless of; i) whether or not of this influence materialises; ii) the duration of this effectiveness, in casu from 28 January 2019 until 30 June 2021; and iii) the economic compensation obtained from it.

In this respect, the Committee considers that clubs, in order to be considered truly independent, must be free to negotiate [transfers for] their players within the legal framework and without any kind of restriction from the counter club. As a result, the Committee considers that, by the existence of this clause, Juventus FC exerted an influence on Al Duhail SC's employment and transfer-related matters, thus affecting its independence.

Nonetheless, the Committee deems that the violation of article 18bis paragraph 1 of the RSTP should, however, be aggravated by the fact that the relevant clause did foresee a financial consequence should the counter club fail to perform accordingly.

In this respect, the Committee is of the opinion that the relationship between the two clubs in relation to the scope and effects of the relevant clause of the Agreement needs to be taken into account. As a matter of fact, and as previously demonstrated above, the burden of such clause mainly lies on Al Duhail SC, while Juventus FC undoubtedly stood to benefit from it.

## 2. Black Bulls (Mozambique) and Amora (Portugal)<sup>67</sup>



- Black Bulls transferred the federative rights and 50% of the economic rights of three players to Amora. The following clause was included:

→ The first party is obliged, subject to a penalty fee of minimum EUR 1,000,000.00 (one million euros), not to assign, either temporarily or definitively, directly or indirectly, the economic and/or federative rights

of the player to any sports club/entity that plays in any football championship in Mozambique, without the written consent of the second party.



### Considerations of the FIFA Disciplinary Committee:

In the Committee's unanimous opinion, the fact that the Club is not entirely free to transfer the Players' rights to the club of its choice without paying the astronomical amount of EUR 1,000,000 (and obtaining ABB's [Black Bulls'] prior written consent) represents a blatant breach of article 18bis of the RSTP. The Committee deems that a club enjoying total freedom can independently choose the club with which it wants to realise a transfer, without having to bear financial consequences.

This Committee considers that this clause grants ABB a major advantage over Club Amora but more importantly, drastically reduces the latter's freedom. Not only does ABB require its own prior written consent in order to allow Amora to transfer the Players to a club from Mozambique, but as if that were not enough, it requires the payment of the amount of EUR 1,000,000 in order to proceed with such transfers.

The Committee considers that this clause shows ABB's interference with Amora's ability to decide

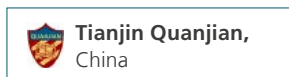
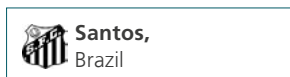
independently on potential appropriate clubs to which to transfer the Players. Amora is, therefore, far from enjoying full independence where "transfer-related matters" are concerned. Indeed, the Committee highlights that in the event of a transfer offer of EUR 500,000 (20 times the amount paid for two of the players) sent from a Mozambican club (other than ABB) to Amora, the latter would very likely have to reject such an offer due to the fact that it would have to pay the amount of EUR 1,000,000.

In any case, the Committee wishes to underline that the mere presence of such clauses in the Agreements does represent an infraction per se. In other words, the Committee considers that the mere fact of contractually agreeing upon the insertion of such clauses already constitutes an infringement of the RSTP and therefore should be sanctioned as such, notwithstanding a potential new version of the Agreements later being created (irrespective of this later being uploaded in TMS) and regardless of whether the clause was negotiated or not.

<sup>67</sup> Decisions of the FIFA Disciplinary Committee dated 9 May 2019.



### 3. Santos (Brazil) and Tianjin Quanjian (China)<sup>68</sup>



- Santos transferred a player to Tianjin Quanjian. The agreement stipulated the following:

→ The ACCEPTING CLUB undertakes to grant the TRANSFERRING CLUB exclusivity in the event of the PLAYER returning to Brazil during the term of his employment contract with the ACCEPTING

CLUB. This means that no other Brazilian club may engage the player permanently or on a loan basis during the PLAYER's employment agreement with the ACCEPTING CLUB.



#### Considerations of the FIFA Disciplinary Committee:

In the Committee's opinion, clause IV.5 represents a blatant violation of the said article as the said clause enabled Santos to acquire the ability to influence Tianjin's independence and policies in transfer-related matters concerning the Player.

The Committee is unanimously convinced that a club that is fully independent would not be subject to such an obligation, which directly impacts the transfer-related matters, independence and policy of the club.

The Committee would like to highlight that the mere fact that Santos entered into an agreement that granted it the possibility of influencing Tianjin's independence and policies in transfer-related matters was sufficient

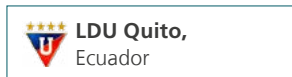
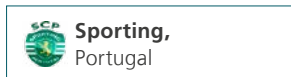
to infringe article 18bis of the RSTP, without taking into consideration if in the end Tianjin complied with the agreement or not.

Furthermore, the Committee notes that the alleged fact that the Player was one of the most talented and beloved players for Santos – the reason stated by Santos for striving to afford itself some kind of preference – is of no relevance.

The Committee is eager to emphasise that even though, according to the agreement, the preference only applied amongst Brazilian clubs, such clause still enables Santos to influence Tianjin's independence.

<sup>68</sup> Decisions of the FIFA Disciplinary Committee dated 27 March 2019.

#### 4. Sporting (Portugal) and LDU Quito (Ecuador)<sup>69</sup>



- Sporting transferred a player to LDU Quito. The agreement included the following clause:

→ LIGA DEPORTIVA [LDU] shall also pay the amount of EUR 30,000,000 (thirty million euros) if the Player is transferred (and therefore only if the player is under contract with LIGA DEPORTIVA at the

moment of such transfer) from LIGA DEPORTIVA to any Portuguese club until 30 June 2021, with the exception of SPORTING.



#### Considerations of the FIFA Disciplinary Committee:

The Committee firmly believes that this clause restricts the freedom of Quito in its transfers. In fact, it is clear that Quito will have to pay Sporting the amount of EUR 30,000,000 in the event that it decides to transfer the player to a club other than Sporting in Portugal. It therefore seems obvious that, in a situation where Quito receives two similar or identical offers for the transfer of the player, it would be more inclined to accept the one not coming from Portugal, in order to make the most profitable transaction from a purely financial point of view.

The Committee points out that clubs are responsible for ensuring that they do not sign transfer agreements which contravene FIFA's regulations or public law.

Furthermore, the Committee wishes to emphasise that a club will be declared guilty of contravening the rules when the contract concerned allows or entitles a club to be influenced by another club (or third party), regardless of whether this influence actually materialises once the contract is signed.

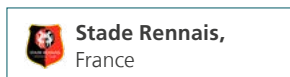
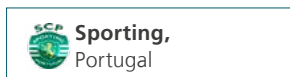
In particular, the Committee would stress that, for a club to be considered truly independent, it should be able to freely transfer its players. In this case, the Committee considers that, by the mere existence of this clause, Quito is subject to influence regarding employment and transfer issues, as illustrated above.

In summary, the Committee considers that this clause grants Sporting the ability to influence in employment and transfer-related matters Quito's independence, its policies and the performance of its teams.

Following analysis of the clause mentioned above, the Committee concludes that Quito signed an agreement that allows Sporting to influence in employment and transfer-related matters Quito's independence, its policies and the performance of its teams, and has therefore violated article 18bis paragraph 1 of the RSTP.

<sup>69</sup> Decisions of the FIFA Disciplinary Committee dated 29 January 2020.

## 5. Sporting (Portugal) and Stade Rennais (France)<sup>70</sup>

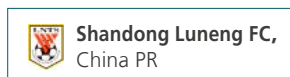
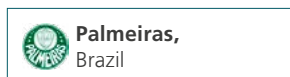


- Sporting transferred a player to Stade Rennais. The following clause was included in the agreement:

→ If the Player is definitively transferred by STADE RENNAIS FOOTBALL CLUB to Sport Lisboa e Benfica – Futebol, SAD or Futebol Clube do Porto – Futebol, SAD before 5 September 2024, the parties agree that STADE RENNAIS FC will pay SPORTING CP a fixed additional fee of EUR 10,000,000 (ten million euros), solidarity mechanism included.

This additional fee, if relevant, shall be paid in accordance with a schedule which is itself strictly in accordance with the schedule for the payment of the transfer fee to be received by STADE RENNAIS FOOTBALL CLUB, as specified in the future transfer contract. In this situation, the sell-on clause won't be applied.

## 6. Palmeiras (Brazil) and Shandong Luneng FC (China)<sup>71</sup>



- Sporting transferred a player to LDU Quito. The agreement included the following clause:

→ Conditional Fee: As a condition sine qua non of this Agreement, the Parties agree that during the period of three (3) years of the execution hereof, if SHANDONG undertakes to loan or transfer the PLAYER's federative rights to any Brazilian Football Club affiliated to CBF – with the exception

of PALMEIRAS itself – SHANDONG will pay PALMEIRAS the additional amount of three million Euro (EUR 3,000,000.00) as a Conditional Fee, within twenty four (24) hours from the date of loan or transfer to the other Brazilian Football Club.”



### Considerations of the FIFA Disciplinary Committee<sup>72</sup>:

The Committee is of the firm opinion that this clause limits the freedom of Shandong in transfer-related matters. In fact, it appears to be clear that Shandong would have to pay to Palmeiras an additional amount of EUR 3,000,000 should it decide to transfer the Player to any other Brazilian football club. Therefore, it

is evident that in a scenario in which Shandong receives two similar and/or identical offers for the transfer of the Player, it would be more inclined to accept the one not coming from a Brazilian football club, this, in order to make the most profitable operation from a purely financial point of view.

<sup>70</sup> In the decisions dated 29 January 2020, the FIFA Disciplinary Committee found both clubs liable for a breach of article 18bis. However, only the terms of the decision are available.

<sup>71</sup> Decision of the FIFA Disciplinary Committee dated 4 May 2020.

<sup>72</sup> The Committee considered that the influencer's behaviour is more reprehensible than the one of the influenced club. The Committee also noted that Palmeiras already had precedents related to violations of art. 18bis.

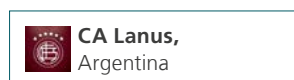
Moreover, the Committee wishes to emphasise that a club is to be found guilty of the prohibited conduct (cf. para II.4 supra) whenever the contract in question enables or entitles a club to be influenced by another one (or by a third party), regardless of whether or not this influence actually materialises after the conclusion of the contract.

In this respect, the Committee underlines that clubs, in order to be considered truly independent, shall be free to transfer their players. In the case at hand, the Committee considers that, by the mere existence of this clause, Palmeiras is influencing in

Shandong's employment and transfer-related matters as demonstrated above, regardless of the fact that the clause has not been executed.

In sum, following an analysis of the aforementioned clause, the Committee concludes that Palmeiras entered into this Agreement enabling it to influence the independence and policies of Shandong in employment and transfer-related matters as well as the performance of its team and is therefore liable for a breach of article 18bis par. 1 of the RSTP in relation to the Agreement.

## 7. CA Lanus (Argentina) and Ferencvarosi TC (Hungary)<sup>73</sup>



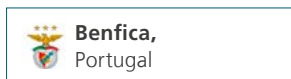
- Lanus transferred a player on loan to Ferencvarosi. The following clause was included in the agreement:

→ LANÚS hereby unconditionally and irrevocably undertakes not to transfer, neither permanently nor temporarily, neither directly nor indirectly, the PLAYER to any other team or club in Hungary within the period of 2 (two) transfer periods commencing after the expiry or termination of this Loan Agreement. Unless express and written authorization at the FTC. The Parties agree that this undertaking is an essential condition for FTC to the signature of this Loan Agreement. In case of any breach of this undertaking, LANÚS shall immediately pay a penalty of EUR 2,000,000 (that is two million euros) to FTC. LANÚS hereby unconditionally and irrevocably waives its right to challenge this penalty clause and also waives its rights to claim the reduction of the amount of this penalty on whatever ground.

[...] the Parties hereby agree that in case of any permanent or temporary transfer of the PLAYER to any other Hungarian team or club within the period of 2 (two) transfer periods commencing after the expiry or termination of this Loan Agreement, LANÚS shall immediately pay a commission of EUR 3,000,000 (that is three millions euros) to FTC for introducing the PLAYER in the Hungarian Championship. LANÚS hereby unconditionally and irrevocably waives its right to challenge this commission clause and also waives its rights to claim the reduction of the amount of this commission on whatever ground."

<sup>73</sup> Decisions of the FIFA Disciplinary Committee dated 4 May 2020. Both clubs were found liable for a breach of article 18bis. However, only the terms of the decisions are available.

## 3.1.2.1.4 Prohibition on transferring the player until the transfer fee is paid in full

1. Benfica (Portugal)<sup>74</sup> and Celta Vigo (Spain)<sup>75</sup>

- Benfica transferred the federative rights and 70% of the economic rights of a player to Celta. The agreement included the following provisions:

→ The parties agree expressly and irrevocably that, until the pecuniary compensation established in clause 2 is fully paid, CELTA DE VIGO may not proceed with the temporary or permanent transfer of the PLAYER, without the prior express consent of BENFICA S.A.D. [...]

In the event that CELTA DE VIGO transfers the PLAYER temporarily or permanently in contravention

of the paragraph above; terminates by mutual agreement the employment contract signed today with the player, without the prior consent of BENFICA S.A.D.; or allows the PLAYER to terminate the employment contract with just cause, it shall pay BENFICA S.A.D., by way of a penalty clause, to which the parties freely and consciously agree, compensation in the amount of EUR 5,000,000.00 (five million euros).

**Considerations of the FIFA Disciplinary Committee:**

The Committee deems that it is clear that the said clause prevents the Club [Celta Vigo] from being truly independent. According to the clause, the club may not proceed with the transfer of the player without first fulfilling two conditions, namely: paying the full amount of EUR 2,500,000 (which was due on 30 June 2015) and obtaining the prior express consent of Benfica.

In other words, if, for whatever reason, the club had the intention of transferring the player before 30 June 2015, it would not have been able to do so without the consent of Benfica.

Consequently, Benfica would have the last word, which shows that Celta Vigo's sports and/or economic policies are clearly under Benfica's influence. The Committee is thus of the opinion that the said requirement allows Benfica to influence Celta Vigo in "transfer-related

matters", insofar as any transfer of the player would have required the involvement of Benfica.

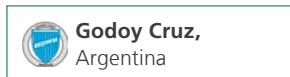
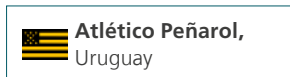
The Committee reiterates that this clause clearly leads to Celta Vigo being subject to influence, in that Celta Vigo is in a position where, if it wishes to act against Benfica's will, it has to pay the amount of EUR 5,000,000 as a penalty. In other words, the price for the Club to be able to be truly free and independent is EUR 5 million.

Although it is true that Celta Vigo is free to let the player terminate the employment contract with just cause, the clause also has a certain impact on its decision-making, a situation which an independent club would never have to face. The Committee deems that there is no doubt that the clause undermines the Club's independence, autonomy and contractual stability.

<sup>74</sup> All charges against Benfica were dismissed since Celta Vigo was not granted any ability to influence Benfica's independence in employment and transfer-related matters (version of the FIFA RSTP prior to 1 January 2015).

<sup>75</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

## 2. Atlético Peñarol (Uruguay) and Godoy Cruz (Argentina)<sup>76</sup>

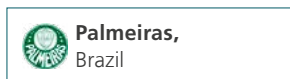
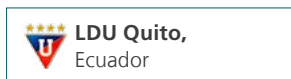


- Peñarol transferred a player to Godoy Cruz, with a 50% sell-on fee agreed in favour of Peñarol. The agreement contained the following clause:
  - ➔ It may also not transfer the player, if it exercises the option to buy the remaining 40% of the player's rights, without settling its relevant debt with Peñarol. Should this not happen, GODOY CRUZ will be unable to negotiate, sign, transfer or receive any type of proposal or offer regarding the player and will be liable to a fine of USD 2,000,000 (two million US dollars).

<sup>76</sup> In the decisions dated 29 January 2020, the FIFA Disciplinary Committee found the two clubs liable for a breach of article 18bis. However, only the terms of the decisions are available.



## 3.1.2.1.5 Authorisation required to loan the player

1. LDU Quito<sup>77</sup> (Ecuador) and Palmeiras (Brazil)<sup>78</sup>

- LDU transferred the federative rights and 70% of the economic rights of a player to Palmeiras. The agreement stipulated the following:
  - For the loan of the Player to a third club (without the Federative Rights being permanently transferred), SE Palmeiras will request in writing the consent of LDU after having provided all the details of the loan (including copies of all the relevant documentation at the disposal of the party that received the offer).
- For a full comprehension of the considerations of the FIFA Disciplinary Committee, the above clause should be read in conjunction with clause 3.8, which states:
  - The parties agree that for a future transfer, it will not be possible to carry out a “*mixed transaction*”, in other words a transfer including as compensation the transfer of another player in exchange for the percentage of the assigned rights, or a transfer including the simultaneous assignment of the Federative and Economic Rights of another player and a given amount in which the value of the Player is not detailed.

**Considerations of the FIFA Disciplinary Committee:**

In the event that Palmeiras wanted to provisionally transfer the Player on loan to another club, it would have to provide all the details to LDU and request its authorisation.

Moreover, the transfer of the Player on a loan basis cannot be carried out without the previous approval of LDU (clause 3.7 of the Transfer Agreement).

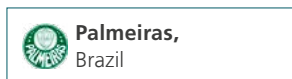
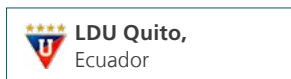
The Committee is of the opinion that this clause corresponded to a clear limitation of the independence of Palmeiras to carry out a transaction concerning the transfer of the Player, since the loan of the Player needed to be approved by LDU.

<sup>77</sup> All charges against LDU Quito were dismissed since Palmeiras was not granted any ability to influence LDU Quito's independence in employment and transfer-related matters (version of the FIFA RSTP prior to 1 January 2015).

<sup>78</sup> The sanction imposed by the FIFA Disciplinary Committee in its decision dated 9 December 2016 was reduced by the Appeal Committee (decision of 20 April 2018) to half the original amount, owing to the following mitigating factors: (i) the club independently negotiated the transfer of the player to another club – thus, the influence was not eventually exerted; and (ii) the player was transferred for a lower amount than established in the agreement. The club's subsequent appeal before CAS was dismissed (CAS 2018/A/6027).

3.1.2.1.6 Prohibition on assigning the player’s economic rights to another party without the other club’s consent

1. LDU Quito (Ecuador)<sup>79</sup> and Palmeiras (Brazil)<sup>80</sup>



- LDU Quito transferred the federative rights and 70% of the economic rights of a player to Palmeiras. The agreement contained the following clause:

→ Neither of the parties will be entitled to assign or transfer to a third party, in total or partially, its percentage of the Economic or Federative Rights of the Player without the express written consent of the other party. The failure to do so [obtain such consent] will entitle the other party not to recognise the transfer and to demand compensation of USD 2,000,000.



**Considerations of the FIFA Disciplinary Committee:<sup>81</sup>**

The freedom and independence of the Club were subjected to further restrictions by the fact that, if it had transferred the Player without the approval of LDU, it would have had to pay a penalty fee of USD 2,000,000.

In this respect, the Committee firmly believes that the inclusion of this clause in the Transfer Agreement

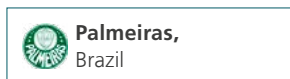
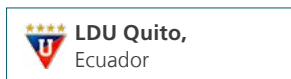
could significantly limit the independence of the Club. In fact, and in order to avoid paying such a considerable amount, Palmeiras could have refrained from transferring the Player for an attractive price only because LDU did not give its authorisation to do so and even if such a transfer were favourable in the context of the sporting and transfer-related policies of the Club.

<sup>79</sup> All charges against LDU Quito were dismissed since Palmeiras was not granted any ability to influence LDU Quito’s independence in employment and transfer-related matters (version of the FIFA RSTP prior to 1 January 2015).

<sup>80</sup> The sanction imposed by the FIFA Disciplinary Committee in its decision dated 9 December 2016 was reduced by the Appeal Committee (decision of 20 April 2018) to half the original amount, owing to the following mitigating factors: (i) the club independently negotiated the transfer of the player to another club – thus, the influence was not eventually exerted; and (ii) the player was transferred for a lower amount than established in the agreement. The club’s subsequent appeal before CAS was dismissed (CAS 2018/A/6027).

<sup>81</sup> There are no additional specific considerations from the FIFA Disciplinary Committee regarding this particular clause. Since the agreement contained several clauses in breach of article 18bis, the FIFA Disciplinary Committee made some general, broad considerations when assessing some of these clauses (i.e. paragraph 68 of the decision: “The Committee considers that the set of clauses mentioned above restricted the freedom and independence of the Club regarding the Player’s future transfer”).

## 3.1.2.1.7 Both clubs are entitled to negotiate the transfer of the player

1. LDU Quito (Ecuador)<sup>82</sup> and Palmeiras (Brazil)<sup>83</sup>

- LDU Quito transferred the federative rights and 70% of the economic rights of a player to Palmeiras. The agreement stated:

→ Each party to the Agreement (LDU and SE Palmeiras) will be entitled to negotiate, either individually or jointly, on its own behalf and on behalf of the other party, with any other third party, the transfer of the

Federative Rights and the totality of the Economic Rights of the Player, always informing the other party in writing.

**Considerations of the FIFA Disciplinary Committee:**

First, according to clause 3.1 of the Transfer Agreement, LDU is entitled to negotiate with any other third party the transfer of the Player, either independently or together with the Club.

In this regard, the Committee notes that the aforementioned clause entitled LDU to negotiate the

possible transfer of the Player independently from the Club. Clause 3.1 allowed LDU to negotiate the transfer of the player autonomously. In this respect, the Committee considers that a club that is fully independent should be the only one entitled to discuss and negotiate the possible transfer of its players.

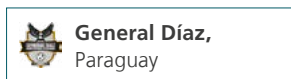
<sup>82</sup> All charges against LDU Quito were dismissed since Palmeiras was not granted any ability to influence LDU Quito's independence in employment and transfer-related matters (version of the FIFA RSTP prior to 1 January 2015).

<sup>83</sup> The sanction imposed by the FIFA Disciplinary Committee in its decision dated 9 December 2016 was reduced by the Appeal Committee (decision of 20 April 2018) to half the original amount, owing to the following mitigating factors: (i) the club independently negotiated the transfer of the player to another club – thus, the influence was not eventually exerted; and (ii) the player was transferred for a lower amount than established in the agreement. The club's subsequent appeal before CAS was dismissed (CAS 2018/A/6027).

### 3.1.2.2 Clauses related to the employment relationship between the club and the player

#### 3.1.2.2.1 Inability to freely negotiate the terms of engagement of the player/obligation for the club to prevent the player becoming a free agent

##### 1. General Díaz (Paraguay)<sup>84</sup> and Argentinos Juniors (Argentina)



- General Díaz transferred the federative rights and 50% of the economic rights of a player to Argentinos Juniors. The agreement contained the following clauses:

→ AAAJ [Argentinos] undertakes to sign and maintain a sports employment contract with THE PLAYER until XXX December 2023, with the following clarifications and provisions:

Clause VI.1 Employment of the Player – Termination by mutual agreement. AAAJ may not terminate the employment contract by mutual agreement with THE PLAYER without the express written consent of GENERAL DÍAZ. In the event that AAAJ does not fulfil the provisions of this clause, AAAJ shall pay GENERAL DÍAZ by way of compensation for damages, which the parties have assessed in advance, a total and final sum equivalent to five million United States dollars (USD 5,000,000) net, within thirty (30) days of the termination of THE PLAYER’S contract.

Clause VI.2 Employment of the Player – Termination of contract due to fault of AAAJ. AAAJ may not totally or partially breach the contractual clauses that directly or indirectly can or could result in or create the loss of the ‘Federative Rights’ or ‘Economic Rights’ that both parties hold, nor terminate the contract of THE PLAYER without justifying the grounds. The parties expressly agree that, in the event that THE PLAYER becomes a

free agent due to the fault of AAAJ, meaning the loss of THE PLAYER’S ‘Federative Rights’, AAAJ shall pay GENERAL DÍAZ by way of compensation for damages, which the parties have assessed in advance, a total and final sum equivalent to five million United States dollars (USD 5,000,000) net, within thirty (30) calendar days from the time THE PLAYER obtains the aforementioned freedom to act.

Clause VI.3 Employment of the Player – Termination of contract due to fault of AAAJ [...] In the event that THE PLAYER terminates the contract and does not voluntarily pay the amount foreseen in the contract with THE PLAYER as compensation for the termination of the contract, AAAJ undertakes to sue THE PLAYER before the court or federative entity which considers the most appropriate actions against THE PLAYER and/or against the club that caused THE PLAYER to terminate the contract, requesting the authorisation of GENERAL DÍAZ to initiate and/or agree and/or settle the claim. In any of these cases, the costs that AAAJ would have incurred to sue THE PLAYER and the new club, including attorneys’ fees, will not be deducted, unless GENERAL DÍAZ’S prior written consent has been obtained.

<sup>84</sup> Decisions of the FIFA Disciplinary Committee dated 16 May 2019.



### Considerations of the FIFA Disciplinary Committee:

The Committee has comprehensively analysed the content of Clause VI *“Employment Validity with the Player”*, and points out that *“AAAJ undertakes to sign and maintain in force a sports employment relationship contract with THE PLAYER until December 2023, with the clarifications and provisions laid down below”*.

AAAJ does not even have the choice to decide on the duration of the employment contract with the Player, which is another clear indication of the lack of independence of the Club in employment-related matters.

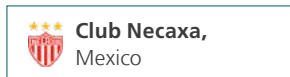
The Committee then notes that clauses VI.1 and 2 allow General Díaz to refuse the early termination of the Player’s employment contract unless the Club pays General Díaz a total sum of USD 5,000,000 in compensation. In this respect, the Committee again considers that a club enjoying complete freedom of action and complete independence would never find itself in such a situation.

The decision-making capacity of the Club is always restricted, which allows the Committee to once again affirm with confidence that General Díaz has influence over AAAJ in employment-related matters.

Finally, clause VI.3 of the Agreement, similarly, obliges AAAJ to request authorisation from General Díaz in the event of termination of the employment contract by decision or fault of the Player, in order *“to initiate and/or agree and/or settle the claim”*. Once again, the Committee is convinced that this clause gives General Díaz obvious sway over the Club, which is in no way empowered to decide freely whether and, if so, how to deal with a possible legal conflict with one of its players.

In this regard, the Committee reiterates, first of all, its position concerning the interpretation of the concept of influence of a third party on the decisions of a club and the fact that in order to establish such influence pursuant to article 18bis of the RSTP, it is not necessary that the actions referred to in the Agreement be carried out; rather, the mere possibility that such influence may be exerted by another club is sufficient to establish a violation of that provision. In other words, the mere existence of an agreement contrary to article 18bis of the RSTP is in itself a violation of the RSTP.

## 2. Colo-Colo (Chile) and Club Necaxa (Mexico)<sup>85</sup>



- Colo-Colo transferred the federative rights and 70% of the economic rights of a player to Necaxa. The agreement stipulated the following:

→ [...] Finally, in the event that Club Necaxa, during the term of the three-year employment contract that it has undertaken to sign with the Player, and without the prior written consent of CSD Colo Colo, terminates the Player's employment contract in advance and the object of the said termination

of the contract is not the transfer of the Player's federative and/or economic rights but merely to make the Player a free agent, Club Necaxa shall be required to pay CSD Colo Colo the sum of USD 300,000 within 30 days of the date of the contract being terminated.



### Considerations of the FIFA Disciplinary Committee:

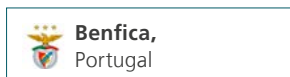
The Committee notes that, in general terms, a truly independent club would not be obliged, at any time, to obtain the prior consent of another club in order to transfer one of its players for a specific fee (in casu less than USD 1,200,000), let alone to pay an amount to another club because it wishes to terminate an employment contract with one of its players before the term of the contract ends.

The Committee also notes that clause 8 grants CSD Colo-Colo the right to prevent the early termination of the player's employment contract with Club Necaxa through the imposition of a fine, which no doubt influences Club Necaxa's independence.

<sup>85</sup> Decisions of the FIFA Disciplinary Committee dated 24 June 2019.



### 3. Benfica (Portugal)<sup>86</sup> and Celta Vigo (Spain)<sup>87</sup>



- Benfica transferred the federative rights and 70% of the economic rights of a player to Celta Vigo. The agreement included the following clauses:
  - Considering its purpose, this contract is subject to the signing of the employment contract between CELTA DE VIGO and the PLAYER by 30 June 2013 and for a minimum of 3 (three) seasons, namely, until 30 June 2016.
  - In the event that CELTA DE VIGO transfers the PLAYER temporarily or permanently in contravention of the paragraph above; terminates by mutual agreement the employment contract signed today with the PLAYER, without the prior consent of BENFICA S.A.D.; or allows the PLAYER to terminate the employment contract with just cause, it shall pay BENFICA S.A.D., by way of a penalty clause, to which the parties freely and consciously agree, compensation in the amount of EUR 5,000,000.00 (five million euros).



#### Considerations of the FIFA Disciplinary Committee:

The Committee reiterates that this clause clearly leads to Celta Vigo being subject to influence, in that Celta Vigo is in a position where, if it wishes to act against Benfica's will, it has to pay the amount of EUR 5,000,000 as a penalty. In other words, the price for the Club to be able to be truly free and independent is EUR 5 million.

Although it is true that Celta Vigo is free to let the player terminate the employment contract with just cause, the clause also has a certain impact on its decision-making, a situation which an independent club would never have to face. The Committee deems that there is no doubt that the clause undermines the Club's independence, autonomy and contractual stability.

The Club is not even free to decide on the length of the employment contract with the Player, which has

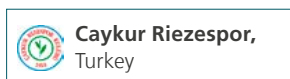
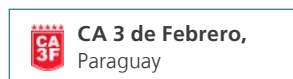
to run until at least 30 June 2016. Here, again, there can be no doubt that a club that was not subject to outside influence on its employment matters would never agree to such an obligation. As well as being able to oppose the Player's transfer, Benfica imposed a minimum duration for the employment contract between another club and a Player who was no longer its employee.

In sum, this clause introduces an external, extraneous element into the employment relationship between the Player and Club, thereby placing a limit on the parties' free contractual choice. The Committee deems that this clause, too, is an infringement of the prohibition laid out in article 18bis of the RSTP inasmuch as it gives Benfica the ability to influence the Club in employment matters.

<sup>86</sup> All charges against Benfica were dismissed since Celta Vigo was not granted any ability to influence Benfica's independence in employment and transfer-related matters (version of the FIFA RSTP prior to 1 January 2015).

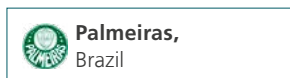
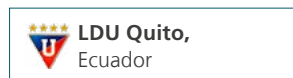
<sup>87</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

#### 4. CA 3 de Febrero (Paraguay) and Caykur Rizespor (Turkey)<sup>88</sup>



- CA 3 de Febrero transferred the federative rights and 50% of the economic rights of a player to Caykur Rizespor. The agreement stipulated that:
  - RIZESPOR shall sign with the player at least a three-year employment contract to extend the validity of the partnership on the economic rights of the player.
  - Penalty clause: [...] it is hereby established as penalty clause, for the case RIZESPOR or CLUB ATLETICO breaches [...] this contract, the amount of AMERICAN DOLLARS TWO MILLION (USD 2,000,000.-) which should be paid to the other, in cash within the fifth working day from the day in which the other party has been duly served of the breach, notwithstanding a greater value that may be claimed in concept of damages.

#### 5. LDU Quito (Ecuador)<sup>89</sup> and Palmeiras (Brazil)<sup>90</sup>



- LDU Quito transferred the federative rights and 70% of the economic rights of a player to Palmeiras. The agreement contained the following clauses:
  - The Player agrees with the content of the Agreement and signs an employment contract with SE Palmeiras valid as from 24 January 2012 until 31 December 2014. Likewise, and with regard to the said employment contract, the parties establish a buyout clause according to article 17 of the RSTP, in favour of the Player in the amount of EUR 15,000,000; the Player and the new club are jointly and severally liable for the payment of the said amount.
  - If SE Palmeiras does not comply with all its previously indicated obligations, and as a consequence of the failure of SE Palmeiras to pay the Player, the latter becomes a free agent, or in the event that the Player becomes a free agent as a consequence of a mutual agreement between him and SE Palmeiras, or as a result of contractual termination by SE Palmeiras, the latter will have to pay LDU compensation in the amount of USD 2,000,000 within ten days as from the moment when the Player becomes a free agent, plus 2% interest per month if SE Palmeiras does not comply with the aforementioned time limit.

<sup>88</sup> In the decisions dated 19 December 2019, the FIFA Disciplinary Committee found both clubs liable for a breach of article 18bis. However, only the terms of the decision are available.

<sup>89</sup> All charges against LDU Quito were dismissed since Palmeiras was not granted any ability to influence LDU Quito's independence in employment and transfer-related matters (version of the FIFA RSTP prior to 1 January 2015).

<sup>90</sup> The sanction imposed by the FIFA Disciplinary Committee in its decision dated 9 December 2016 was reduced by the Appeal Committee (decision of 20 April 2018) to half the original amount, owing to the following mitigating factors: (i) the club independently negotiated the transfer of the player to another club – thus, the influence was not eventually exerted; and (ii) the player was transferred for a lower amount than established in the agreement. The club's subsequent appeal before CAS was dismissed (CAS 2018/A/6027).

→ If there is an early termination of the employment contract between the Player and SE Palmeiras, LDU will be entitled to receive from SE Palmeiras 30% of the amount corresponding to the compensation for the said early termination. That amount will

have to be paid within seven days as from the date of the early termination of the contract. If SE Palmeiras fails to comply with this obligation, it will have to pay punitive interest corresponding to 2% per month.



### Considerations of the FIFA Disciplinary Committee:

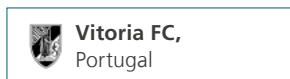
In this sense, the Committee is of the opinion that the aforementioned clauses of the Transfer Agreement established several limits to the Club's independence concerning employment-related matters. The Committee considers that the fact that the duration of the employment agreement was agreed upon with LDU, which was not a party to the said contract, proves that the Transfer Agreement enabled LDU to influence Palmeiras in its independence and policies concerning employment-related matters.

In the event of the early termination of the employment agreement between the Player and Palmeiras, LDU was entitled to receive 30% of the amount corresponding to the compensation established for the said early termination. That amount had to be paid within seven days as from the date of the termination of the employment agreement, plus 2% of interest per month if the Club failed to comply with that obligation.

Likewise, clauses 4.4 and 4.5 of the Transfer Agreement established that Palmeiras would have faced serious financial consequences in the event that the employment contract with the Player were terminated or the Player became a free agent, regardless of the reasons. This would mean for instance that, in a hypothetical scenario where Palmeiras had just cause to terminate the contract with the Player, it might still decide to maintain the employment relationship in order to avoid the consequences stipulated by the Transfer Agreement.

The Committee also wishes to underline that the existence of all the aforementioned clauses enabling LDU to influence Palmeiras in employment and transfer-related matters is clearly explained by the fact that the former owned 30% of the economic rights of the Player and was therefore interested in guaranteeing itself a high amount of profit from the future transfer of the Player.

## 6. Sao Paulo (Brazil) and Vitoria FC (Portugal)<sup>91</sup>



- Sao Paulo transfer a player to Vitoria against a sell-on fee of 40% in favor of Sao Paulo.

→ VITÓRIA DE SETÚBAL is obliged to sign an employment contract with the ATHLETE at least until 06.30.2023 and in case VITÓRIA DE SETÚBAL wants to terminate the contract with the ATHLETE

by mutual agreement or unilaterally, it will only be able to do so with the express agreement in writing from SPFC, which is obliged to express its position, within 5 (five) days of its communication [...].



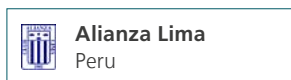
### Considerations of the FIFA Disciplinary<sup>92</sup>:

The Committee firmly believed that clause 2.1.7. limited the freedom of Vitória FC in employment and transfer-related matters. This is particularly illustrated by the fact that Vitória FC had to conclude an employment contract with the Player until June 2023, and that if the Portuguese club wanted to terminate the employment contract, it first had to seek São Paulo FC's permission. In light of the foregoing, the Committee first recalled [...] that art. 18bis of the RSTP is addressed to clubs, which have the duty to ensure that they do not influence or are in any way influenced by the counter club or a third-party. Then, the Committee insisted on the fact that a violation of art. 18bis of the RSTP occurs whenever a club enters into a contract by means of which it acquires the ability to influence, at any level and irrespective of whether or not such influence

materializes, another club. Therefore, the mere fact of concluding a contract with the characteristics described above would constitute a breach of art. 18bis of the RSTP.

As result, the Committee concluded that art. 18bis was fully applicable to São Paulo FC as the latter was a club and considered that, by the mere existence of clause 2.1.7. in the Agreement, the Brazilian club influenced Vitória FC as the latter could not freely determine its employment and transfer policy regarding the Player. Finally, the Committee found that although the parties had amended the original Agreement by declaring clause 2.1.7. "non-effective/cancelled", the Club could under no circumstances be exonerated from its responsibility for the violation of art. 18bis of the RSTP

## 7. Alianza Lima (Peru) and Tigres de la UANL (Mexico)<sup>93</sup>



- Tigres de la UANL transferred a player to Alianza Lima, keeping 50% of the player's economic rights. The transfer agreement stated included the following clause:

→ By virtue of the 50% of the economic rights that Tigres will keep, Alianza Lima is obliged to sign an employment contract with the player for a

minimum of 3 years and with a buy-out clause of no less than USD 3'000'000.

<sup>91</sup> Decisions of the FIFA Disciplinary Committee dated 18 May 2020

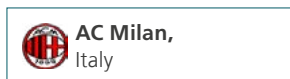
<sup>92</sup> The influencer's behaviour is more reprehensible than the one of the influenced

<sup>93</sup> In the decisions dated 15 June 2020, the FIFA Disciplinary Committee found both clubs liable for a breach of article 18bis. However, only the terms of the decisions are available.

### 3.1.2.3 Clauses linked to selection in matches

#### 3.1.2.3.1 Ensure that the player transferred (on loan) is fielded regularly

#### 1. Atlético Madrid (Spain) and AC Milan (Italy)<sup>94</sup>



- Atlético Madrid transferred a player on loan to AC Milan. The agreement included the following provisions:
  - ➔ If, during the second part of the Italian 2014/2015 season (from the date in January 2015 that CERCI is registered and actually eligible to play with MILAN up to June 2015), CERCI is not fielded in at least 50% (fifty percent) of the matches actually played by MILAN's first team during such period of time, then MILAN shall pay ATLÉTICO as a penalty fee the sum of EUR 500,000.00 (five hundred thousand euros) on 1 July 2015 by bank transfer to the account which ATLÉTICO shall indicate to MILAN. Moreover, if this clause applies, ATLÉTICO shall have the right to withdraw from this Agreement under the following binding terms and conditions:
    - (i) The right of withdrawal can only be exercised by ATLÉTICO during the period between 1 June and 15 June 2015 (both dates inclusive), by sending a written communication to MILAN and to CERCI (c/o MILAN) by fax or by email at the address and number indicated in the epigraph of this Agreement; and
    - (ii) The right of withdrawal shall, in any case, take effect from 1 July 2015; and
    - (iii) As a consequence of the exercise of the right of withdrawal, this Agreement and the employment contract between MILAN and CERCI shall both be terminated early with effect from 1 July 2015 and CERCI shall rejoin ATLÉTICO's squad with effect from 1 July 2015.
  - ➔ Provided that ATLÉTICO has not exercised the right of withdrawal per art. 3 above, if, during the Italian 2015/2016 season (1 July 2015 – 30 June 2016), CERCI is not fielded in at least 50% (fifty percent) of the matches actually played by MILAN's first team, then MILAN shall pay ATLÉTICO as a penalty fee the sum of EUR 1,000,000.00 (one million euros) on 1 July 2016 by bank transfer to the account which ATLÉTICO shall indicate to MILAN.

<sup>94</sup> Decisions of the FIFA Disciplinary Committee dated 11 April 2019.



### Considerations of the FIFA Disciplinary Committee:

Firstly, the Committee wishes to clarify that it fully understands the rationale of the clause and its goal to maintain (or avoid a decline in) the Player's value. However, the Committee finds that the Club [Atlético Madrid], by conditioning the playing conditions of the Player at AC Milan, clearly impedes the latter from acting independently in *"employment and transfer-related matters" with regard to "its policies or the performance of its teams"*.

The Committee finds that by stipulating that AC Milan is liable to financially compensate the Club through a "penalty clause" if it does not field the Player in at least 50% of the matches, the Club clearly violated article 18bis of the RSTP. The Club essentially forces AC Milan to field the Player, regardless of its sporting preferences or policies, where failure to do so results in a financial penalty and/or the withdrawal from the Agreement (and the consequent loss of the Player).

The agreement is clearly designed in such a way that not fielding the Player in accordance with the instructed minimum of matches would be prejudicial to AC Milan. AC Milan is not in a fully independent position to field the Player based on e.g. its real

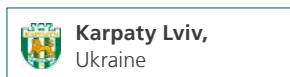
sporting interests. These clauses undoubtedly enable the Club to influence AC Milan in employment and transfer-related matters, more specifically its policies and the performance of its teams, in breach of article 18bis of the RSTP.

Finally, and for the sake of clarity, the Committee wishes to emphasise that a club is guilty of the prohibited conduct when the contract in question effectively enables or entitles it to have an influence on another club in such matters, regardless of whether or not this influence actually materialises.

The fact of the matter is that the parties attached considerable financial consequences to the situation where AC Milan does not field the player in a minimum of 50% of the matches played. Such clause affects AC Milan's independence twofold since it may be forced to field the Player to avoid 1. financial consequences and 2. the Club's withdrawal from the Agreement (and the consequent loss of the Player).

This situation prevents AC Milan from operating fully independently, which is sufficient to conclude that the clause is in breach of article 18bis of the RSTP.

## 2. Sevilla (Spain) and Karpaty Lviv (Ukraine)<sup>95</sup>



- Sevilla transferred a player on loan to Karpaty Lviv. The agreement stipulated the following:
  - The Parties agree that in the event that the Player makes fewer than 10 (ten) appearances in official matches for Karpaty's first (main) team during the course of his loan, the value of the loan from Sevilla FC to FC Karpaty of the sports rights, established in point 1 of this transfer agreement, will increase to EUR 250,000 (two hundred and fifty thousand) – taking into account the provisions in clause 5 of this agreement, the additional amount to be paid will be EUR 249,900 (two hundred and forty-nine thousand and nine hundred) net [...]



### Considerations of the FIFA Disciplinary Committee:

The Committee considers that clause 7 of the transfer agreement prevents Karpaty from freely making a decision about which players to line up in a match in order to obtain the best possible result, since Karpaty is induced to field the player due to the possible negative financial impact of not doing so. It is clear that Karpaty would not have enjoyed complete independence in terms of its policies or the performance of the team.

The Committee has taken into account Sevilla's opinion that said clause has the same general meaning as the variable clauses included in contracts based on the sporting performance of a player, like "the club will receive €X if the player has participated in a minimum number of games with the new club".

In this sense, the Committee understands that in a clause such as the one mentioned by Sevilla, the

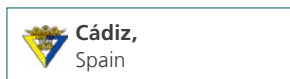
economic payment is generated when a player manages to play a certain number of matches, a circumstance that occurs when he is fielded due to his good sports performance. In this sense, the club is free to decide if it wishes to field the player, not being forced by an economic consequence in the case of choosing not to do so.

However, the Committee understands that the consequence contemplated in Clause 7 of the transfer contract constitutes a different situation from the previous one, since if, from the sporting perspective, the club decides not to field the Player on the basis that his performance will not be the right one, the club will have to face an economic penalty, thus seeing their independence influenced when making decisions from a purely sporting point of view.

<sup>95</sup> In the decisions dated 17 October 2019, the FIFA Disciplinary Committee found both clubs liable for a breach of article 18bis. The sanction for Sevilla FC was higher since the FIFA Disciplinary Committee considered that it was the club that benefited from the inclusion of the said clause and the influencer's behaviour is more reprehensible than that of the influenced party. On 27 March 2020, the FIFA Appeal Committee confirmed the decisions of the FIFA Disciplinary Committee.



### 3. Udinese (Italy) and Cádiz (Spain)<sup>96</sup>



- Udinese transferred a player on loan to Cádiz. The agreement stated the following:

→ The loan under this agreement is free of charge.

However, in the event that the Player does not play [a minimum of] 45 minutes in at least 70% (seventy percent) of the games played by Cádiz's first team in the 2018/19 Spanish second division

(regular season), Cádiz will have to pay Udinese a net amount of EUR 150,000.00 (one hundred and fifty thousand euros) by 30 June 2019 (hereinafter 'fixed loan fee') unless the agreement is terminated early, in which case this clause would be rendered void.



#### Considerations of the FIFA Disciplinary Committee:

The Committee is of the firm opinion that this clause prevents Cádiz from freely making a decision as to which players to select in a match with the aim of achieving the best result possible, given that Cádiz is instigated to select a certain player because of the possible negative financial impact that not doing so would involve. In this regard, the Committee observes that it is clear that Cádiz would not have enjoyed complete independence with regard to its policies or the performance of its teams.

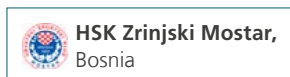
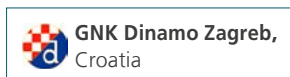
In this context, the Committee notes that the Club [Udinese] argued, inter alia, that the EUR 150,000 represented a conditional payment of the loan fee. In this regard, the Committee highlights that, unlike clauses with conditional bonus payments, i.e. "*the club shall receive EUR xx in the event that the Player plays in at least xx% of the matches*", where the new club is

still free to decide if the Player plays, the clause in the matter at hand does not grant such a bonus payment in the event of a certain number of matches being played but rather imposes a penalty should the Player not play in 70% of the matches. This clearly influences Cádiz in its decision as to whether the Player should play or not.

Furthermore, the Committee wishes to emphasise that a club is to be found guilty of the prohibited conduct whenever the contract in question enables or entitles a club to be influenced by another club (or by a third party), regardless of whether or not this influence actually materialises after the conclusion of the contract. By the mere existence of this clause, Cádiz is influenced in its employment and transfer-related matters, as demonstrated above.

<sup>96</sup> Decisions of the FIFA Disciplinary Committee dated 26 February 2020, which were confirmed by the FIFA Appeal Committee on 24.06.2020.

#### 4. GNK Dinamo Zagreb (Croatia) and HSK Zrinjski Mostar (Bosnia)<sup>97</sup>



- Dinamo Zagreb transferred a player on loan to Zrinjski Mostar. The agreement stated the following:
  - HSK Zrinjski obliges to pay to GNK Dinamo the contractual penalty in the amount of € 20.000,00 (twenty thousand Euros) in the case if Player is not fielded in the starting 11 (eleven) in at least 50% (fifty percent) of the official matches of HSK Zrinjski during the loan period.



#### Considerations of the FIFA Disciplinary Committee<sup>98</sup>:

The Committee firmly believes that this clause 4 prevents Zrinjski Mostar from freely determining the players to be selected in a match with the aim of achieving the best possible result. In particular, the Committee finds that the Club is induced to select a certain Player in order to avoid paying the contractual penalty provided for in the Agreement, and therefore does not enjoy complete autonomy with regard to its policies or the performance of its teams.

In addition, the Committee recalls that a club is considered to be in breach of art. 18bis of the RSTP whenever it enters into a contract that enables or entitles another club to influence, at any level and irrespective of whether or not such influence materializes, its independence with regard to its policies and performance of its teams. In this sense, and in order for a club to be considered fully independent, it shall not be subject to any kind of conditions or sanctions when deciding, amongst others, which players will be lined up.

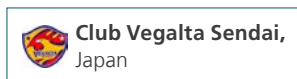
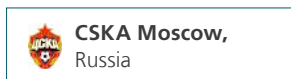
Turning back to the case at hand, the Committee considers that, by the mere existence of article 4 in the Agreement, Zrinjski Mostar is influenced by the Croatian club because it cannot freely determine the composition and the performance of its teams. This is particularly illustrated by the fact that if the Club does not field the Player in a specific number of official matches, a contractual penalty of EUR 20,000 will have to be paid to Dinamo Zagreb.

In sum, the Committee finds that the aforementioned clause undoubtedly grants Dinamo Zagreb the ability to influence Zrinjski Mostar's independence in determining the conditions and policies concerning purely sporting matters such as the composition and performance of its teams, and therefore concludes that the Bosnian Club is liable for the breach of art. 18bis par. 1 of the RSTP.

<sup>97</sup> Decisions of the FIFA Disciplinary Committee dated 4 May 2020

<sup>98</sup> The influencer's behaviour is more reprehensible than the one of the influenced

## 5. CSKA Moscow (Russia) and Club Vegalta Sendai (Japan)<sup>99</sup>

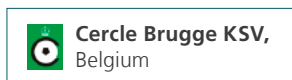
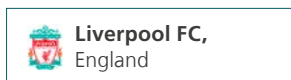


- CSKA Moscow transferred a player on loan to Portimonense SC (Portugal), which agreed to sub-loan the player to Vegalta Sendai.
- Clause 6 of the sub-loan agreement stated the following:

→ “6) In case the PLAYER during the Loan Periods participates in less than 50% (fifty percent) matches for SENDAI in the J-League sporting season 2020, provided that only the matches in which the PLAYER played 45 (Forty-five) or more minutes shall be taken into account, SENDAI shall pay CSKA a

conditional transfer compensation in the amount of 100,000 (One hundred thousand) Euros NET, i.e. exclusive of any solidarity contributions, training compensations, taxes, levies or bank commissions, etc., no later than 31 January 2021.”

## 6. Liverpool FC (England) and Cercle Brugge KSV (Belgium)<sup>100</sup>



- Liverpool transferred a player on loan to Brugge. The agreement stated the following:

→ If the Player is named in the starting line-up for Cercle Brugge in at least 70% or more of the Belgian First Division A games that he is available for during the Loan Period, then there shall be no penalty fee payable by Cercle Brugge

If the Player is named in the starting line-up for Cercle Brugge in 60% or more, but less than 70% of the Belgian First Division A games that he is available for during the Loan Period then Cercle Brugge shall pay to Liverpool a penalty fee of €50'000 plus VAT, if applicable. Such payment to be made on 30<sup>th</sup> June 2020 upon receipt of a valid invoice.

If the Player is named in the starting line-up for Cercle Brugge in 50% or more, but less than 60% of the Belgian First Division A games that he is available for during the Loan Period then Cercle Brugge shall pay to Liverpool a penalty fee of €100'000, plus VAT (if applicable). Such payment to be made on 30<sup>th</sup> June 2020 upon receipt of a valid invoice.

If the Player is named in the starting line-up for Cercle Brugge in fewer than 50% of the Belgian First Division A games that he is available for during the Loan Period then Cercle Brugge shall pay to Liverpool a penalty fee of €1500'000, plus VAT if applicable. Such payment to be made on 30<sup>th</sup> June 2020 upon receipt of a valid invoice.

<sup>99</sup> In the decisions dated 23 July 2020, the FIFA Disciplinary Committee found both clubs liable for a breach of article 18bis. However, only the terms of the decisions are available

<sup>100</sup> Decisions of the FIFA Disciplinary Committee dated 4 May 2020



### Considerations of the FIFA Disciplinary Committee<sup>101</sup>:

The Committee is of the firm opinion that this clause limits the freedom of Cercle in employment related matters and the management of its team. In fact, it appears to be clear that Cercle would have to pay Liverpool a penalty fee if Cercle does not field the Player in the starting lineup in 70% or more games of the Belgian First Division A during the loan period. Furthermore, the Committee observes that the amount of the penalty fee rises in inverse proportion to the number or percentage of games in which Cercle would not field the Player in the starting lineup. Therefore, it is evident that Cercle is not completely free and autonomous to decide the starting lineup of its team as it always has to bear in mind that the Player has to be fielded at the start of the game for a certain number of matches in order for Cercle not to suffer an economic loss.

Therefore, in light of what has been explained above, the Committee does not consider that Cercle retains full independence and control over its team selection as stated by the Club and hence, does not share the latter position to this respect.

In addition, the Committee wishes to emphasize that a club is to be found in breach of art. 18bis of the Regulations whenever it concludes a contract in which any of its provisions enables or entitles another club to influence the former's independency in transfer related and employment matters, at any level and regardless of the objective the contracting parties pursue by including the said provisions and whether or not the said influence materializes.

Furthermore, the Committee observes that the Club claims that it had legitimate expectation that

the Clauses were not in breach of article 18bis of the Regulations as it had included similar clauses in different agreements over several years without any issues being raised and in addition, FIFA had already ratified the validity of such clauses.

To this respect, [...] the Committee considers it relevant to remind and clarify the concept of legitimate expectation. In general, both procedural and substantive legitimate expectations are recognized. Substantive legitimate expectations are expectations induced by a public authority (or any other authority) that an individual will be granted or retain some substantive benefit. Therefore, it is the Committee's opinion that this expectation extends to a benefit that an individual has received and can legitimately expect to continue or a benefit that he expects to receive.

This having said, the Committee notes that the Club relies on the absence of actions taken by the Committee with regard to clauses agreed by the Club similar to the ones at stake in the present proceedings, to justify a legitimate expectation. In this sense, the Committee deems that the absence of an action, in this case, disciplinary proceedings, cannot be considered as a benefit given to the Club. To this respect, the Committee refers to article 52 of the FIFA Disciplinary Code, which provides an exhaustive list of the conditions and/or basis under which disciplinary proceedings can be initiated by the Committee. It follows from the content of said article that the Committee is only authorized to open disciplinary proceedings for potential infringements that have come to its attention, not being able then, as it is obvious, to prosecute possible infringements that it is not aware of.

<sup>101</sup> The influencer's behaviour is more reprehensible than the one of the influenced

However, the fact that no disciplinary proceedings are carried out for a potential infringement, does not, in anyway, mean that an action considered to be in breach of the Regulations is not a breach just because it has not been subject of disciplinary proceedings or sanctions.

Therefore, the Committee does not agree that the fact that similar clauses to the ones at stake in the present case have not been analyzed and later on, considered to be a breach of article 18bis of the Regulations, created a legitimate expectation on the Club that the content of said clauses was in line with the FIFA regulations.

Furthermore, and with respect to the alleged validation by FIFA of the content of the Clauses or of similar clauses, the Committee deems that this could have not created a legitimate expectation on the Club simply because the argument of the Club is false. The Committee observes that the Club believes that the Clauses or clauses with similar provisions were validated and accepted by the FIFA Players' Status Committee.

First of all, the Committee considers important to highlight that the FIFA Players' Status Committee and the FIFA Disciplinary Committee are different legal bodies, independent from each other and with different competencies. The distinction of competencies between the Players' Status Committee and the Disciplinary Committee is founded on the application of two different sets of rules: the former renders decisions based on principles of contractual civil law, whereas the latter intervenes in cases where private regulations of an association, in this case, the Regulations, are violated. Consequently, a contractual clause that is contrary to the private regulations of an association is not necessarily contrary to the principles of contractual civil law, and any dispute arising therefrom will be dealt with accordingly by the Players' Status Committee. Nevertheless, clauses of a contract that are valid from the perspective of principles of contractual civil law may be contrary to private regulations of an

association. As a result, the Committee may enter into the merits of a possible breach of FIFA's regulations without discussing whether the contract is valid from the perspective of civil law principles.

In light of what has been explained above, the Committee stresses that the fact that the Players' Status Committee orders a club to pay an amount of money to another club on the basis of a clause agreed upon the said clubs, does not prevent the Disciplinary Committee to open disciplinary proceedings against those clubs if it finds that the relevant clause is in violation of the FIFA regulations.

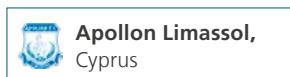
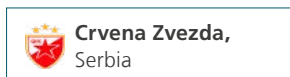
In fact, the CAS reached to the same conclusion in the case CAS 2018/A/6027, where the Panel pointed out that "Article 18bis is not concerned with the issue of the validity and/or the binding nature of the contractual provisions enabling a party to an agreement to exercise undue influence to its counter party-football club. This is a matter to be settled under the applicable law, which is the task of the FIFA PSC when called to examine the validity and the binding nature of the same contractual provisions in the context of a contractual dispute that is brought before the FIFA PSC. It is perfectly possible that said contractually agreed provisions are enforceable under a set of applicable (civil law) rules and at the same time fall foul of Article 18bis of the FIFA Regulations (which at any case does not and cannot determine whether they are illegal, invalid or unenforceable)."

In sum, the Committee considers that the Clauses undoubtedly grant Liverpool the ability to influence in employment and transfer-related matters the independence, policies and the performance of Cercle's teams, and that there was no legitimate expectation for Liverpool to believe that such clauses were in line with the Regulations. Therefore, the Committee concludes that Liverpool is liable for the breach of article 18bis par. 1 of the Regulations.

### 3.1.2.4 Clauses obliging the club to communicate certain information

#### 3.1.2.4.1 Obligation to inform about a player's injury

##### 1. Crvena Zvezda (Serbia) and Apollon Limassol (Cyprus)<sup>102</sup>



- Crvena Zvezda (“Red Star”) sold 70% of the economic rights of a player to Apollon Limassol. The agreement stipulated the following:
  - In the event of permanent disability due to injuries, Apollon will be entitled to receive 70% of the proceeds from the insurance company under the insurance policy.
  - It is agreed between the Parties that Apollon shall be entitled to receive 70% of any amount received by Red Star from the insurance company.
  - If the Player is unable to play or train for a consecutive period of 72 (seventy-two) hours, Red Star shall notify the Apollon medical team and discuss investigation and treatment options before initiating them. It is the responsibility of Red Star’s medical team to notify the Apollon medical team as soon as possible following any injury and provide the Apollon medical team with all information pertaining to the injury. No surgical procedure should be carried out without the prior written consent of the Apollon Club Doctor, and emergency surgical procedures must be discussed with the Apollon Club Doctor before the procedure is carried out unless to do so would have a detrimental impact on the Player’s health. For the avoidance of doubt, Apollon is free to appoint a specialist on its behalf.



#### Considerations of the FIFA Disciplinary Committee:

The Committee is eager to emphasise that this clause denotes Red Star’s lack of autonomy and independence from Apollon. Even the medical staff of Red Star are subject to the control of their counterparts at Apollon. It is undeniable that a purely independent club would not share any sensitive medical information concerning any players with any other club. The fact that Red Star needs to undertake such a practice is clear evidence of its lack of self-governance.

The Committee would like, furthermore, to reject the Club’s argument according to which there is no financial consequence and no penalty foreseen under any of these clauses, which would strengthen the influence. Indeed, the Committee considers that there is no need

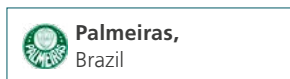
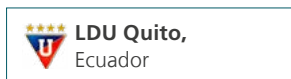
for there to be a penalty in a clause for it to exert an influence. The influence can be materialised in many different aspects and the Committee truly believes that the above clauses constitute such an example.

What is more, contrary to what the Club alleges, the Committee considers that the absence of intention to grant any influence is of no relevance to the present matter. The Committee is eager to emphasise that the mere presence of such clauses in the Agreement does represent an infraction per se. In other words, the Committee considers that the mere fact of contractually agreeing upon the insertion of such clauses already constitutes an infringement of the FIFA RSTP and therefore should be sanctioned as such.

<sup>102</sup> Decisions of the FIFA Disciplinary Committee dated 7 March 2019.

3.1.2.4.2 Obligation to disclose every transfer offer

1. LDU Quito (Ecuador)<sup>103</sup> and Palmeiras (Brazil)<sup>104</sup>



- LDU Quito transferred the federative rights and 70% of the economic rights of a player to Palmeiras. The agreement included the following clause:

→ The parties will immediately inform each other about all the details concerning a possible transfer.



**Considerations of the FIFA Disciplinary Committee:**

In accordance with clause 3.4 of the Transfer Agreement, the parties have to inform each other immediately about all details of a possible transfer. As soon as the prospect arose of transferring the Player, Palmeiras would have the obligation to inform LDU immediately.

In this sense, the Committee considers that clause 3.4 already imposed certain obligations on Palmeiras that

a completely independent club would never have to follow, such as communicating all details concerning ongoing negotiations regarding the Player, while clause 3.1 allowed a third party (i.e. LDU) to negotiate the transfer of the Player autonomously. In this respect, the Committee considers that a club that is fully independent should be the only one entitled to discuss and negotiate the possible transfer of its players.

<sup>103</sup> All charges against LDU Quito were dismissed since Palmeiras was not granted any ability to influence LDU Quito's independence in employment and transfer-related matters (version of the FIFA RSTP prior to 1 January 2015).

<sup>104</sup> The sanction imposed by the FIFA Disciplinary Committee in its decision dated 9 December 2016 was reduced by the Appeal Committee (decision of 20 April 2018) to half the original amount, owing to the following mitigating factors: (i) the club independently negotiated the transfer of the player to another club – thus, the influence was not eventually exerted; and (ii) the player was transferred for a lower amount than established in the agreement. The club's subsequent appeal before CAS was dismissed (CAS 2018/A/6027).



### 3.1.2.5 Obligations to transfer a player under certain conditions

#### 3.1.2.5.1 Obligation to accept an offer for a specific transfer fee (or pay a penalty fee)

#### 1. Club Universitario de Deportes (Peru)<sup>105</sup> and Colo-Colo (Chile)



- Club Universitario de Deportes transferred the federative rights and 50% of the economic rights of a player to Colo-Colo. The agreement stated that:

→ BNSA [Colo-Colo's management company] and Club Universitario de Deportes hereby agree that, should either of them receive a formal offer from a president, legal representative or sporting director of a domestic or foreign professional football club for the purchase of 100% of the player's federative and economic rights for a price equal to or greater than USD 2,000,000 (two million US dollars), net and payable in one payment (hereinafter the

"offer"), the party that receives the offer shall inform the other party thereof within five business days, and if the offer meets the agreed conditions, BNSA and Club Universitario de Deportes will be obliged to accept it and will therefore have to sell 100% of the player's federative and economic rights to the third party that made the offer, unless there is an agreement to the contrary between the parties.



#### Considerations of the FIFA Disciplinary Committee:

The Committee notes that, in general terms, a truly independent club would not be obliged at any time to inform another club about any offer that it may receive regarding one of its players, let alone to accept an offer received through another club or to pay an amount to another club because it wishes to keep a player.

The Committee is of the opinion that the said clause contains conditions and restrictions on the freedom and independence of CSD Colo-Colo, since Club Universitario de Deportes acquired the effective ability to influence CSD Colo-Colo in matters relating to transfers, given that CSD Colo-Colo is not at liberty to make a unilateral decision on the transfer of the player. Consequently, in the event of receiving an offer that meets the conditions stipulated in the agreement, and even if it does not wish to accept it, CSD Colo-Colo will be obliged to do so, if Club Universitario

de Deportes so wishes. There is no doubt that a club having to act in such a way is not a club that enjoys complete independence.

In this regard, the Committee notes that the transfer agreement provides CSD Colo-Colo with the option of avoiding the said sales obligation, given that, in accordance with clause 4.1, it "*will always be entitled to match any offer received [...] thus having the opportunity to buy the remaining 50% of the economic rights*".

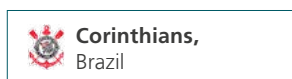
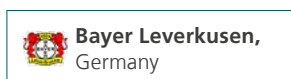
However, even with this option, CSD Colo-Colo would be obliged to pay a significant amount of money (i.e. equal to or greater than USD 1,000,000), which clearly means that the decision as to whether or not to transfer the player depends on the economic solvency of CSD Colo-Colo at the time of receipt of the respective offer.

<sup>105</sup> Decisions of the FIFA Disciplinary Committee dated 18 June 2018.

In other words, if when it receives the offer, CSD Colo-Colo does not have the amount necessary to “cancel” its “sales obligation”, it will be obliged to transfer the player in accordance with the transfer agreement.

Consequently, the ability of CSD Colo-Colo to take decisions is always subject to it meeting its sales obligation under clause 4.1 or to whether or not it has sufficient funds to pay to cancel the obligation.

## 2. Bayer Leverkusen (Germany)<sup>106</sup> and Corinthians (Brazil)<sup>107</sup>



- Bayer Leverkusen transferred a player to Corinthians. The agreement contained the following stipulations:

→ SC Corinthians will pay Bayer 04 a transfer sum in the amount of EUR 3,500,000 for the transfer of a player from Bayer 04 to SC Corinthians and the assignment of part of the financial interest in the player (the financial interest in the player means the financial participation in a future transfer sum received for the transfer of the player). Therefore, Bayer 04 will keep a financial interest in the player.

→ Due to the remaining financial interest of Bayer 04 in the player, SC Corinthians shall comply with the following obligation:

If SC Corinthians receives an offer for the transfer of the player to another club, SC Corinthians shall inform Bayer 04 immediately about the offer and its contents. SC Corinthians is obligated to accept

the offer to transfer the player if the transfer sum amounts to EUR 8,000,000 or higher.

If the player is transferred to a third club, Bayer 04 is entitled [to] receive 50% of the transfer sum including all payments related to the [...] transfer, but at least EUR 3,000,000. This means that if the transfer sum is EUR 3,000,000 or lower, Bayer 04 will receive the full amount. If the transfer sum is EUR 6,000,000 or higher, Bayer 04 will receive 50%.

<sup>106</sup> Bayer Leverkusen was not sanctioned by the FIFA Disciplinary Committee since the previous version of article 18bis was in force at the time of the signature of the agreement, and the club “did not enter into a contract which enables any other party to that contract or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams”.

<sup>107</sup> Decision of the FIFA Disciplinary Committee dated 21 December 2018.



### Considerations of the FIFA Disciplinary Committee:

Article 3 represents a blatant violation of article 18bis of the RSTP. Indeed, in the event that the Club [Corinthians] receives a transfer offer of the amount of EUR 8,000,000 (or above), not only does the Club have to immediately inform Bayer 04 but it has the obligation to transfer the Player whatever the sporting interest of keeping the Player in the squad.

It is striking that, regardless of the sporting performances of the Player, the Club's sporting and financial needs, or the Club's sporting strategy, the latter will be forced to accept the transfer offer and sell the Player, which prevents its independent functioning.

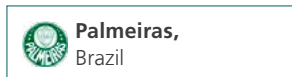
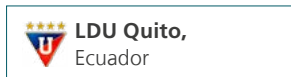
The Committee is unanimously convinced that a fully independent club would not be subject to such an obligation, which directly impacts its transfer-related matters, independence, policy and, in general, its functioning as a football club.

The Committee wishes to inform the Club that the fact that Bayer 04 did not receive the full amount that it

was entitled to receive after the Player was transferred to Beijing FC is of no relevance. Indeed, the basis of the violation of article 18bis of the RSTP does not lie in the amount distributed to Bayer after the transfer but in the wording of clause 3 of the agreement, which obliges the Club to transfer the Player whenever the transfer offer reaches the EUR 8,000,000 threshold, which was effectively the case in the matter at hand.

Furthermore, the Committee is eager to emphasise that even if an offer above EUR 8,000,000 had been refused by the Club or if Bayer 04 had not received any payment after the transfer of the Player to Beijing FC, the mere presence of such a clause in the agreement does represent an infraction of the regulations per se. In other words, the Committee considers that the mere fact of contractually agreeing upon the insertion of such a clause constitutes an infringement of article 18bis of the RSTP, irrespective of whether the clause is subsequently applied or not.

### 3. LDU Quito (Ecuador)<sup>108</sup> and Palmeiras (Brazil)<sup>109</sup>



- LDU Quito transferred the federative rights and 70% of the economic rights of a player to Palmeiras. The agreement contained the following provisions:

➔ The minimum transfer fee has to be at least USD 8,000,000 net, and both Palmeiras and LDU will be entitled to mutually oblige each other, by means of written notification in accordance with the Agreement, to transfer the Federative Rights or their share of the Economic Rights.

The Parties also agree that the transfer can take place, at the request of either of the Parties, for a lower price than the aforementioned one but always respecting the percentages held by the parties as if the Player had been transferred for the amount of USD 6,000,000.



#### Considerations of the FIFA Disciplinary Committee:

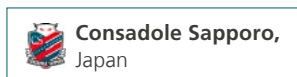
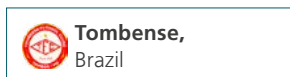
The parties set a minimum transfer fee of USD 8,000,000 net. Both Palmeiras and LDU could mutually oblige each other to transfer the Player if such an amount was offered. Additionally, both parties could decide to transfer the Player for a lower price. However the profit generated by the transfer of the economic rights of the Player would be redistributed respecting the percentages held by the parties (in accordance with clause 1.1 of the Transfer Agreement) as if the Player had been transferred for the amount of USD 6,000,000.

The content of clause 3.5 of the Transfer Agreement considerably limited the freedom of Palmeiras to accept or reject a possible offer for the transfer of the Player. This clause could have led to a scenario where SE Palmeiras considered an offer of USD 5,000,000 corresponding to the market value of the Player and refused it in order to avoid paying LDU its percentage of the economic rights of the Player as if the latter had been transferred for an amount of USD 6,000,000.

<sup>108</sup> All charges against LDU Quito were dismissed since Palmeiras was not granted any ability to influence LDU Quito's independence in employment and transfer-related matters (version of the FIFA RSTP prior to 1 January 2015).

<sup>109</sup> The sanction imposed by the FIFA Disciplinary Committee in its decision dated 9 December 2016 was reduced by the Appeal Committee (decision of 20 April 2018) to half the original amount, owing to the following mitigating factors: (i) the club independently negotiated the transfer of the player to another club – thus, the influence was not eventually exerted; and (ii) the player was transferred for a lower amount than established in the agreement. The club's subsequent appeal before CAS was dismissed (CAS 2018/A/6027).

#### 4. Tombense (Brazil) and Consadole Sapporo (Japan)<sup>110</sup>



- Tombense transferred the federative rights and 50% of the economic rights of a player to Consadole Sapporo. The agreement stipulated as follows:
  - ➔ During the whole period in which SAPPORO and the PLAYER maintain a valid employment contract, including in the event of extensions and renewals, TOMBENSE will hold the right to receive 50% (fifty per cent) of the economic result (amounts to be paid in money and/or rights) to be received by SAPPORO in the event of a future transfer, either temporary or definitive, of the PLAYER from SAPPORO to any third club, or even in the event of the payment of the termination clause established in the Employment Contract with SAPPORO by the PLAYER (hereinafter 'economic rights').
  - ➔ The parties agree that during the year 2019, if a formal offer for the transfer of the PLAYER for at least USD 6,000,000.00 (six million dollars) is received, then SAPPORO is obliged to accept the offer and to proceed with the transfer, subject to the PLAYER's willingness to be transferred to this third club. However, the parties agree that this amount will be decreased by USD 1,000,000.00 (one million dollars) at the beginning of the subsequent years (2020 and 2021), dropping to USD 5,000,000.00 (five million dollars) during the year 2020 and to USD 4,000,000.00 (four million dollars) for the year 2021 and beyond.



#### Considerations of the FIFA Disciplinary Committee:

The Committee is of the firm opinion that this clause limits the freedom of Consadole in transfer-related matters. In fact, it appears clear that in the event of receiving an offer for the Player of at least the amounts determined therein, Consadole would be forced to sell the Player.

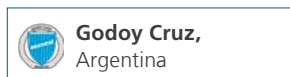
The Committee wishes to emphasise that a club is to be found guilty of the prohibited conduct [...] whenever the contract in question enables or entitles a club to be influenced by another club (or by a third party), regardless of whether or not this influence actually materialises after the conclusion of the contract.

Moreover, the Committee underlines that clubs, in order to be considered truly independent, must be free to transfer their players. In the case at hand, the Committee considers that, by the mere existence of this clause, Consadole is influenced in its employment and transfer-related matters by Tombense as demonstrated above, regardless of whether the Player's opinion may also be taken into account.

In sum, the Committee considers that this clause undoubtedly grants Tombense the ability to influence in employment and transfer-related matters Consadole's independence, its policies and the performance of its teams.

<sup>110</sup> Decisions of the FIFA Disciplinary Committee dated 29 January 2020.

## 5. Atlético Peñarol (Uruguay) and Godoy Cruz (Argentina)<sup>111</sup>



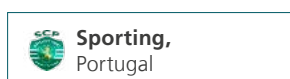
- Peñarol transferred a player to Godoy Cruz, with a 50% sell-on fee agreed in favour of Peñarol. The agreement contained the following clause:

→ If either party receives from a third party an offer of more than eight million United States dollars (USD 8,000,000.00) – net of all deductions for tax, fees, levies, contributions, stamp duties, charges, commissions or any other expense linked to this transfer – for the acquisition of the entirety (100%) of the PLAYER's rights, it must duly inform the other party so that they may proceed with the sale of those rights by mutual consent.

the price and per the conditions detailed in the offer received, the refusing party will be obliged to acquire from the party that is willing to sell all of the rights owned by the latter party, paying the proportional amount due in accordance with the price and payment conditions that were offered, provided that the scenario stipulated in the previous paragraph does not occur.

In the absence of such an agreement between the parties to sell their respective percentages at

## 6. Atlético Madrid (Spain) and Sporting (Portugal)<sup>112</sup>



- Atlético Madrid transferred a player to Sporting, with a 50% sell-on fee agreed in favour of Atlético Madrid. The agreement stipulated that:

→ In the event that Sporting receives a formal offer from a third club, including Atlético, to definitively or temporarily acquire the rights of the Player for an amount equal to or greater than twenty million euros (EUR 20,000,000), Sporting may:

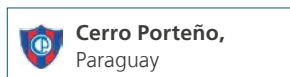
the transfer price offered by the third party. This amount must be paid by bank transfer within the non-extendable period of the month following the day on which Sporting rejects the offer. In such a case, Sporting shall be entitled to receive and keep 100% of the compensation arising from a Subsequent Registration and Atlético shall no longer be entitled to the AM Compensation.

Reject the offer, in which case it is obliged to pay Atlético an amount equal to fifty percent (50%) of

<sup>111</sup> In the decisions dated 29 January 2020, the FIFA Disciplinary Committee found both clubs liable for a breach of article 18bis. However, only the terms of the decisions are available.

<sup>112</sup> In the decisions dated 29 January 2020, the FIFA Disciplinary Committee found both clubs liable for a breach of article 18bis. However, only the terms of the decisions are available.

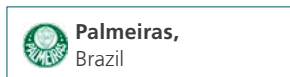
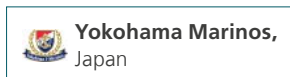
## 7. Universidad de Concepción (Chile) and Cerro Porteño (Paraguay)<sup>113</sup>



- Universidad de Concepción transferred the federative rights and 50% of the economic rights of a player to Cerro Porteño. The agreement included the following clause:

→ The parties agree that, if an offer is received (either domestic or international) for the purchase of the economic and federative rights of the player, the parties are obliged to accept the said offer whenever the amount of the offer is higher than USD 2,000,000 net. It is expressly agreed that both Cerro Porteño and CD Universidad are entitled to receive offers.

## 8. Yokohama Marinos (Japan) and Palmeiras (Brazil)<sup>114</sup>



- SE Palmeiras transferred the federative rights of a player to Yokohama Marinos against a fixed transfer fee and a 50% sell-on fee in favor of SE Palmeiras. The agreement included the following clause:

→ “The Parties agree that if YOKOHAMA receives any proposal for the transfer of ATHLETE to another club by a transfer fee equal or higher than EUR 6.000.000,00 (six million Euro), YOKOHAMA may:

- (i) execute the referred transfer by transferring the Transfer Participation to PALMEIRAS in 5 (five) days following the receipt of these gains by YOKOHAMA; or
- (ii) reject the such proposal and making the payment to PALMEIRAS of the value corresponding to 50% (fifty percent) of the price offered by the third club, within 5 (five) days from the rejection of the proposal.



### Considerations of the FIFA Disciplinary Committee<sup>115</sup>:

The Committee is of the firm opinion that this clause limits the freedom of Yokohama in transfer-related matters. In fact, it appears to be clear that in case of receiving an offer for the Player of at least the amount determined therein, Yokohama would face

financial consequences in case that it does not sell the Player.

The Committee considers that it is legitimate for the parties to determine in advance the specific amount

<sup>113</sup> In the decisions dated 26 February 2020, the FIFA Disciplinary Committee found both clubs liable for a breach of article 18bis. However only the terms of the decision are available.

<sup>114</sup> Decisions of the FIFA Disciplinary Committee dated 18 May 2020.

<sup>115</sup> The Committee considered that the influencer’s behaviour is more reprehensible than the one of the influenced club. The Committee also noted that Palmeiras already had precedents related to violations of art. 18bis.



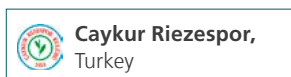
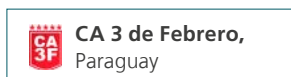
or the specific percentage that Yokohama would have to pay Palmeiras in case of a future transfer of the Player. However, the Committee notes that clause 2.4. of the Agreement also determines a percentage that would have to be paid to Palmeiras by Yokohama in case that the latter decides not to transfer the Player after receiving an offer for the amount determined in the subject clause. As a consequence, the Committee considers that Yokohama is not entirely free to decide on the possible transfer of the Player, given that it would have to face a negative financial consequence should it decide not to transfer him upon receiving an offer for the amount determined in clause 2.4. of the Agreement.

Moreover, the Committee notes that Palmeiras argued that the parties freely negotiated and accepted clause 2.4., and that said clause has not yet been executed,

given that the Player is still part of the Yokohama team. In this sense, the Committee wishes to emphasise that a club is to be found guilty of the prohibited conduct (cf. para II.4 supra) whenever the contract in question enables or entitles a club to be influenced by another one (or by a third party), regardless of whether or not this influence actually materializes after the conclusion of the contract.

Moreover, the Committee underlines that clubs, in order to be considered truly independent, shall be free to transfer their players. In the case at hand, the Committee considers that, by the mere existence of this clause, Palmeiras is influencing in Yokohama's employment and transfer-related matters as demonstrated above, regardless of the fact that the clause has not been executed and the Player remains part of the Yokohama team.

### 9. CA 3 de Febrero (Paraguay) and Caykur Rizespor (Turkey)<sup>116</sup>



- CA 3 de Febrero transferred the federative rights and 50% of the economic rights of a player to Caykur Rizespor. The agreement stipulated that:

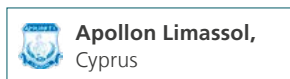
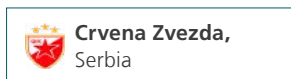
→ The parties agree a base Price of a future transfer of the player for a sum of 4.000.000-USD. During the term of the permanent employment contract of the player with RIZESPOR, if RIZESPOR receives an offer of 4.000.000.-USD or above and RIZESPOR rejects to transfer the player to the offeree Club, then RIZESPOR shall pay 50% of the offered transfer fee to CLUB ATLETICO as sell on fee. This sell on fee shall be paid only once to CLUB ATLETICO and with this payment, CLUB ATLETICO's right to receive sell on fee would be ended and CLUB ATLETICO's 50% share of the economic rights of the player will be transferred to RIZESPOR. This payment shall be

made within 3 days after RIZESPOR has rejected the offer

Penalty clause: [...] it is hereby established as penalty clause, for the case RIZESPOR or CLUB ATLETICO breaches [...] this contract, the amount of AMERICAN DOLLARS TWO MILLION (USD 2,000,000.-) which should be paid to the other, in cash within the fifth working day from the day in which the other party has been duly served of the breach, notwithstanding a greater value that may be claimed in concept of damages.

<sup>116</sup> In the decisions dated 19 December 2019 the FIFA Disciplinary Committee found both clubs liable for a breach of article 18bis. However, only the terms of the decisions are available.

## 3.1.2.5.2 The club has no say in the future transfer of the player

1. Crvena Zvezda (Serbia) and Apollon Limassol (Cyprus)<sup>117</sup>

- Crvena Zvezda (“Red Star”) sold 70% of the economic rights of a player to Apollon Limassol. The agreement contained the following stipulations:
  - ➔ It is hereby agreed that in order to fully register the player in Cyprus, Red Star undertakes that at any point after the Player’s 18<sup>th</sup> birthday and upon written request of Apollon, it will ensure that the Player signs an employment agreement with Apollon for a period of 5 (five) football seasons.
  - ➔ Red Star hereby agrees that it shall not at any time sell, assign, transfer, loan or otherwise dispose or make any use of Red Star’s rights without receiving Apollon’s prior written approval.
  - ➔ At any time, upon Apollon’s request, Red Star will complete the transfer of the Player’s International Transfer Certificate (‘ITC’) in accordance with the Transfer Matching System (‘TMS’) requirements.
  - ➔ The Parties wish that the Player shall keep playing for Red Star until Apollon’s [...] request, [whereupon] the full federative rights will be transfer[red] to Apollon and the Player will be register[ed] in Cyprus.

**Considerations of the FIFA Disciplinary Committee:**

The Committee clarifies that Apollon, after the signature of the Agreement on 22 January 2015, held 70% of the Player’s economic rights as well as 100% of the Player’s federative rights (even though the Player was effectively playing for Red Star for another year).

In this regard, clause 2.8 above clearly prevents Red Star from exercising its Rights over the Player in an independent manner. Indeed, Red Star has the obligation to obtain Apollon’s written approval in order to “sell, assign, transfer, loan or otherwise dispose or make any use of” its Rights.

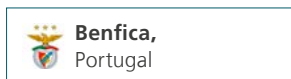
According to the Committee, it is evident that a perfectly independent club would not have to obtain another club’s prior approval before exercising its rights over a player.

In the event that Red Star were desperately in need of financial resources and were therefore forced to sell its economic rights, it would have to request authorisation from Apollon.

<sup>117</sup> Decisions of the FIFA Disciplinary Committee dated 7 March 2019.

3.1.2.5.3 Obligation to transfer the player in the event of relegation

1. **Benfica (Portugal)<sup>118</sup> and Celta Vigo (Spain)<sup>119</sup>**



- Benfica transferred the federative rights and 70% of the economic rights of a player to Celta Vigo.
- Henceforth, if CELTA VIGO were to be relegated to the second division of the Spanish league, BENFICA S.A.D. and the Player may impose on CELTA VIGO the temporary transfer of the player for one season to any sports entity, provided that that entity is not playing in the Spanish second division.



**Considerations of the FIFA Disciplinary Committee:**

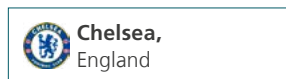
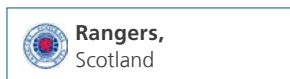
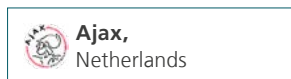
The Committee deems that this clause clearly impinges on Celta Vigo's independence inasmuch as it unequivocally specifies that Benfica (together with the player) may impose a temporary transfer on the Club merely because of the Club being relegated to

the second division. To that effect, the Club would not be free to decide on the Player's future as it saw fit, which undoubtedly describes a situation whereby a club cannot act entirely independently.

<sup>118</sup> All charges against Benfica were dismissed since Celta Vigo was not granted any ability to influence Benfica's independence in employment and transfer-related matters (version of the FIFA RSTP prior to 1 January 2015).

<sup>119</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

## 3.1.2.5.4 Obligation to release the player for training and friendly matches

1. Ajax (Netherlands), Rangers (Scotland) and Chelsea (England)<sup>120</sup>

- Chelsea engaged one player from Ajax and one player from Rangers. Both agreements contained some identical clauses:

**Clause 5.1 (d) / 6.1 (d):**

→ The transferor hereby represents and warrants to Chelsea that: (...)

prior to the registration of the Player with Chelsea, it shall release the Player to Chelsea for such periods

of training and development or participation in friendly matches or tours as Chelsea shall reasonably require subject to the applicable rules and requirements of FIFA, The FA and the PL [Premier League].

**Considerations of the FIFA Disciplinary Committee in the Ajax decision:**

Furthermore, it appears clear that, in accordance with clause 5.1 (d), Ajax had to release the player to Chelsea upon request of the latter. The Committee considers that such a clause clearly limits the independence of Ajax concerning the composition and performance of its team which could even entail an adverse effect –

e.g. when Chelsea unilaterally decides to request the release of the player, the player may have other matches with Ajax in which the player cannot participate due to his departure to Chelsea at the given time. An independent club cannot be subject to such limitations with respect to its teams.

**Considerations of the FIFA Disciplinary Committee in the Rangers decision:**

Same considerations as above in the Ajax decision

<sup>120</sup> Chelsea decision with grounds dated 22 February 2019, Ajax decision dated 13 August 2019 and Rangers decision dated 20 September 2019.



### Considerations of the FIFA Disciplinary Committee in the Chelsea decision:

Furthermore, and with regard to clauses 5.1 (d)/6.1 (d), the respective clubs are to release the players to Chelsea upon request of the latter. The Committee considers that such clauses limit the independence of Ajax/Rangers concerning the composition and performance of their teams, which could even entail an adverse effect – e.g. when Chelsea unilaterally decides to request the release of the player, the player may have other matches with Ajax/Rangers in which the player cannot participate due to his departure to Chelsea at the given time. An independent club cannot be subject to such limitations.

The Committee considers that these clauses are most blatant as far as impact and influence on Ajax/Rangers' independence, policies and the performance of their teams are concerned.

For the sake of clarity, the Committee wishes to emphasise that a club is guilty of the prohibited conduct when the contract in question effectively enables or entitles the club to have an influence on the other club in such matters and/or capacities, regardless of whether or not this influence actually materialises.



Chelsea appealed the decision of the Disciplinary Committee before the Appeal Committee.<sup>121</sup>

### Considerations of the FIFA Appeal Committee in the Chelsea decision:

Likewise, the Committee is of the firm opinion that clause 6.1 (d) of the Rangers agreement and 5.1 (d) of the Ajax agreement limited the independence of the respective clubs, since they had the obligation, upon request of Chelsea, to release the players in question so that they could take part in specific training and matches with Chelsea.

Once again, the Committee considers that these clauses entitled the Appellant to influence both Rangers and Ajax in transfer-related matters. Indeed, the clubs would be obliged to release the players upon request of Chelsea, regardless of whether it was in their sporting interest to keep them with their team.

<sup>121</sup> Ajax and Rangers did not appeal the respective decisions of the FIFA Disciplinary Committee.



Chelsea appealed the decision of the Appeal Committee before CAS.

**Considerations of CAS in the Chelsea decision:<sup>122</sup>**

In the Sole Arbitrator's opinion, to have contractual rights vis-à-vis a club for just a single player normally does not amount to having the level of influence on another club required to trigger the application of Article 18bis, para. 1, RSTP, i.e. *"the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams"*. In the vast majority of cases the proper interpretation of the terms *"independence"*, *"policies"* and *"performance of teams"* requires much more than a contractual obligation related to one player. In the Sole Arbitrator's view, unless a single player is so exceptionally important for a given club that an agreement like the ones at hand can demonstrably influence that club's sporting and economic behaviour, there must be a network of similar agreements for various players that, aligned together, can truly influence the *"independence"*, *"policies"* or *"performance of teams"* of a club.

The Sole Arbitrator cannot uphold that the Rangers and Ajax Agreements gave the Appellant that level of

influence, considering that FIFA (who bears the burden of proof) submitted no evidence that players 18 and 46 – even with the benefit of hindsight – could be of so exceptional importance for Rangers and Ajax, respectively, to influence these clubs' independence, policies or performance of teams. In addition, in applying Article 18bis, para. 1, RSTP one must also consider, on a case-by-case basis, the relative standing, prominence and market power of the involved clubs. It would be illogical, after all, to consider that important clubs such as Rangers or Ajax, well-known on the European stage, could be influenced in their *"independence"*, *"policies"* or *"performance of teams"* based just on the obligations respectively undertaken in reference to players 18 and 46.

In light of the above, the Sole Arbitrator holds that the Appellant did not violate Article 18bis, para. 1, RSTP in relation to those two agreements.

<sup>122</sup> CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA.

## 3.2 AGREEMENTS BETWEEN THIRD PARTIES AND CLUBS <sup>123</sup>

For the sake of clarity, in some cases, clubs have entered into agreements with other clubs that include the same type of clauses in breach of article 18bis as those incorporated in the agreements signed between clubs and third parties.

Therefore, although the considerations of the FIFA judicial bodies regarding the categories/types of clauses marked with an asterisk (\*) in the list below are explained and analysed in chapter 3.1 above, such clauses and

their corresponding analysis by the FIFA judicial bodies will also be part of the present chapter, since they have likewise been signed between clubs and third parties and their content may differ to some extent.

This also provides an opportunity to identify the similarities and differences between the types of clauses in breach of article 18bis inserted by clubs when entering into contractual agreements with other clubs and third parties respectively.



### **Clauses restricting the new club with respect to the future transfer of the player**

- Prohibition on transferring the player (or recruiting any players) without the third party's consent\*
- Prohibition on transferring the player to a direct competitor in the national league (or any other team in the country)\*
- The club cannot decide when to transfer the player
- Authorisation required to loan the player/inability to freely negotiate the terms of a loan\*
- Prohibition on transferring the player for less than a minimum fee



### **Clauses related to the employment relationship between the club and the player**

- Inability to freely negotiate the terms of engagement of the player/obligation for the club to prevent the player becoming a free agent\*
- Hindrances to the conclusion of transfer agreements/employment contracts
- Obligation to maintain an insurance policy to insure against the risk of the player's injury or death



### **Clauses linked to selection in matches**

- Ensure that the player is fielded regularly\*



### **Clauses obliging the club to communicate certain information<sup>124</sup>**

- Obligation to disclose every transfer offer\*

<sup>123</sup> For the purposes of this Manual, the FIFA judicial bodies' decisions are analysed from the perspective of the clauses in violation of article 18bis. Therefore, a club that has only been sanctioned once may appear repeatedly insofar as multiple types/categories of clause that were present in the agreement in question were analysed by the FIFA judicial bodies.

<sup>124</sup> The types of clauses under this category have always been investigated by the FIFA administration together with other clauses potentially in breach of article 18bis. No investigation has been initiated against a club when this type of clause has appeared to be the only one possibly in breach of article 18bis.





### Obligations to transfer a player under certain conditions

- Obligation to accept a transfer offer for the player (or acquire the third party's economic rights/pay a penalty fee)\*
- Obligation to transfer the player before a certain date, subject to a penalty fee
- The club has no say in the future transfer of the player\*



### Clauses granting the third party other types of influence

- Joint selection of new players to reinforce the club's squad
- The third party has the right to negotiate the future transfer of the player
- The club and the third party to mutually decide on the market value of the player
- The third party can oblige the club to purchase its share of the player's economic rights
- The third party to buy players for the club, cover their expenses, retain their economic rights and hold the decision to transfer them

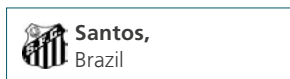
## How many clubs have been sanctioned for entering into transfer agreements including this type of clauses?

	Prohibition on transferring the player (or recruiting any players) without the third party's consent	3	Number of clubs sanctioned
	Prohibition on transferring the player to a direct competitor in the national league (or any other team in the country)	1	
	The club cannot decide when to transfer the player	1	
	Authorisation required to loan the player/ inability to freely negotiate the terms of a loan	3	
	Prohibition on transferring the player for less than a minimum fee	1	
	Inability to freely negotiate the terms of engagement of the player/obligation for the club to prevent the player becoming a free agent	8	
	Hindrances to the conclusion of transfer agreements/employment contracts	4	
	Obligation to maintain an insurance policy to insure against the risk of the player's injury or death	3	
	Ensure that the player is fielded regularly	1	
	Obligation to disclose every transfer offer	6	
	Obligation to accept a transfer offer for the player (or acquire the third party's economic rights/pay a penalty fee)	7	
	Obligation to transfer the player before a certain date, subject to a penalty fee	5	
	The club has no say in the future transfer of the player	2	
	Joint selection of new players to reinforce the club's squad	3	
	The third party has the right to negotiate the future transfer of the player	1	
	The club and the third party to mutually decide on the market value of the player	2	
	The third party can oblige the club to purchase its share of the player's economic rights	1	
	The third party to buy players for the club, cover their expenses, retain their economic rights and hold the decision to transfer them	1	

### 3.2.1 CLAUSES RESTRICTING THE NEW CLUB WITH RESPECT TO THE FUTURE TRANSFER OF THE PLAYER

#### 3.2.1.1 Prohibition on transferring the player (or recruiting any players) without the third party's consent

##### 1. Santos (Brazil)<sup>125</sup>



- Santos transferred 5% of the economic rights of one of its players to the company TEISA.<sup>126</sup> The agreement included the following clauses:
  - In the event that (i) the offer received is equal to or greater than the amount stipulated in the specific agreement signed between the parties for the Player and (ii) TEISA FUTEBOL accepts the offer received, Santos FC may:
    - a. transfer the Player within 3 days or
    - b. reject the offer and buy TEISA FUTEBOL's share of the Player's economic rights for the same conditions initially offered within 7 days. In such circumstances, should Santos FC fail to pay the amount due, a 10% penalty will be added on a monthly basis (cf. clause 9.1.1).
  - The consent of TEISA FUTEBOL shall be required for every contract related to the transfer of the Player's economic or federative rights.



#### Considerations of the FIFA Disciplinary Committee:

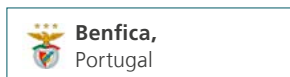
Clause 6.2 significantly limits the independence of Santos regarding the possible transfer of the Player. In fact, if Santos received an offer for an amount corresponding to or higher than the amount agreed upon with TEISA FUTEBOL, it would be obliged to transfer the Player within three days. Failure to do so would oblige Santos to buy from TEISA FUTEBOL its share of the Player's economic rights at a price to be calculated in accordance with the amount proposed for the potential transfer of the Player.

Also, not only was Santos not free to decide when and under which conditions to transfer the Player, but it always needed the consent of TEISA FUTEBOL to transfer him. In this sense, clause 6.2.3 is very clear: the Player could not be transferred without prior approval from TEISA FUTEBOL. It is self-evident that such a clause limits the independence of Santos in transfer-related matters.

<sup>125</sup> Decision of the FIFA Disciplinary Committee dated 4 March 2016.

<sup>126</sup> A second agreement was subsequently signed between Santos, TEISA and TEISA FUTEBOL in relation to the player.

## 2. Benfica (Portugal)<sup>127</sup>



- Benfica signed an Economic Rights Participation Agreement (ERPA) with the company Meriton Capital regarding one of its players. The agreement stipulated the following:<sup>128</sup>
  - ➔ If Meriton rejects the Transfer Offer and the Club proceeds with the Transfer, the provisions of clause 5 shall apply. (Clause 4.4)
  - ➔ If Meriton accepts the Transfer Offer, the Club shall make payment to Meriton of 100% of the proposed transfer fee contained in the Transfer Offer (after deduction of Benfica's Interest, if applicable) within 7 (seven) calendar days of having received such a demand for payment from Meriton whether or not the Transfer proceeds (without prejudice, if applicable, to clause 5.2 [below]). The offer and the value described in this paragraph relate, solely and exclusively, to non-Portuguese clubs. Therefore, the Club shall not be obliged, in any event and under any circumstances, to accept an offer for the Player if said offer comes from a Portuguese Club, regardless of its value and the specific terms and conditions. (Clause 4.5)
  - ➔ [...] where the Transfer of the Player has commenced without Meriton's acceptance and the Club has received the Transfer Fee, the Club shall pay to Meriton, within 7 calendar days of the Club receiving the Transfer Fee, one of the following amounts (whichever is higher):
    - a. Meriton's Interest [i.e. 100% of the financial value stemming from the Player's Federative Rights, after deduction of Benfica's Interest (corresponding to 25% of the Transfer Fee in excess of EUR 15 million if the Transfer Fee is higher than EUR 15 million, if applicable)] or
    - b. Meriton's Grant Fee [i.e. EUR 15 million], plus interest from the dates of payment of each of its instalments at a rate per annum of 5% (five per cent). Such interest shall accrue from day to day. (Clause 5.1)
  - ➔ The Club shall, upon reasonable request, provide Meriton with copies of any and all documents, invoices and agreements relating to any Transfer of the Player as evidence of the Transfer Fee paid to the Club for the transfer of the Player [...] (Clause 5.3)



### Considerations of the FIFA Disciplinary Committee:

The Committee deems that clause 5, in combination with clause 4, forces Benfica to seek Meriton's approval before accepting any transfer offer, in

particular considering that failure to do so would result in Benfica having to pay a sum of money to Meriton. In this respect, the Committee firmly believes that the

<sup>127</sup> Decision of the FIFA Disciplinary Committee dated 1 March 2018. The decision was confirmed by the FIFA Appeal Committee on 12 April 2019 (case pending at CAS).

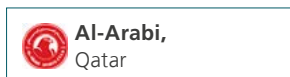
<sup>128</sup> The same clauses were analysed by the FIFA Disciplinary Committee in its decision against Benfica in the case of another player. This decision was also confirmed by the FIFA Appeal Committee on 12 April 2019 (case pending at CAS).

inclusion of this clause in the ERPA significantly limits the independence of the Portuguese club. In fact, and in order to avoid paying such a considerable amount, Benfica could have refrained from transferring the Player for an attractive price only because Meriton did not or would not give its authorisation to do so and even if such a transfer were favourable in the context of the sporting and transfer-related policies of the Portuguese club.

In addition, the content of clause 5.3 provides Meriton with the assurance that the transfer is duly executed, but also makes it privy to privileged and confidential information, namely the payments executed in relation to the transfer. In particular, the Committee emphasises that a fully independent club would not be under the obligation to provide any other entity with such information.

In fact, a combined reading of clause 4 and 5 shows that Benfica is implicitly obliged to accept the offer and transfer the player in accordance with Meriton's decision, in total breach of article 18bis of the RSTP. The structure of the agreement is designed in such a way that rejecting the offer would be so prejudicial to the Club that the Club would never be in a position to do so, regardless of its real sporting interests. In the opinion of the Committee, these clauses undoubtedly and abusively influence the Club's employment and transfer-related matters in breach of article 18bis of the RSTP.

### 3. Al-Arabi (Qatar)<sup>129</sup>



- Al-Arabi and the sports services company Al Hadaf entered into a memorandum of understanding (MoU) focused on cooperation in the field of sport in general and in football in particular.

→ The Second Party (Al-Arabi) is not entitled to recruit any player or trainer or technical team unless it has a written authorization from the First Party. The Second Party has no right to negotiate with Qatari or non-Qatari clubs regarding the transfer or rent of contracted players or trainers who have been recruited and whose expenses are covered by the First Party, unless it gets a written authorization from the First Party for this purpose.

All expenses thereof shall be covered by the First Party. The Second Party, or any official thereof, shall

not make any public statement or press release or deliver any information regarding the players or trainers or the technical team before consulting with the First Party and getting its written authorization. The Second Party may not contest the sale or transfer of any player or trainer by the First Party and for which it had covered the contract expenses with all its salaries and remunerations. The Second Party commits to provide housing, health and physical care to the players or trainers it recruited.



#### Considerations of the FIFA Disciplinary Committee:

In the Committee's opinion, this clause shows the limitation that the club has in relation to any employment-related issue, in particular due to the fact that it needs to have written authorisation from the Company in order to recruit, negotiate or communicate with the press.

Furthermore, the Club has agreed to "provide residence, health and physical care" for the players and coaches contracted by the Company. The Club is therefore compelled under the agreement to bear the full costs of rent and numerous other costs for these

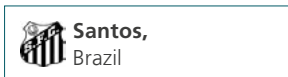
Company-hired individuals, despite being denied the right to decide on whether or not to contract the players and coaches in question.

The violation of the club's independence in transfer and employment-related issues is therefore compounded by the punitive financial burden in being made solely responsible for the cost of the residential, health and physical-care needs of an unspecified number of individuals who will be engaged by Target Sports [Al Hadaf] and about whose employment the club does not have a say

<sup>129</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

### 3.2.1.2 Prohibition on transferring the player to a direct competitor in the national league (or any other team in the country)

#### 1. Santos (Brazil)<sup>130</sup>



- Santos transferred 5% of the economic rights of one of its players to the company TEISA.<sup>131</sup> The agreement contained the following stipulation:

→ Santos FC is not entitled to loan players to the clubs Palmeiras, Corinthians or São Paulo.



#### Considerations of the FIFA Disciplinary Committee:

Clause 5.4 limits the freedom of Santos, which is prevented from loaning the Player to certain clubs. Therefore, Santos could have faced the situation in which it was interested in transferring the Player on

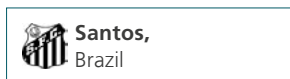
loan and yet been prevented from doing so. The Committee has no doubt that a truly independent club would never be subject to such a limitation.

<sup>130</sup> Decision of the FIFA Disciplinary Committee dated 4 March 2016.

<sup>131</sup> A second agreement was subsequently signed between Santos, TEISA and TEISA FUTEBOL in relation to the player.

### 3.2.1.3 The club cannot decide when to transfer the player

#### 1. Santos (Brazil)<sup>132</sup>



- Santos transferred 5% of the economic rights of one of its players to the company TEISA.<sup>133</sup> The agreement stated the following:

→ The transfer of the Player can only occur after 360 days have passed from the date on which TEISA FUTEBOL acquired its percentage of the Player's economic rights and as long as the transfer does not occur during the participation of Santos FC in the quarter-finals, semi-finals or final of the Copa Libertadores or during the FIFA Club World Cup.



#### Considerations of the FIFA Disciplinary Committee:

The conditions established under clause 6.2.1 also affect the independence of the Club in transfer-related matters, since it is not allowed to transfer the Player for a one-year period or during the Copa Libertadores or the Club World Cup. Consequently, if the Club had received an offer for the transfer of the Player

during the period of time indicated in the agreement, it would not have been allowed to accept such an offer regardless of the possible sporting and financial interest in transferring the Player in that particular moment.

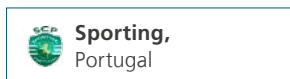
<sup>132</sup> Decision of the FIFA Disciplinary Committee dated 4 March 2016.

<sup>133</sup> A second agreement was subsequently signed between Santos, TEISA and TEISA FUTEBOL in relation to the player.



### 3.2.1.4 Authorisation required to loan the player/inability to freely negotiate the terms of a loan

#### 1. Sporting (Portugal)<sup>134</sup>



- Sporting concluded two ERPA's with the investment fund Doyen Sports Investments Limited whereby the latter acquired 75% of the economic rights of one of its players and 35% of the economic rights of another of its players. These stated as follows:

→ Where Doyen has not accepted the loan of the player but the club Sporting has proceeded with it, if the borrowing club assumes the payment of the player's salary, such salary assumption by the

borrowing club will be considered part of the loan fee and Sporting shall pay Doyen an additional amount of 75% [...] or 35% [...] relating to the player's salary assumed by the new club.



#### Considerations of the FIFA Disciplinary Committee<sup>135</sup>:

In the Committee's opinion, the above appears to be a punitive measure that would harm the Club's independent decision to loan a player, in breach of article 18bis of the RSTP.

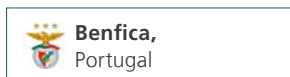
If Sporting decides to proceed independently and without Doyen's consent, Sporting will be at a financial

disadvantage and will have to pay Doyen a percentage of the player's salary, even if Sporting does not actually receive any payment for the transfer of the player on loan. These measures could potentially discourage Sporting from temporarily transferring the players on loan to another club, even though this would be done in the interest of both the Club and the players.

<sup>134</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

<sup>135</sup> Please also note the reference to the CAS award related to this case on page 143.

## 2. Benfica (Portugal)<sup>136</sup>



- Benfica signed an ERPA with the company Meriton Capital regarding one of its players.<sup>137</sup> The agreement included the following stipulations:
  - Upon the Loan of the Player, the Club shall pay to Meriton 100% of any Loan Fee.
  - The Club shall, upon reasonable request, provide Meriton with copies of any and all documents, invoices and agreements relating to any Loan of the Player as evidence of the conditions of the Loan and the Loan Fee paid to the Club for the Loan of the Player [...]



### Considerations of the FIFA Disciplinary Committee:

The Committee notes that, should the Club decide to loan the Player, it is not entitled to receive the relevant loan fee as the said fee must be transferred to Meriton as per clause 6.1. In addition, the Committee highlights that clause 6.2 provides Meriton with the assurance that the loan is duly executed, but also makes it privy to privileged and confidential information, namely the payments executed in relation to the transfer.

In addition to the above, and for the sake of good order, the Committee wishes to emphasise that it is clear from the content of clauses [...] and 6 that Benfica is not in a position to freely negotiate a possible transfer/

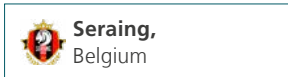
loan of the Player independently from Meriton. In this respect, the Committee reiterates that a club that is fully independent should be the only one entitled to discuss, negotiate and decide on the possible transfer of its players.

In this sense, the Committee considers that the set of clauses mentioned above, i.e. clauses [...] and 6, deeply restrict the freedom and independence of the Portuguese club regarding the Player's future transfer. In fact, these clauses considerably limit the freedom of Benfica to accept or reject a possible offer for the transfer of the Player.

<sup>136</sup> Decision of the FIFA Disciplinary Committee dated 1 March 2018. The decision was confirmed by the FIFA Appeal Committee on 12 April 2019 (case pending at CAS).

<sup>137</sup> The same clauses were analysed by the FIFA Disciplinary Committee in its decision against Benfica in the case of another player. This decision was also confirmed by the FIFA Appeal Committee on 12 April 2019 (case pending at CAS).

### 3. Seraing (Belgium)<sup>138</sup>



- Seraing entered into several agreements with the investment fund Doyen Sports Investments Limited. One of those agreements (an ERPA dated 7 July 2015) was uploaded in TMS and contained the following stipulation:

→ [...] if the club borrowing the Player assumes the payment of his salary as part of the Loan agreement, such salary assumption by the borrowing club will be considered part of the Loan Fee, therefore the Club will have to pay DOYEN as part of the Loan Fee an additional amount equal to 25% (twenty five percent) of the Player's salary as evidence of the conditions of the Loan and the Loan Fee paid to the Club for the Loan of the Player.



#### Considerations of the FIFA Disciplinary Committee:

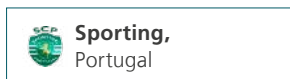
Clause 11 paragraph 2 of the ERPA grants Doyen the ability to influence Seraing since the latter will consider whether transferring the Player on loan

per the conditions established in that clause will be economically viable due to the duty to pay an amount equal to 25% of the Player's salary to Doyen.

<sup>138</sup> Decision of the FIFA Disciplinary Committee dated 4 September 2015.

### 3.2.1.5 Prohibition on transferring the player for less than a minimum transfer fee, subject to a penalty

#### 1. Sporting (Portugal)<sup>139</sup>



- Sporting concluded two ERPA's with the investment fund Doyen Sports Investments Limited whereby the latter acquired 75% of the economic rights of one of its players and 35% of the economic rights of another of its players. These included the following provisions:
  - The Club is obliged to pay to Doyen a percentage of the transfer fee received equivalent to the shares of the players' economic rights (i.e. 75% for player X and 35% for player Y). Nevertheless, if the transfer fee is less than Doyen's minimum interest fee (that is EUR 4,200,000 for [...] and EUR 3,150,000 for [...]), Doyen will be entitled to receive an amount corresponding to the minimum interest fee.



#### Considerations of the FIFA Disciplinary Committee<sup>140</sup>:

The Committee considers that this clause grants Doyen a major advantage over the Club, but more importantly, drastically reduces the Club's freedom. Even if the Club received a transfer offer for the players that would be considered acceptable for and by the Club (considering

a certain number of sporting and financial criteria), if the price were lower than Doyen's minimum interest fee, it might be forced to reject the offer just because otherwise it would have to pay a certain amount to Doyen, and consequently would lose money.

<sup>139</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

<sup>140</sup> Please also note the reference to the CAS award related to this case on page 143.

### 3.2.2 CLAUSES RELATED TO THE EMPLOYMENT RELATIONSHIP BETWEEN THE CLUB AND THE PLAYER

#### 3.2.2.1 Inability to freely negotiate the terms of engagement of the player/obligation for the club to prevent the player becoming a free agent

##### 1. Rayo Vallecano (Spain)<sup>141</sup>



- The club Rayo Vallecano and the company NJQY Sports Management Co, Ltd, registered in China and more commonly known as Qbao, signed a sponsorship agreement on 8 July 2014 so as to promote the company's brand by implementing various measures, inter alia, signing a player of Chinese nationality to play for the club's first team. The agreement stipulated the following:

→ It is in the interest of the parties [...] to achieve common objectives focusing mainly on the training of young, adult football players of Chinese nationality [...] Rayo Vallecano de Madrid SAD shall incorporate into its B team, Rayo Vallecano de Madrid SAD B, one (1) player with federative professional status, whose economic rights derived from the federative rights shall be held by the sponsor, and who shall join the club preferably on loan and free of charge for one season, which may, where applicable and with the prior agreement of the parties, be extended. With regard to the above-mentioned incorporation, Rayo Vallecano commits to providing in the contract the financial, sporting, promotional and any other conditions that enable the favourable and complete integration of the said player in the category and competition in which he is registered. The parties stipulate that

the amounts agreed for the salary of the player, as well as the licensing and social security costs of the player, shall be fully, and in any event, borne by the sponsoring company for the term of the contract [...] As compensation for training the player, Rayo Vallecano de Madrid SAD shall receive NINETY THOUSAND (90,000.00) EUROS from the sponsor for each season that the player is registered at Rayo Vallecano de Madrid SAD B. It shall receive that amount as expenses for training [...] Rayo Vallecano shall receive thirty (30) percent of any profit that may be generated by the permanent sale or temporary transfer of the player [...] The parties agree that, if the player debuts in an official match with the first team of Rayo Vallecano, the rights to the payment of the bonuses for meeting the objectives set out in Section IV points A and B of the first clause of this contract shall apply.



#### Considerations of the FIFA Disciplinary Committee:

The club is obliged to provide the player with specific conditions (financial, sporting, contractual, etc.), meaning that its ability to take decisions regarding the player's employment conditions are predetermined by the company.

Similarly, the company undertakes to pay the player's salary, which again reflects its influence on the club's employment policies.

Furthermore, this clause provides that the club shall receive, from the company, 30% of the amount that may be generated as profit from the permanent sale or temporary transfer of the player, and this despite the fact that all of his economic rights would belong to the company.

Hence, in this case, the club is being encouraged to sell or loan the player concerned, which contributes to undermining the principle of contractual stability.

<sup>141</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

- Likewise, the following clause was also included in the agreement:

→ FOURTH – Conditions of the contract between Rayo Vallecano and the player: Rayo Vallecano de Madrid SAD shall sign a federative, professional-player contract with ZHANG CHENGDONG for one season (2015-2016 season), which in any case may, where the parties are willing and expressly agree, be extended for subsequent seasons under the following financial terms:

For each season, the player shall receive:

- a) EUR 50,000 GROSS in 12 instalments;
- b) EUR 25,000 GROSS for staying in the first division;
- c) EUR 25,000 GROSS if the player plays 25 official matches;
- d) EUR 30,000 GROSS if the player plays an additional 15 matches.



#### Considerations of the FIFA Disciplinary Committee:

The Committee notes that the club and the company are the sole parties to the partnership agreement signed on 15 July 2015, which was, moreover, signed prior to the signing of the contract with the player (i.e. 27 July 2015), meaning that, contrary to the club's statement, the salary and contract term were initially agreed with the company. Furthermore, it is clear that any extension of the agreement would require the consent of the company.

Moreover, the fact that it is the company that undertakes to pay the said amounts, as established in the clause, is a way of exerting influence on the club, since if it does not complete the payment, this may result in a contractual breach on the part of the club.

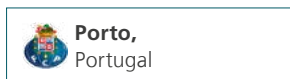
Consequently, the Committee finds that, under the said clause, the club's ability to decide on the important

matter of negotiating the player's salary was restricted, while the company acquired the effective ability to influence the club in employment-related matters.

Finally, the Committee notes that the clause "FIFTH – Timeline for the contracting of the player" stipulates that the club "shall have fifteen business days to undertake the necessary formalities in order to contract the player under the terms set out in the fourth clause of this contract".

The Committee firmly believes that the fact that the club is obliged, under the said clause, to sign the player within a specific time frame, following its receipt of a certain amount from the company, restricts the club's autonomy and independence in determining when to sign the player according to its own needs.

## 2. Porto (Portugal)<sup>142</sup>



- Porto signed an ERPA with the investment fund Doyen Sports Investments Limited regarding one of the club's players.<sup>143</sup> The agreement contained the following provisions:

→ The Club shall use its best endeavours to prevent the Player becoming a free agent and acknowledges that such endeavours are considered normal business practice for professional football clubs.

→ Where the Player is considered by FIFA or any other competent court, state or arbitral, to be a free agent, prior to the expiry of his Employment Contract with the Club and without breach of the Employment Contract by the Club, the Club shall pay the FUND an amount equal to the Grant Fee plus compound interests at the rate of 10% per annum from the date of this Agreement to the date that the Player becomes a free agent (the "Free Agency Fee"). The Parties agree that the Free Agency Fee represents a genuine pre-estimate of the minimum value of the FUND's Interest in the Economic Rights, and therefore accordingly also represents the minimum value of the loss that would be suffered by the FUND in these circumstances.

Where the Player Re-Signs with the Club (whether a new employment contract, or an extension or modification of the Employment Contract), the FUND will then have the following options that can be exercised or not at the FUND's own discretion:

a) at the FUND's request, the CLUB shall pay the FUND the Grant Fee plus compound interests at the rate of 10% per annum from the date of this Agreement to the date that the Player Re-Signs, and

such payment shall be made in two (2) instalments, 50% within thirty (30) calendar days from the date the Player Re-Signs and the pending 50% within sixty (60) calendar days of such event, and the Club shall become entitled to retain 100% (one hundred percent) of the Player's Economic Rights; or b) if the FUND does not exercise the previous option, then it shall keep its FUND's Interest in the Player during the term of the new employment contract of the Player or during the extension or modification of the Employment Contract and subject to the rest of the terms and conditions of the present Agreement. The Club shall notify the FUND promptly if the Player Re-Signs with the Club (within 2 (two) calendar days of the date of re-signing) and then the FUND shall have 3 (three) calendar days (i.e. 3 calendar days after the date of the FUND's notification) to decide whether or not it wishes to exercise its option right.

In the event that the Player terminates the Employment Contract without just cause, the Club shall pursue a claim for unlawful termination of the Employment Contract without just cause against the Player before the Portuguese courts, Portuguese FA or FIFA, as applicable. In the event that the Portuguese courts, Portuguese FA or FIFA, as applicable, make an award in respect of the claim in favour of the Club, the Club shall pay to the FUND an amount equivalent to 33.33% of such

<sup>142</sup> Decision of the FIFA Disciplinary Committee dated 5 March 2019. The decision was confirmed by the FIFA Appeal Committee on 6 September 2019 (pending before CAS).

<sup>143</sup> A similar clause was inserted in another ERPA signed between Porto and Doyen Sports Investments Limited regarding another of the club's players, prompting the same considerations from the FIFA Disciplinary Committee. This decision was also confirmed by the FIFA Appeal Committee on 6 September 2019 (pending before CAS).



award. In the event that such amount arising from the award is less than the Grant Fee plus compound interests at the rate of 10% per annum from the date of this Agreement to the date of issuance of the award, the Club shall pay the FUND an amount equal to the Grant Fee plus compound interest at

the rate of 10% per annum from the date of this Agreement to the date of issuance of the award. Such payment shall be made in two (2) instalments, 50% within thirty (30) calendar days from the date of the award and the pending 50% within sixty (60) calendar days of such event.



#### Considerations of the FIFA Disciplinary Committee:

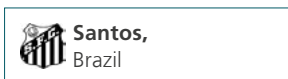
The Committee notes that clause 9 (including 9.1, 9.2 and 9.3) titled *“Free Agency and Player Re-Signing”* governs several conditions ranging from the Player becoming a *“free agent”* to re-signing with the Club or terminating the contract with the Club without just cause. Conditions are imposed by Doyen on the Club depending on which scenario unfolds. The Committee finds that Doyen, in conditioning the various scenarios, clearly prevents the Club from acting independently in employment-related matters.

Firstly, the Club undertakes to *“use its best endeavours to prevent the Player becoming a free agent”*, meaning that the Club may not freely decide whether it wishes to retain the Player based on its own considerations, which is a transfer and employment policy-related matter. Furthermore, if the Player becomes a free agent prior to the expiry of the employment agreement, the Club would be liable for Doyen’s *“Free Agency Fee”*

or the *“Grant Fee plus compound interest at 10% per annum”*. This clause adds further financial pressure on the Club to prevent such a scenario from occurring, incentivising (for instance) the transfer of the Player, regardless of its own sporting preferences and policies in that regard.

In accordance with clause 9.3, the Club is obliged to *“pursue a claim for unlawful termination of the Employment Contract without just cause”*. In the event of a successful outcome, Doyen would be entitled to its proportional share of 33.33%, whereas in the event that the outcome is not as positive, the Club remains liable to pay Doyen an amount equivalent to its *“Grant Fee plus compound interest at 10% per annum”*. The Committee finds that the obligation for the Club to pursue a claim clearly affects the Club’s independence and policies in employment-related matters.

### 3. Santos (Brazil)<sup>144</sup>



- Santos transferred 5% of the economic rights of one of its players to the company TEISA.<sup>145</sup>
- The following stipulations also make reference to an additional agreement signed by Santos with the company DIS regarding the same player:

→ Santos FC is forbidden from performing any action that may enable the termination of the Player’s employment contract without the previous written consent of DIS.

If Santos FC, for any reason and without the prior approval of DIS, enables the Player to become a

free agent, it shall pay damages in the amount of BRL 10,000,000 to DIS.

If Santos FC allows the Player to become a free agent, Santos FC must reimburse TEISA FUTEBOL for the amount initially invested ‘duly adjusted to the fund benchmark’.



#### Considerations of the FIFA Disciplinary Committee:

There is no doubt that, besides having agreed on the transfer of part of the economic rights of the Player to DIS, the latter also acquired the capacity to interfere with the Player’s future transfer to other clubs, therefore having a direct influence on the transfer-related policies of Santos. In this respect, the Committee deems it appropriate to reiterate that a fully independent club should be the only one entitled to discuss and negotiate the possible transfer of its players.

Likewise, the Committee believes that clauses 6.1 and 6.2 limit the Club’s independence concerning its employment relationship with the Player and indirectly entitle DIS to influence Santos’s decision to possibly allow the Player to become a free agent given that in such a scenario, the latter would have to pay BRL 10,000,000 to DIS.

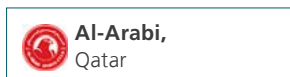
Finally, if the Player had become a free agent, Santos FC would have been obliged to reimburse TEISA FUTEBOL for the amount initially invested “*duly adjusted to the fund benchmark*”. Once again, the Committee is of the opinion that a fully independent club should not face any financial consequences as a result of one of its players becoming a free agent. This clause had the ability to influence the independence and policies of Santos in employment and transfer-related matters, in clear violation of article 18bis of the RSTP.

Additionally, in view of the Club’s repeated arguments in this regard, it is important for the Committee to note that the division of the Player’s economic rights among several entities (i.e. third-party ownership) was not prohibited at the time and therefore there is no need to refer to article 18ter of the RSTP (2015 edition).

<sup>144</sup> Decision of the FIFA Disciplinary Committee dated 4 March 2016.

<sup>145</sup> A second agreement was subsequently signed between Santos, TEISA and TEISA FUTEBOL in relation to the player.

#### 4. Al-Arabi (Qatar)<sup>146</sup>



- Al-Arabi and the sports services company Al Hadaf entered into a memorandum of understanding (MoU) focused on cooperation in the field of sport in general and in football in particular. The agreement stated as follows:
  - Where the Player obtains his disengagement from the Club by reason of breach by the Club of the Club's obligations under the relevant Player Employment Contract or, in the event of unjustified dismissal of any relevant player prior to the expiry of the term of his Player Employment Contract, the Club shall be obliged to pay to the Investor, at once and in full, and without prejudice to any indemnity for losses caused to the Club, an amount of: the applicable Player Purchase Price actually paid for by the Investor in connection with the relevant player plus any other sums borne by the Investor in connection with such player.



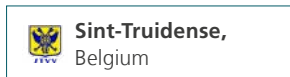
#### Considerations of the FIFA Disciplinary Committee:

By virtue of the content of this clause, if the employment contract is ended through the club's fault, the Club will need to pay the company the Player purchase price as well as any other sums borne by the company in connection with the player.

The Committee is eager to emphasise that, according to this clause, the Club is far from enjoying full independence where "*employment and transfer-related matters*" are concerned.

<sup>146</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

## 5. Sint-Truidense (Belgium)<sup>147</sup>



- Sint-Truidense signed an agreement with KICKRS (an organisation claiming to be a start-up aimed at crowdfunding to secure revenue to be invested in the transfer of football players) regarding one of the club's players, who was transferred from the Greek club PAE Aiginiakos. The agreement stipulated the following:
  - The Club offers the following contract options (see Annexe 1) to the Player:
    - a. If the Funding Threshold of EUR 220,000 is reached, the Club will sign a two-year contract (plus a one-year option) with the Player.
    - b. If the Funding Limit of EUR 300,000 is reached, the Club will sign a three-year contract with the Player.

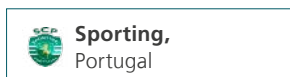


### Considerations of the FIFA Disciplinary Committee:

The Committee ascertains that the future of the contractual relationship between the Club and the Player depends on the outcome of the crowdfunding campaign promoted by KICKRS. In this respect, the Committee considers that the Club cannot freely

decide on the duration of the contract to be offered to the Player in those cases where one of the two established thresholds are met, as it has to enter into one of those pre-established two-year or three-year employment contracts (i.e. "the Club will sign").

## 6. Sporting (Portugal)<sup>148</sup>



- Sporting concluded two ERPA's with the investment fund Doyen Sports Investments Limited whereby the latter acquired 75% of the economic rights of one of its players and 35% of the economic rights of another of its players. The following clause was included:
  - If the player becomes a free agent, the Club will have to pay to Doyen the amount of EUR 4,200,000 for player [ ] and EUR 3,150,000 for player [ ].

<sup>147</sup> Decision of the FIFA Disciplinary Committee dated 4 March 2016.

<sup>148</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.



### Considerations of the FIFA Disciplinary Committee<sup>149</sup>:

This clause once again shows the power given to Doyen since it is evident that the latter stands to benefit financially when the players are transferred.

Therefore, it is in the interest of Doyen that the players do not become free agents. Allowing the players to become free agents, in accordance with potential sporting interests for the Club, would be excessively prejudicial from an economic point of view. In fact, the Committee considers that it would be so prejudicial

that the Club would be obliged not to allow this to happen.

Moreover, the clause adds that the Club is conscious of the harshness and severe consequences of the present clause and waives any rights to request modifications or reductions of the compensation foreseen above. Also in this case, the Committee considers that this clause limits the independence of Sporting concerning its employment relationship with the players.

- Another provision stipulated as follows:

→ The Club must have Doyen's consent in order to sign a new employment contract or modify the existing employment contract with the players. If the Club proceeds without the consent of the investment fund, the latter would be due the amount of EUR

4,200,000 for player [ ] and EUR 3,150,000 for player [ ]. Furthermore, the last paragraph of this clause obliges Sporting CP to pursue a claim against the players in the event that one of them terminates his contract without just cause.



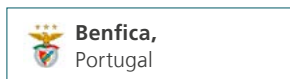
### Considerations of the FIFA Disciplinary Committee:

The Committee understands that this obligation also affects Sporting's independence and decision-making in employment-related matters, in breach of article 18bis of the RSTP. One can easily infer that an independent club would not be requested to obtain the consent of a third party in order to modify an existing employment agreement with one of its

players. Likewise, the Committee wishes to underline that, although it is the Club's right to pursue a claim against a player who terminates his employment contract without just cause, the obligation provided under clause 9.3 limits the Club's independence to decide whether or not to lodge a claim against the player.

<sup>149</sup> Please also note the reference to the CAS award related to this case on page 143.

## 7. Benfica (Portugal)<sup>150</sup>



- Benfica signed an ERPA with the company Meriton Capital regarding one of its players.<sup>151</sup> The agreement stated that:
  - The Club warrants that the Employment Contract [concluded between the Player and the Portuguese club] shall be enforceable, legal and binding on the parties to it until 30 June 2019.



### Considerations of the FIFA Disciplinary Committee:

The Committee finds it worthwhile to emphasise that such an obligation [encroaches on] the relationship between the Portuguese club and the Player. As a matter of fact, no other party should be able to oblige Benfica to ensure that any of its employment contracts continue until a certain date, in casu 30 June 2019.

Although it can be argued that it indeed favours contractual stability, the Committee wishes to highlight

- The agreement also provided that:
  - Where the Player Re-Signs with the Club, Meriton shall have the option to either:
    - (a) demand that the Club pays Meriton an amount equal to its Grant Fee [i.e. EUR 15 million] within 7 calendar days of the day the Player Re-Signs

that the clause also has a direct influence on the club, which therefore cannot decide to terminate the player’s contract at an earlier stage in accordance with articles 14 or 15 of the RSTP, i.e. with just cause or with sporting just cause. Additionally, the Committee is eager to point out that a truly independent club should be able to determine on its own the duration of the contractual relationship with the players in its roster, without any imposition or interference from a third party.

with the Club, and the Club shall become entitled to retain 100% [...] of the Player’s Economic Rights; or

(b) maintain Meriton’s Interest [...]”



### Considerations of the FIFA Disciplinary Committee:

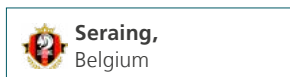
The Committee understands that this obligation also affects Benfica’s independence and decision-making in employment-related matters, in breach of article 18bis of the RSTP. One can easily infer that an independent

club would not be requested to take into account the financial interests of a third party to an employment contract with one of its players in order to extend that contract.

<sup>150</sup> Decision of the FIFA Disciplinary Committee dated 1 March 2018. The decision was confirmed by the FIFA Appeal Committee on 12 April 2019 (case pending at CAS).

<sup>151</sup> The same clause was analysed by the FIFA Disciplinary Committee in its decision against Benfica in the case of another player. This decision was also confirmed by the FIFA Appeal Committee on 12 April 2019 (case pending at CAS).

## 8. Seraing (Belgium)<sup>152</sup>



- Seraing entered into several agreements with the investment fund Doyen Sports Investments Limited. One of those agreements (an ERPA dated 7 July 2015) was uploaded in TMS and contained the following clause:

→ 1. The Club shall use its best endeavours to prevent the Player becoming a free agent and acknowledges that such endeavours are considered normal and ordinary business practice for professional football clubs.

Where the Player is considered by FIFA, the [Belgian] Football Association or any other competent court, state or arbitral, to be a free agent prior to the expiry of his Employment Contract with the Club, the Club shall pay to DOYEN, as minimum compensation, the Free Agency Fee in an amount equal to DOYEN's Minimum Fee accrued at the date of the Player becoming a free agent.

In the event that the Player terminates the Employment Contract without just cause, the Club shall pay to DOYEN an amount equivalent to 25% (twenty five percent) of any award resulting from the Club's claim for unlawful termination of the Employment Contract, with minimum compensation to be paid to DOYEN equivalent to DOYEN's Minimum Fee accrued at the date of the Player's unilateral termination of the Employment Contract.



### Considerations of the FIFA Disciplinary Committee:

Concerning clause 9 of the ERPA, the Committee considers that this stipulation contradicts the principle of contractual stability, which has consistently been of

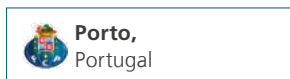
paramount importance for FIFA as well as all football stakeholders, since it aims to encourage the club to transfer the Player before his contract expires.

<sup>152</sup> Decision of the FIFA Disciplinary Committee dated 4 September 2015.



### 3.2.2.2 Hindrances to the conclusion of transfer agreements/employment contracts

#### 1. Porto (Portugal)<sup>153</sup>



- Porto signed an ERPA with the investment fund Doyen Sports Investments Limited regarding one of the club's players. The agreement included the following provisions:

→ Upon the Loan of the Player, the Club shall pay to the FUND the FUND's Interest in any Loan Fee within seven (7) calendar days of receipt by the Club of the Loan Fee.

In connection with this clause, in cases in which the club borrowing the Player assumes the payment of his salary as part of the Loan agreement, such salary assumption by the borrowing club will be considered part of the Loan Fee, therefore the Club will have to pay the FUND as part of the Loan Fee, on a monthly basis, an additional amount equal to 33.33% of the salary of the Player assumed by the club borrowing the Player. The Part of the Loan Fee that corresponds to the payment of the Player's salary, and that is paid to the FUND on the occasion of the Loan of the Player, shall be reimbursed by the FUND to the Club by means of deduction from the final payment of the Transfer Fee to be made by the Club to the FUND. In the event of the Loan of the Player, the Parties agree

that any amounts payable to any intermediaries and/or by way of Solidarity Contribution (as defined in the FIFA Regulations on the Status and Transfer of Players) shall be split between the Parties so that the FUND shall pay 33.33% and the club shall pay 66.67% of such fees. The amounts to be paid by the FUND shall be deducted from the payment to the FUND pursuant to clause 11.1.

In the event of the Loan of the Player, the Parties agree that the FUND shall only pay 33.33% of any fees to intermediaries up to a maximum of 10% of the Loan Fee. The club shall be responsible for all amounts over 10% of the Loan Fee (i.e. 66.67% up to 10% and 100% of the exceeding amount). The Club shall, upon reasonable request, provide the FUND with copies of any and all documents, invoices and agreements relating to any Loan of the Player as evidence of the conditions of the Loan and the Loan Fee paid to the Club for the Loan of the Player.



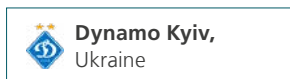
#### Considerations of the FIFA Disciplinary Committee:

Clause 11 of the ERPA ("*Loan of the Player*") stipulates that, if the Player is loaned and the borrowing club assumes the Player's salary, the payment of the player's salary will be considered part of the loan fee. The Club is obliged to pay Doyen an additional amount of 33.33% of the player's salary assumed by the new club. Furthermore, in the event of a loan, Doyen would only be responsible for 33.33% of any intermediary fees up to 10% of the loan fee.

In the Committee's opinion, the above clause affects the Club's independent ability to decide to loan the Player, in breach of article 18bis of the RSTP. The clause and its financial consequences could potentially discourage the Club from temporarily transferring the Player on loan to another club, even though this could be in the best interests of both the Club and the Player.

<sup>153</sup> Decision of the FIFA Disciplinary Committee dated 5 March 2019. The decision was confirmed by the FIFA Appeal Committee on 6 September 2019 (pending before CAS).

## 2. Dynamo Kyiv (Ukraine)<sup>154</sup>



- Reference is made to an agreement signed between Dynamo Kyiv and the company Newport Management Ltd.
- Subsequently, an appendix to the employment contract signed between the club and one of its players stated that all payments to be made to the Player (i.e. salaries and bonuses) could be executed by the company on behalf of the Club.



### Considerations of the FIFA Disciplinary Committee:

In this regard, the Committee notes the content of paragraph 2 of the Agreement. In particular, it was stated that *“the payments mentioned in the present appendix can be executed by Newport Management Ltd. for and on behalf of the Club. The Club shall, however, at all times remain the only contractual party of the Player”*.

This clause already grants a third party the ability to be involved in employment-related matters and, consequently, such involvement entails the possibility of influencing the Club at any given time during its contractual relationship with the Player. This is the case regardless of the fact that the Club may truly remain the only contractual party to the Player’s employment contract (which is irrelevant where article 18bis of the RSTP is concerned).

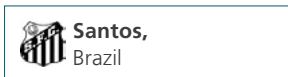
Similarly, the fact that this agreement apparently served only *“as an additional guarantee of the payments”* or that it *“did not provide for any obligation of the Player towards Newport”* does not detract from the fact that Newport was indeed enabled to exert influence on the Club.

Along the same lines, clauses 1 to 5 of the Agreement detail Newport’s ability to pay the Player’s remuneration (*“The Club/Company undertakes to pay remuneration to the Player”*) and bonuses (*“The Company undertakes to pay bonuses”*), and to pay for flight tickets, apartments or hotels and vehicles. Such wording leaves no doubt as to Newport’s ability to decide whether or not to pay the aforementioned amounts, consequently putting it in a position to influence the Club in matters connected with the Player’s employment conditions.

Finally, clause 6 determines that *“The club shall be jointly and severally liable in the event that the Company fails to make any payment or to provide the benefits under the present Agreement”*. This provision renders the Club in a position of dependency towards Newport, which can, according to the wording of the Agreement, choose to comply with its obligations or not, having a direct impact on the Club’s obligations towards the Player.

<sup>154</sup> Decision of the FIFA Disciplinary Committee dated 4 September 2015.

### 3. Santos (Brazil)



- Santos and the company DIS signed an agreement regarding the economic rights of one of the club's players, which included the following stipulation:

→ Upon request from DIS, Santos FC shall provide the latter with a document authorising it to look for proposals for the transfer of the Player to a third club.

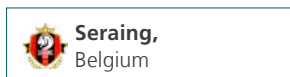


#### Considerations of the FIFA Disciplinary Committee:

There is no doubt that, besides having agreed on the transfer of part of the economic rights of the Player to DIS, the latter also acquired the capacity to interfere with the Player's future transfer to other clubs, therefore having a direct influence on Santos's transfer-

related policies. In this respect, the Committee deems it appropriate to reiterate that a fully independent club should be the only one entitled to discuss and negotiate the possible transfer of its players.

#### 4. Seraing (Belgium)<sup>155</sup>



- A cooperation agreement was signed between Seraing and Doyen Sports Investments Limited concerning, among others, the sale of 30% of the economic rights of three players from the club to Doyen. The agreement stated that:
  - SERAING UNITED shall notify DOYEN SPORTS of any and all incidents (of whatever nature) affecting any of the players, as well as of any negotiations concerning any potential transfer or loan of any of the players, any player re-signing, or the termination of the Employment Contract of any of the players. SERAING UNITED shall communicate promptly (within 3 (three) business days) every detail on the above [...] If any other footballer forms part of the transfer of any of the players, SERAING UNITED shall also inform DOYEN SPORTS of the value attributed to such footballer; in the event of a dispute regarding the value of the players to be exchanged, the parties should nominate three (3) independent experts (one indicated by SERAING UNITED, another indicated by DOYEN SPORTS and the third one to be appointed by the other two experts) in order to have a fair valuation of the transaction that shall be accepted by both parties.
  - Where a transferee club expresses an interest in securing the transfer of any of the players and makes an offer (the “Transfer Offer”), such Transfer Offer shall be shared between SERAING UNITED and DOYEN.



#### Considerations of the FIFA Disciplinary Committee:

Clause 5 of the Cooperation Agreement allows Doyen to exert influence on Seraing’s independence in employment and transfer-related matters, as well as its policies. Seraing cannot freely decide to renew, transfer, loan or terminate the employment contracts of the Selected Players without having to inform Doyen about all the facts surrounding such possible transactions.

Additionally, Seraing may not be able to decide by itself whether a player who is going to be engaged

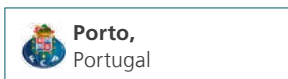
in exchange for one of its current players has an appropriate value or not.

[...] As a result of all the above, the Committee concludes that the above analysed clauses of the Cooperation Agreement clearly put Seraing in a position of dependency in transfer or employment-related matters with respect to Doyen and are consequently in breach of article 18bis of the RSTP.

<sup>155</sup> Decision of the FIFA Disciplinary Committee dated 4 September 2015.

### 3.2.2.3 Obligation to maintain an insurance policy to insure against the risk of the player's injury or death

#### 1. Porto (Portugal)<sup>156</sup>



- Porto signed an ERPA with the investment fund Doyen Sports Investments Limited regarding one of the club's players. This contained the following provisions:

→ During the Term, the Club shall enter into and maintain a policy with standard preconditions or exclusions, and at its own expense, with a reputable insurance company insuring against the risk of the Player's death and the risk of the player suffering an incapacitating injury or any injury which may patently reduce the Player's ability as a professional footballer, for a minimum amount of €6,500,000 – Six Million and Five Hundred Thousand Euros – (the 'Insurance Policy').

The Club shall provide the FUND, on request, with copies of the Insurance Policy and any evidence of all premiums paid in respect thereof and shall address any issues or deficiencies in the Insurance Policy that are notified to it by the FUND.

In the event that the Club makes a claim against the Insurance Policy, the Club shall, having consulted

with the FUND, make a claim under this policy and distribute 33.33% of the proceeds of the Insurance Policy claim to the FUND provided that the FUND shall receive a minimum payment of an amount equal to the Grant Fee plus compound interests at the rate of 10% per annum from the date of this Agreement to the date of distribution of the proceeds of the Insurance Policy. In the event that 33.33% of the proceeds of the Insurance Policy claim are less than the Grant Fee plus compound interests at the rate of 10% per annum from the date of this Agreement to the date of distribution of the proceeds of the Insurance Policy, the Club shall pay the difference to the FUND. The Club shall pay any amount owed to the FUND in two (2) instalments: 50% within thirty (30) calendar days of the Club claim under the Insurance Policy and the pending 50% within sixty (60) calendar days of such event.

<sup>156</sup> Decision of the FIFA Disciplinary Committee dated 5 March 2019. The decision was confirmed by the FIFA Appeal Committee on 6 September 2019 (pending before CAS).



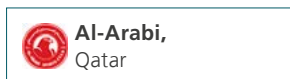
### Considerations of the FIFA Disciplinary Committee:

The Club is contractually obliged to maintain an insurance policy at its own expense to insure against the risk of the Player's death or injury for a minimum of EUR 6,500,000. Such obligation in itself influences the Club's (insurance) policies in employment-related matters. In the Committee's view, this clause demonstrates Doyen's interference with the Club's ability to independently decide on matters such as the appropriate amount for which to insure the minimum risk. The Committee considers that a truly independent club would not have the obligation to sign an insurance agreement under the conditions established by a third party.

Also, the Club is obliged to pay 100% of the costs of the insurance policy while entitling Doyen to receive the benefit of any claim without having to bear any of the costs.

Furthermore, it appears that if 33.33% (Doyen's stake) of the proceeds from a claim under the insurance policy were less than "*EUR 2,647,059 plus compound interests of 10%*", the Club would be liable or responsible for financially bearing the difference. The Committee considers such a clause financially punitive and that it could cause a significant financial loss affecting the Club's budget.

## 2. Al-Arabi (Qatar)<sup>157</sup>



- Al-Arabi and the sports services company Al Hadaf entered into a memorandum of understanding (MoU) focused on cooperation in the field of sport in general and in football in particular. The agreement included the following stipulation:

→ Subject to the Investor paying for the insurance coverage, the Club will, in accordance with applicable law, obtain and maintain an insurance policy which is to the Investor's reasonable

satisfaction, and under which the Investor would be a beneficiary. Such coverage will apply for the period of the Player's employment with the Club, as may be extended from time to time.



### Considerations of the FIFA Disciplinary Committee:

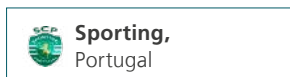
In accordance with the content of this clause, the club is required to enter into an insurance policy at the expense of the company. Firstly, the Annexe requires that the club obtain and maintain insurance if the company pays for the coverage. Under the Annexe, then, the club may not decline the purchase of insurance once Target Sports [Al Hadaf] has decided to pay for same.

This constitutes a breach, in the technical sense, of the club's independence to decide its own policies in

employment-related matters. Furthermore, once the club has made this compromised decision to purchase insurance, it is prohibited from selecting the policy in a free, autonomous and unencumbered fashion. Instead, the club is required to *"obtain and maintain an insurance policy which is to the Investor's reasonable satisfaction"* (the company being the *"Investor"*). This clearly constitutes a breach of article 18bis paragraph 1 of the RSTP.

<sup>157</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

### 3. Sporting (Portugal)<sup>158</sup>



- Sporting concluded two ERPA's with the investment fund Doyen Sports Investments Limited whereby the latter acquired 75% of the economic rights of one of its players and 35% of the economic rights of another of its players. The following clause was included:

→ The Club shall enter into and maintain a policy with standard preconditions or exclusions and at its own expense with a reputable insurance company insuring against the risk of the player's death or injury for a minimum amount of EUR 3,708,000

for for player X and EUR 1,950,000 for player Y. In addition, the Club must provide Doyen with copies of the Insurance Policy and evidence of payment of premiums.



#### Considerations of the FIFA Disciplinary Committee<sup>159</sup>:

In the Committee's opinion, these clauses show Doyen's interference with the Club's ability to decide independently on the appropriate amount to insure for minimum risk. Also in this case, the Committee

considers that a truly independent club would not have the obligation to sign an insurance agreement under the conditions previously established by a third party.

- A further provision stipulated as follows:
- The Club must consult with Doyen before making any claim against the insurance policy. Furthermore, in the event that the Club makes an insurance policy claim, the Club shall distribute to Doyen 100% of

the proceeds – and pay the difference within three business days when the proceeds are less than the 'put on option fee' (EUR 3,708,000 for player X and EUR 1,950,000 for player Y).



#### Considerations of the FIFA Disciplinary Committee:

For the Committee, this clause is financially punitive, as it requires the Club to pay 100% of the cost of the insurance policy while entitling Doyen to receive 100% of the benefit of any claim. Indeed, the Club not only has to sign an insurance policy in accordance with a certain number of dictated conditions, but also has

to "consult" with Doyen before potentially making a claim (thus, not being totally independent to act); even more strikingly, it has to distribute 100% of the proceeds of such a claim to Doyen, which could represent a significant financial loss for the Club and therefore strain the Club's budget.

<sup>158</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

<sup>159</sup> Please also note the reference to the CAS award related to this case on page 143.



### 3.2.3 CLAUSES LINKED TO SELECTION IN MATCHES

#### 3.2.3.1 Ensure that the player is fielded regularly

##### 1. Rayo Vallecano (Spain)<sup>160</sup>



- The club Rayo Vallecano and the company NJQY Sports Management Co, Ltd, registered in China and more commonly known as Qbao, signed a sponsorship agreement on 8 July 2014 so as to promote the company’s brand by implementing various measures, inter alia, signing a player of Chinese nationality to play for the club’s first team. The agreement stipulated the following:

→ AGREEMENT ON BONUSES TO BE PAID TO RAYO VALLECANO [...]

Rayo Vallecano shall receive, following the hiring of the player [...] certain amounts by means of a system of bonus payments that the sponsor shall pay the club provided the following conditions are met: (A) For the debut of the player – the first official match

in which the player plays for the Rayo Vallecano first team [the club shall receive the amount of] ONE HUNDRED AND FIFTY THOUSAND EUROS ... (B) After participation in each official match, the sponsor shall pay RAYO VALLECANO DE MADRID SAD the amount of NINETEEN THOUSAND (19,000) EUROS ...

- Moreover, another collaboration agreement was signed between the club and the company in relation to the engaging of one player by the club, which stated as follows:

→ (...) operate a system of bonuses that the company will pay to the Club if the following objectives are achieved:

A. For the debut of the player, i.e. the first official match in which he features for the Rayo Vallecano first team, [the club shall receive] the amount of ONE HUNDRED AND FIFTY THOUSAND EUROS [...] This amount must be paid by NJQY Sports Management within ten days of the player making his debut for Rayo Vallecano’s first team.

B. For each appearance in an official match, [NJQY] shall pay RAYO VALLECANO DE MADRID, SAD an amount of NINETEEN THOUSAND EUROS (19,000.00). This bonus will be paid periodically and upon delivery of the corresponding invoice, at the end of the first and second half of the season [...]

C. Rayo Vallecano shall receive a percentage equivalent to TWENTY-FIVE (25) PERCENT plus [...]

<sup>160</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.



### Considerations of the FIFA Disciplinary Committee:

The Committee notes that, under this clause, the company offers a certain sum of money to the club for each match in which the player is fielded, meaning that the more appearances he makes, the more money the club will receive [...] this clause makes the payment of a significant amount on the part of the company to the club conditional on the participation of the player in the club's official matches.

The Committee considers that the purpose of the clause is to exert influence on the club to field the

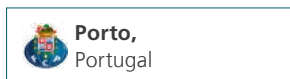
signed player in its official matches, since for such participation, the club will receive sums of money which it would not otherwise receive.

Consequently, the club is in a situation where, due to the financial benefit that it is being offered, it might feel compelled to field the player for the mere reason that it needs to obtain additional financial resources from the company, therefore not being fully independent regarding the composition and performance of its own teams.

### 3.2.4 CLAUSES OBLIGING THE CLUB TO COMMUNICATE CERTAIN INFORMATION

#### 3.2.4.1 Obligation to disclose every transfer offer

##### 1. Porto (Portugal)<sup>161</sup>



- Porto signed an ERPA with the investment fund Doyen Sports Investments Limited regarding one of the club's players.<sup>162</sup> The agreement stated that:

→ The Club shall notify the FUND of all negotiations concerning any potential Transfer of the Player, communicating promptly (within 7 (seven) calendar days) every detail about those negotiations, including but not limited to the club's name, the Transfer Fee proposed and offered, whether the Club accepts or rejects the offer, intermediary fees (if any), terms and conditions of payment of

the Transfer Fee and information about whether the Player has accepted the offer (the 'Transfer Information').

The FUND shall not share the Transfer Information with third parties other than its own advisers while such information remains out of the public domain.



##### Considerations of the FIFA Disciplinary Committee:

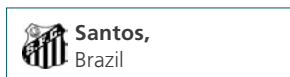
The wording and nature of this clause grant far-reaching control and involvement to Doyen. Porto is contractually obliged to share every detail concerning any negotiations for a transfer (e.g. interested club's name, transfer fee, acceptance/rejection of the offer,

intermediary fees, terms and conditions of payment, acceptance by the player, etc.), thereby enabling Doyen to acquire the ability to influence Porto in employment and transfer-related matters.

<sup>161</sup> Decision of the FIFA Disciplinary Committee dated 5 March 2019. The decision was confirmed by the FIFA Appeal Committee on 6 September 2019 (pending before CAS).

<sup>162</sup> A similar clause was inserted in another ERPA signed between Porto and Doyen Sports Investments Limited regarding another of the club's players, prompting the same considerations from the FIFA Disciplinary Committee. This decision was also confirmed by the FIFA Appeal Committee on 6 September 2019 (pending before CAS).

## 2. Santos FC (Brazil)<sup>163</sup>



- Santos transferred 5% of the economic rights of one of its players to the company TEISA.<sup>164</sup> The agreement contained the following provision:

→ In the event that Santos [...] receives an offer for the acquisition of the economic or federative rights of the Player, it needs to inform TEISA FUTEBOL of the amount and payment plan in the following 24 hours.

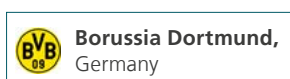


### Considerations of the FIFA Disciplinary Committee:

The club's independence is affected by the content of the clause [...] since it has the obligation to inform TEISA FUTEBOL within 24 hours about any offer received for the transfer of the Player. It is clear that no

club should be obliged to inform a third party about the offers it receives for the transfer of the players in its roster.

## 3. Borussia Dortmund (Germany)<sup>165</sup>



- Borussia Dortmund signed a transfer commission agreement with the company Isport Worldwide Limited with regard to one of the club's players, which included the following stipulation:

→ If one or more third-party clubs has/have submitted one or more good-faith offers in written form to the Club in the period from 1<sup>st</sup> May 2015 until 1<sup>st</sup> August 2015, the Club shall promptly and without undue delay inform the Company of each offer and of the substantial terms of such offer (...).



### Considerations of the FIFA Disciplinary Committee:

The Committee finds that this obligation in itself grants far-reaching control and involvement to Isport,

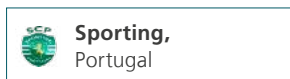
facilitating the latter's ability to influence the Club in employment and transfer-related matters.

<sup>163</sup> Decision of the FIFA Disciplinary Committee dated 4 March 2016.

<sup>164</sup> A second agreement was subsequently signed between Santos, TEISA and TEISA FUTEBOL in relation to the player.

<sup>165</sup> Decision of the FIFA Disciplinary Committee dated 27 March 2019.

#### 4. Sporting (Portugal)<sup>166</sup>



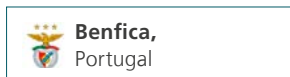
- Sporting concluded two ERPA with the investment fund Doyen Sports Investments Limited whereby the latter acquired 75% of the economic rights of one of its players and 35% of the economic rights of another of its players. One of the provisions thereof was as follows:
  - The Club shall communicate (within three days) to Doyen about all negotiations concerning any potential transfer of the players.



#### Considerations of the FIFA Disciplinary Committee<sup>167</sup>:

The Committee is of the firm opinion that a club that is fully independent would never have the obligation to inform a third party of the offers for its players.

#### 5. Benfica (Portugal)<sup>168</sup>



- Benfica signed an ERPA with the company Meriton Capital regarding one of its players.<sup>169</sup> The agreement stated that:
  - The [Portuguese] Club shall notify Meriton of all transfer offers, communicating promptly (within 3 (three) calendar days) every detail about each Offer [...] including but not limited to the club's name, the Transfer Fee proposed and offered, whether the Club accepts or rejects the offer, intermediary fees (if any), terms and conditions of payment of the Transfer Fee and information about whether the Player has accepted the offer.

<sup>166</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

<sup>167</sup> Please also note the reference to the CAS award related to this case on page 143.

<sup>168</sup> Decision of the FIFA Disciplinary Committee dated 1 March 2018. The decision was confirmed by the FIFA Appeal Committee on 12 April 2019 (case pending at CAS).

<sup>169</sup> The same clause was analysed by the FIFA Disciplinary Committee in its decision against Benfica in a case related to another player. The decision was confirmed by the FIFA Appeal Committee on 12 April 2019 (case pending at CAS).

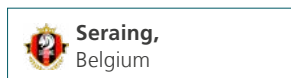


### Considerations of the FIFA Disciplinary Committee:

The Committee emphasises that a fully independent club would not be under the obligation to inform any other entity about the transfer offers it receives. In particular, the Committee is concerned about the fact

that this could create a situation of conflict of interest should Meriton have concluded a similar agreement with a club that would like to engage the Player.

## 6. Seraing (Belgium)<sup>170</sup>



- Seraing entered into several agreements with the investment fund Doyen Sports Investments Limited. One of those agreements (an ERPA dated 7 July 2015) was uploaded in TMS and included the following stipulation:

→ The Club shall notify DOYEN of all negotiations concerning any potential Transfer of the Player, communicating promptly (within 3 (three) business days) every detail about those negotiations, including but not limited to the club's name, the Transfer Fee proposed and offered, whether the

Club accepts or rejects the offer, intermediary fees (if any), terms and conditions of payment of the Transfer Fee and information about whether the Player has accepted the offer (the 'Transfer Information').



### Considerations of the FIFA Disciplinary Committee:

Clause 6 paragraph 1 of the ERPA [...] already imposed certain obligations on Seraing that a completely independent club would never have to follow, such as communicating all details concerning ongoing negotiations about the Player. Moreover, in the same

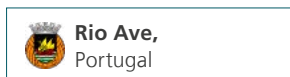
vein as the aforementioned clause, paragraph 3 of clause 7 of the ERPA establishes an obligation for Seraing to provide Doyen with any evidence regarding the Player's transfer.

<sup>170</sup> Decision of the FIFA Disciplinary Committee dated 4 September 2015.

### 3.2.5 OBLIGATION TO TRANSFER A PLAYER UNDER CERTAIN CONDITIONS

#### 3.2.5.1 Obligation to accept a transfer offer for the player (or acquire the third party's economic rights/pay a penalty fee)

##### 1. Rio Ave (Portugal)<sup>171</sup>



- Rio Ave concluded an agreement with the company Gestifute regarding one of the club's players. The provisions contained therein included the following:
  - If a third entity presents a proposal for the acquisition of the federative rights relating to the ATHLETE, RIO AVE, at GESTIFUTE's request, undertakes, within the period of 8 (eight) days, to either accept the proposal or acquire the fraction of the ECONOMIC RIGHTS pertaining to GESTIFUTE for the amount the latter would receive, pursuant to [number] 3 above, in the event that the transaction were to be concluded in the terms proposed by such third party, disregarding the price components which would only be due if a certain condition or conditions were met.
  - If RIO AVE intends to accept a proposal presented by a third entity for the acquisition of the federative rights relating to the ATHLETE ("*Proposal A*"), the following regime shall be applicable:
    - a. RIO AVE shall notify GESTIFUTE of said intention;
    - b. Within 8 (eight) days (...) GESTIFUTE may present to RIO AVE a proposal from another entity (Proposal B);
    - c. In the event that the price stated on Proposal B is higher by at least 5% than the one on Proposal A, regardless of the components of the price which would only be due if a certain condition or conditions were met, and the payment conditions for both proposals are the same, if RIO AVE accepts Proposal A it undertakes to pay GESTIFUTE the amount it would have received, as per number 3 above, had the transaction been completed as per the conditions of Proposal B, but excluding the components of the price which would only be due if a certain condition or conditions were met.

<sup>171</sup> Decision of the FIFA Disciplinary Committee dated 7 March 2019.



### Considerations of the FIFA Disciplinary Committee:

Gestifute's share in accordance with the relevant proportion of the amount proposed by the third party.

The Committee firstly concludes that the Club is obliged to act in accordance with Gestifute's request and notify when it decides to accept a transfer offer. The Committee finds such an obligation in itself to be indicative of the Club's contractual dependence and Gestifute's far-reaching control and involvement.

Furthermore, the Club is obliged to either accept the transfer offer it receives or to financially compensate Gestifute upon the latter's request and in accordance with the proposed terms of the transfer, regardless of the Club's own preferences or needs. The Committee finds that Gestifute, in conditioning the transfer offer, clearly prevents the Club from acting independently in transfer-related matters.

Clause 1 paragraph 7 contains several further obligations for the Club. Firstly, the Club is obliged to inform Gestifute when it decides to accept a transfer offer [...] Secondly, Gestifute has the contractual option of presenting an additional transfer proposal from another entity within eight days. Thirdly, and in the event that the Club decides to accept the initial transfer offer while the transfer offer proposed by Gestifute is 5% higher, the Club is contractually obliged to compensate Gestifute in accordance with the latter's higher transfer offer.

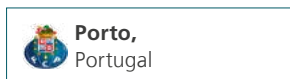
The Committee considers that paragraph 7, which grants Gestifute the contractual right to provide an additional transfer proposal, whereupon the Club either has to accept that proposal or financially compensate Gestifute when it decides not to accept it, constitutes a violation of the Club's independence. Such an obligation clearly prevents the Club from acting independently in transfer-related matters. The Committee deems that an independent Club cannot be subject to such influence.

The Club is essentially forced to accept any transfer, regardless of its sporting preferences or policies, where failure to do so results in financial penalties in the form of financial compensation.

The clauses are designed in such a way that rejecting a transfer offer (or the transfer offer proposed by Gestifute) would be prejudicial to the Club. The Club cannot simply reject a transfer offer, regardless of its own sporting interests. The Committee therefore does not agree with the Club's argument that it was "*completely free to accept or refuse an offer [...] it being exclusively up to the Club to choose the strategy that best suited its plans regarding the player*". The Committee finds that although the Club may have held the final decision-making power, it was inevitably and clearly "*influenced*" by the financial consequences of not accepting Gestifute's proposed transfer offer.



## 2. Porto (Portugal)<sup>172</sup>



- Porto signed an ERPA with the investment fund Doyen Sports Investments Limited regarding one of the club's players.<sup>173</sup> The agreement included the following provisions:

→ Where a club expresses an interest in securing the Transfer of the Player and makes an offer equal to or above €15,000,000 (the 'Transfer Offer'), such Transfer Offer shall be communicated to the FUND pursuant to clause 6.1. Both the Club and the FUND declare that they consider a reasonable Transfer Offer and market value for the Player [to be] the amount of fifteen million euros (€15,000,000).

If the Club decides not to accept the Transfer Offer, then the Club shall automatically be obliged to make payment to the FUND of the greater of the following amounts: a) the Grant Fee plus compound interests at the rate of 10% per annum from the date of this Agreement to the date of the Transfer Offer, [...] to be paid in two (2) instalments, 50% within thirty (30) calendar days from the date of the Transfer Offer and the pending 50% within ninety (90) calendar days of such event; or b) 33.33% of the proposed transfer fee in the Transfer Offer, to be paid by the Club to the FUND in three (3) instalments, 50% within ninety (90) calendar days from the date of the Transfer Offer, 25% within a maximum payment period of one (1) year from the date of the Transfer Offer and the pending 25% within a maximum payment period of two (2) years of such event.

If the Transfer Offer implies a partial or complete exchange of players from the transferee club to the Club involving the Player, the parties accept that the FUND shall have the option to either: a) in the event the Player is exchanged for new player/s, to transfer the FUND's Interest in the Player to the Club in exchange for a certain interest in the Economic Rights of the new player/s involved in such exchange, to be agreed with the Club, and in a percentage that is proportional to the 33.33% that was held in the Player by the FUND; or b) demand that the Club shall pay to the FUND an amount equal to 33.33% of the market value of such player/s [the 'new' player/s] in exchange, with a minimum payment to be made by the Club to the FUND of an amount equal to the Grant Fee plus compound interests at the rate of 10% per annum from the date of this Agreement to the date of the exchange of players, with such payment to be made in two (2) instalments, 50% within thirty (30) calendar days from the date of the Player's exchange and the pending 50% within sixty (60) calendar days of such event.

<sup>172</sup> Decision of the FIFA Disciplinary Committee dated 5 March 2019. The decision was confirmed by the FIFA Appeal Committee on 6 September 2019 (pending before CAS).

<sup>173</sup> A similar clause was inserted in another ERPA signed between Porto and Doyen Sports Investments Limited regarding another of the club's players, prompting the same considerations from the FIFA Disciplinary Committee. This decision was also confirmed by the FIFA Appeal Committee on 6 September 2019 (pending before CAS).



### Considerations of the FIFA Disciplinary Committee:

Clause 10.1, like clause 6.1, obliges the Club to immediately inform Doyen upon receipt of a transfer offer [...] Moreover, the clause establishes that the Club and Doyen consider an offer of EUR 15,000,000 or more to be reasonable and the market value of the Player. As a result [...] the Club cannot independently assess or decide on possible changes in the Player's value since it has already been determined by a third party.

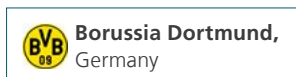
Clause 10.2 stipulates that *"(...) if the Club decides not to accept the offer, then the Club shall automatically be obliged to make payment to the FUND" of the "greater" of either the "Grant Fee plus compound interest at 10% per annum" or "33.33% of the proposed transfer fee in the Transfer Offer"*.

The Committee finds that stipulating in clause 10.2 that the Club is liable to compensate Doyen if it does not accept a transfer offer of EUR 15,000,000 is a clear and blatant violation of article 18bis of the RSTP. The Committee deems that an independent Club cannot be subject to such influence. The Club is essentially forced to accept any transfer, regardless of its sporting preferences or policies, where failure to do so results in financial penalties in the form of financial compensation.

Similarly, the same situation arises when the Club is offered a transfer with a partial or complete exchange of players [...] The acceptance of such an offer and the conditions of such are made fully dependent on Doyen's preference. Doyen either receives a stake in the "new" player proportional to 33.33% or receives an amount from the Club equal to 33.33% of the market value of the "new" Player but always with a minimum payment consisting of the *"Grant Fee plus compound interest at 10% per annum"*. Such an arrangement clearly influences the Club's independence and its policies in employment and transfer-related matters and potentially even the performance of its teams.

The structure of the agreement is designed in such a way that rejecting the offer would be so prejudicial to the Club that the Club could never be in a position to do so, regardless of its real sporting interests. These clauses undoubtedly and abusively influence the Club's employment and transfer-related matters in breach of article 18bis of the RSTP.

### 3. Borussia Dortmund (Germany)<sup>174</sup>



- Borussia Dortmund signed a transfer commission agreement with the company Isport Worldwide Limited with regard to one of the club's players. The following clauses were included in the agreement:

→ [...] the parties agree that the Company shall be remunerated by means of a fixed commission fee to be paid upon the Player being registered with the Club and, in addition to that, with a variable commission which will accrue and become payable in the event of the Player transferring to another club or in the event that the Club does not accept a good-faith offer from another club in accordance with the terms and conditions below.

→ Should the Club reject a good-faith written offer made by a club that the Player agrees to be employed by, then the Company shall receive 20% of the Fictitious Transfer Surplus in excess of the Fictitious Residual Value that would have been feasible in the event that the offer from the other club had been accepted.

The "*Fictitious Residual Value*" is defined for all transfer periods until 2016/2017 by clause 2.3 (i) to

(v) of section B. For each transfer period until the season 2016/2017 (clauses 3 to 6), the Agreement specifies (e.g. in clauses 5.1.2 and 6.1.2) that:

→ If one or more third-party clubs has/have submitted one or more good-faith offer in written form to the Club in the period from 1<sup>st</sup> May 2015 until 1<sup>st</sup> August 2015, the Club shall promptly and without undue delay inform the Company of each offer and of the substantial terms of such offer [...]

If the Club rejects the offer or otherwise does not accept the offer [...] and the Player is actually a member of the Club's professional team in the subsequent contract year, the Company shall receive 20% of the Fictitious Transfer Surplus in excess of the Fictitious Residual Value based on the sum mentioned in paragraph 2.3. (iii) that would have been feasible if the offer from the other club had been accepted.



#### Considerations of the FIFA Disciplinary Committee:

The Committee notes the Club's contractual obligation to either accept the transfer offer it receives or financially compensate Isport if a transfer offer is rejected in accordance with the proposed terms of such an offer (i.e. 20% of the "*Fictitious Transfer Surplus*").

The Committee finds that Isport, by conditioning the transfer offer, already prevents the Club from acting independently in transfer-related matters. The Committee further finds that stipulating that the Club is liable to compensate Isport if it does not accept a transfer offer is a clear violation of article 18bis of the

<sup>174</sup> Decision of the FIFA Disciplinary Committee dated 27 March 2019.

RSTP. The Committee deems that an independent club cannot be subject to such influence. The Club is essentially forced to accept any transfer, regardless of its sporting preferences or policies, where failure to do so results in a financial penalty.

The structure of the agreement appears to be designed in such a way that rejecting the offer would be prejudicial to the Club. The Club is not in a fully independent position to reject such an offer based on factors such as its real sporting interests. These clauses undoubtedly influence the Club's employment and transfer-related matters in breach of article 18bis of the RSTP.

For the sake of clarity, the Committee wishes to emphasise that a club is guilty of the prohibited conduct when the contract in question effectively enables or entitles the third party to have an influence on the club in such matters, regardless of whether or not this influence actually materialises.

The fact of the matter is that the parties attached considerable financial consequences to the situation where the Club would reject a transfer offer, regardless of whether the Club is ranked 12<sup>th</sup> on the list of European clubs by revenue. Such a clause affects the Club's independence in two ways: it may be forced to transfer the Player, contrary to its sporting interests, to avoid financial consequences, and maintaining the Player could come at a considerable price, which the Club may or may not be able to pay, in any case affecting its functioning (including the Club's sporting interests).

Either one of the situations prevents the Club from operating fully independently, which is sufficient to conclude that the abovementioned clauses are in breach of article 18bis of the RSTP.

#### 4. São Paulo (Brazil)<sup>175</sup>



- São Paulo entered into different agreements with the companies DIS and PHC relating to a player.
- At the time of the agreements, DIS owned 55% of the player's economic rights and another Brazilian club, Santos, owned the other 45% (as well as the player's federative rights).
- São Paulo was interested in acquiring the player's federative rights, and through this agreement, it declared that it would present a formal transfer proposal to Santos in order to acquire those rights. According to this agreement, if the offer were accepted by Santos, DIS would not require São Paulo to buy the 55% of the economic rights owned by DIS. However, in return, São Paulo would recognise DIS's right to preserve its 55% of the player's economic rights, and particularly the right to receive 55% of the net amount resulting from a potential permanent transfer to another club during the player's employment contract. To that effect, conditions were stipulated with regard to such transfer offers:

→ If São Paulo does not accept the submitted proposal, subject to the entire content of item 4.1.5. being complied with, the ASSIGNEE has the option to require SPFC [São Paulo], within 10 (ten) days of the refusal, to buy its full percentage of

the ATHLETE's economic rights, receiving for the transfer, the transferred percentage applied to the value indicated in item 4.1.3. (i) a (iv) above, according to the formalisation date of the proposal.



#### Considerations of the FIFA Disciplinary Committee:

The Committee firstly analyses the content of clause 4.1.3 that is referred to. [...] If São Paulo receives a written and concrete proposal to transfer the Player's federative rights based on the content of clause 4.1.3 and does not accept such an offer, DIS has the option to require São Paulo to buy the total percentage of the Player's economic rights that it owns.

In the Committee's opinion, the above appears to be a punitive measure that would harm the Club's independent decision-making. If São Paulo decides to proceed independently and to refuse the transfer

offer, it has to face the possible financial consequences that could arise from such a situation.

By conditioning a purely sporting choice (refusing a transfer offer in order to keep a player in the squad) based on a potential economic consequence (the acquisition of 55% of the Player's economic rights from DIS) the Club is affected in its independence and decision-making process in both employment and sporting matters. One can easily infer that an independent club would not have to face such a dilemma when an opportunity as described in the agreement occurred.

<sup>175</sup> Decision of the FIFA Disciplinary Committee dated 11 April 2019.

- The agreements also stipulated the following:

→ In the event of the acceptance by São Paulo of an on-paid-basis proposal for the Athlete's federative-rights transfer to another football club in Brazil or outside for a lower price than the one established in item 4.1.3 above, defined as the minimum expectation, and according to the proposal date, São Paulo will be obliged to compensate the assignee in the amount equating to the difference between the amount to be transferred to the assignee for

the economic rights and that amount that would have applied if the transfer were to observe the minimum expectation, according to the date and amount indicated in item 4.1.3. above, except if São Paulo obtains the formal consent of the assignee, stating its agreement with the amount for which the economic rights are to be transferred; in that case, any possibility of compensation would be removed.



#### Considerations of the FIFA Disciplinary Committee:

In the same vein as the previous clauses, the Committee is eager to emphasise that, according to this clause, the Club is far from enjoying full independence where "employment and transfer-related matters" are concerned. In the Committee's opinion, this clause shows DIS's interference with the Club's ability to decide independently on the amount of the potential transfer fee and even on the future destination of the Player since, if the latter is transferred to a Brazilian club this clause applies.

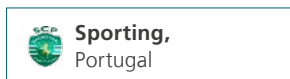
Once again, the Committee highlights that the Club's willingness might be jeopardised by the Club's necessity to avoid the financial consequences this clause imposes.

What is more, the Committee underlines that the Club does not seem to appreciate the scope of these clauses

since it affirms that "the only obligation of São Paulo was to financially bear the consequences of its own sporting decisions and only if these were economically disadvantageous to DIS and/or PHC". This is exactly what is punishable, since the Club's sporting decisions will generate significant financial consequences for the Club.

Additionally, the Committee is eager to emphasise that the mere presence of such clauses in both the agreement and amendment does represent an infraction per se. In other words, the Committee considers that the mere fact of contractually agreeing upon the insertion of such clauses already constitutes an infringement of the FIFA RSTP and therefore should be sanctioned as such.

## 5. Sporting (Portugal)<sup>176</sup>



- Sporting concluded two ERPA with the investment fund Doyen Sports Investments Limited whereby the latter acquired 75% of the economic rights of one of its players and 35% of the economic rights of another of its players. The provisions contained therein included the following:
  - Both the Club and Doyen declare that they consider a reasonable transfer offer and market value for the players [to be] the amount of EUR 8,000,000 for [ ] and EUR 9,000,000 for [ ].
  - If Sporting CP receives a transfer offer equal to or above those specified amounts, if requested by the Fund, the Club is obliged to accept the offer or compensate the Fund accordingly.



### Considerations of the FIFA Disciplinary Committee:

Clause 10 shows that Doyen has the power to influence the Club's decision to transfer a player by stipulating punitive measures in the event that the Club does not accept the transfer offer. For example, in the X agreement, under clause 10.4 ("*transfer offer equal to or above EUR 1,500,000 but lower than EUR 9,000,000 not accepted by the Club*"), the Club shall pay Doyen at least EUR 1,500,000 or 35% of the proposed transfer fee, at Doyen's discretion.

In the case stipulated under clause 10.5 ("*transfer offer equal to or above EUR 9,000,000 not accepted by the Club*"), the Club shall pay Doyen 35% of the amount that has been offered.

This clause obliges Sporting to accept the offer and transfer the player in accordance with Doyen's decision, in total breach of article 18bis of the RSTP. The structure of the agreement is designed in such a way that rejecting the offer would be so prejudicial to the Club that the Club could never be in a position to do so, regardless of its real sporting interests. These clauses undoubtedly and abusively influence the Club's employment and transfer-related matters, in breach of article 18bis of the RSTP.

<sup>176</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.



In relation to this case, it is also important to note the arbitral award rendered by CAS on 21 December 2015 in a case (CAS 2014/O/3781 and CAS 2014/O/3782) in which both Sporting and Doyen were involved.

The Committee deems it important to mention various paragraphs of the said award, especially from paragraph 162 onwards:

*[...] "the immoral nature of the contract is revealed not only merely through its [...] offence to public morality but also because of its infringement of economic freedom. [...] The ERPAs are also immoral because they set up a control mechanism which allows Doyen to review any of Sporting's decisions and to influence it [Sporting] by requiring" at its sole discretion, a payment by the Club each time the latter decides to decline a transfer offer (article 10 of the ERPAs).*

*[...] The purpose of the Put Option is a "quite obvious mechanism to push for a transfer, because if a transfer does not occur until a certain date, then the fund will threaten to use (or will use) this mechanism to either force a transfer or get a handsome revenue on its investment" [...] the ERPAs have been drafted in a manner so that Doyen always has the final word and bears no risk whatsoever.*

*[...] There was no true negotiation between Sporting and Doyen, which imposed its terms and conditions throughout [...] the ERPAs are null and void because they provide "for such an economical unbalance that it amounts to an excessive restriction of Sporting's economic liberty under Article 27 of the Swiss Civil Code [...] Doyen's illicit actions and contract breaches create severe situations of unfair competition" [...] the pressure exerted by TPO on clubs' independent decision-making as rational market actors influences the free competition among clubs.*

The Committee notes that the Club itself claimed that the content of these agreements without a doubt allows Doyen to exert an influence on the Club's independence in employment and transfer-related matters, and therefore the Club must be declared in breach of article 18bis of the RSTP.



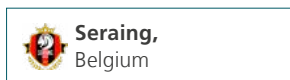
## 6. Sevilla (Spain)<sup>177</sup>



- Sevilla signed an agreement with the investment fund Doyen Sports Investments Limited to transfer 20% of the economic rights of one of its players to the company. The following clause was included:

→ In the event that Sevilla receives a written and unconditional offer from a football club for the definitive transfer of the player, as of 1 July 2013, for an amount equal to or higher than €10,000,000, and Sevilla does not want to proceed with the transfer of the federative rights of the player, Sevilla would be obliged to acquire from Doyen its 20% of the player's economic rights for a price equal to 20% of the offer received by Sevilla from the other club.

## 7. Seraing (Belgium)<sup>178</sup>



- A cooperation agreement was signed between Seraing and Doyen Sports Investments Limited concerning, among others, the sale of 30% of the economic rights of three players from the club to Doyen. One of the provisions therein was as follows:

→ In the event that the Transfer Offer for any of the players is equal to or above five hundred thousand euros (€500,000), IF SUCH TRANSFER OFFER IS ACCEPTED by DOYEN SPORTS and by the Player involved but not accepted by SERAING UNITED, SERAING UNITED is obliged to pay DOYEN SPORTS 30% of the transfer fee proposed by the transferee club in the Transfer Offer, payable according to the payment schedule referred to in the Transfer Offer.



### Considerations of the FIFA Disciplinary Committee:

Clause 5 of the Cooperation Agreement allowed Doyen to exert influence on Seraing's independence

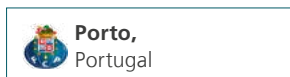
in employment and transfer-related matters as well as its policies.

<sup>177</sup> Decision of the FIFA Disciplinary Committee dated 9 May 2019 – several clauses of the agreement were found to be in breach of article 18bis. Since the grounds were not requested by the club, only the terms of the decision are available.

<sup>178</sup> Decision of the FIFA Disciplinary Committee dated 4 September 2015.

### 3.2.5.2 Obligation to transfer the player before a certain date, subject to a penalty fee

#### 1. Porto (Portugal)<sup>179</sup>



- Porto signed an ERPA with Doyen Sports Investments Limited regarding one of the club's players. The agreement contained the following stipulations:

→ Independently of all the above, as agreed by the parties, in the event that the Club has not transferred the Player on or before October 24<sup>th</sup> 2014, at the FUND's request and discretion, the Club shall pay to the FUND the Anticipated Payment.

The payment of the Anticipated Payment to the FUND shall be made in two (2) equal instalments, the first 50% being due within thirty (30) days from October 24<sup>th</sup> 2014, and the second 50% within ninety (90) days of such date.

The Anticipated Payment has been established by the parties at the time of entering into this agreement and has been accepted by both parties freely, voluntarily and unreservedly, as both regard it as reasonable in order to protect the FUND's investment in the Club and the provision of funding and financial services to the Club on competitive terms and conditions.



#### Considerations of the FIFA Disciplinary Committee:

Clause 15 of the ERPA (*"Anticipated termination"*) stipulates that if the Player is not transferred on or before 24 October 2014, Doyen had the option to request payment by the Club of the *"Anticipated Payment"* (i.e. *"Grant Fee plus compound interest at 10% per annum"*).

The Committee considers the clause to be a clear violation of article 18bis of the RSTP considering that Doyen has the power and influence to decide when the Player has to be transferred (i.e. before 24 October 2014), where failure to transfer the Player would result

in Doyen's one-sided option to receive the *"Anticipated Payment"*.

The ERPA is designed in such a way that failing to transfer the player before 24 October 2014 could be financially harmful to the Club. The Club is forced to transfer the player before that date in order to avoid any financial consequences. This shows it to be a punitive clause that clearly affects the Club's independence in transfer and employment-related matters, in breach of article 18bis of the RSTP.

<sup>179</sup> Decision of the FIFA Disciplinary Committee dated 5 March 2019. The decision was confirmed by the FIFA Appeal Committee on 6 September 2019 (pending before CAS).

## 2. São Paulo (Brazil)<sup>180</sup>



- São Paulo entered into different agreements with the companies DIS and PHC relating to a player.
- At the time of the agreements, DIS owned 55% of the player's economic rights and another Brazilian club, Santos, owned the other 45% (as well as the player's federative rights).
- São Paulo was interested in acquiring the player's federative rights, and through this agreement, it declared that it would present a formal transfer proposal to Santos in order to acquire those rights. According to this agreement, if the offer were accepted by Santos, DIS would not require São Paulo to buy the 55% of the economic rights owned by DIS. However, in return, São Paulo would recognise DIS's right to preserve its 55% of the player's economic rights, and particularly the right to receive 55% of the net amount resulting from a potential permanent transfer to another club during the player's employment contract. One of the provisions inserted regarding that possible transfer was the following:

→ São Paulo will be forced to buy 10% of the 55% of the player's economic rights owned by DIS if the player has not been transferred against payment before 31 October 2014.



### Considerations of the FIFA Disciplinary Committee:

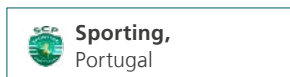
This clause shows the lack of independence of São Paulo, which drastically reduces its freedom. Indeed, in order to keep the Player in its squad beyond 31 October 2014, the Club is obliged to buy (and therefore to pay for) 10% of the Player's economic rights held by DIS.

In other terms, if the Club is facing financial difficulties and is unable to pay DIS for that 10%, but wants to

keep the Player within the team, it has to let the Player go, in complete conflict with its sporting policy and interests. The structure of the agreement is designed in such a way that rejecting a potential transfer offer would be so prejudicial to the Club that the Club could never be in a position to do so, regardless of its real sporting interests.

<sup>180</sup> Decision of the FIFA Disciplinary Committee dated 11 April 2019.

### 3. Sporting (Portugal)<sup>181</sup>



- Sporting concluded two ERPA's with the investment fund Doyen Sports Investments Limited whereby the latter acquired 75% of the economic rights of one of its players and 35% of the economic rights of another of its players.

→ This clause shows that Doyen has the power to decide when the player must be transferred. For example, in the event that the Club has not transferred one of the players on or before 1 July

2015, at Doyen's request and discretion, Doyen would have been entitled to exercise and request the execution of the 'Put Option' at any time.



#### Considerations of the FIFA Disciplinary Committee:<sup>182</sup>

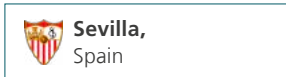
The structure of these agreements is designed in such a way that failing to transfer the players before 1 July 2015 would be so financially prejudicial to Sporting that it would be forced to transfer the players before the said date in order to avoid any financial consequences.

This shows it to be a punitive clause that clearly affects the Club's independence in transfer and employment-related matters, in breach of article 18bis of the RSTP.

<sup>181</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

<sup>182</sup> Please also note the reference to the CAS award related to this case on page 143.

#### 4. Sevilla (Spain)<sup>183</sup>

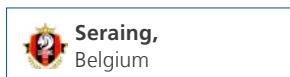


- Sevilla signed an agreement with the investment fund Doyen Sports Investments Limited to transfer 20% of the economic rights of one of its players to the company. The agreement stipulated the following:
  - ➔ Non-transfer of the player (31 January 2015): The parties have also agreed that should the player not be transferred prior to 31 January 2015, in order to protect the return and profitability of Doyen, and at the request and discretion of Doyen, the Club undertakes voluntarily, expressly and without reservation, to pay to Doyen an amount equal to EUR 660,000 + an annual interest rate of 15% [...].

Such amount will be paid by Sevilla to Doyen within a maximum of 7 calendar days as from 31 January 2015, whereupon the Club will regain the 20% of the player's economic rights that are held by Doyen.

<sup>183</sup> Decision of the FIFA Disciplinary Committee dated 9 May 2019 – several clauses of the agreement were found to be in breach of article 18bis. Since the grounds were not requested by the club, only the terms of the decision are available.

## 5. Seraing (Belgium)<sup>184</sup>



- Seraing entered into several agreements with the investment fund Doyen Sports Investments Limited. One of those agreements (an ERPA dated 7 July 2015) was uploaded in TMS and stated as follows:

→ The Club hereby grants DOYEN and DOYEN accepts a Put Option by which [...] DOYEN is entitled to sell to the Club, and the Club is obliged to purchase from DOYEN, DOYEN's Interest in the Player's Economic Rights (25% – twenty-five percent), for an amount equal to €65,000 (sixty-five thousand euros – the 'Put Option Fee'). The price of the Option Right granted by the Club to DOYEN is included within the Grant Fee paid by DOYEN.

Therefore, in the event that the Club has not transferred the Player on or before July 1<sup>st</sup> 2017 (the 'Put Option Date'), regardless of the reason or cause, at DOYEN's request and discretion, DOYEN will be entitled to exercise and request the execution of the Put Option.



### Considerations of the FIFA Disciplinary Committee:

Clause 13 mainly foresees that if the Player is not transferred before a given date (1 July 2017), Doyen can request the payment of EUR 65,000 from Seraing. Therefore, the intention of that provision may be to – in the eyes of the Committee – encourage the club to transfer the Player (despite the club's sporting interests) in order to avoid incurring such a debt.

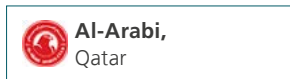
There is no doubt that besides having agreed on the transfer of the economic rights of the Player, Doyen

also acquired the capacity to influence the future of the Player, such as the Player's next club, with a direct influence on the Player's employment situation with the club. By signing the agreement, the club created a situation whereby the club-player relationship is impaired, as the player's future is also dependent on the decisions of Doyen and not solely on his sporting performance for the club.

<sup>184</sup> Decision of the FIFA Disciplinary Committee dated 4 September 2015.

### 3.2.5.3 The club has no say in the future transfer of the player

#### 1. Al-Arabi (Qatar)<sup>185</sup>



- Al-Arabi and the sports services company Al Hadaf entered into a memorandum of understanding (MoU) focused on cooperation in the field of sport in general and in football in particular. The agreement stated the following:

→ The First Party [Al Hadaf] is entitled to sell or lease any player or trainer it had recruited and thus pay all incurred expenses without having recourse to the Second Party [the club].

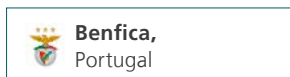


#### Considerations of the FIFA Disciplinary Committee:

This entitles the Company to sell or lease any player without having to inform the Club, which undermines the independence of the Club in employment and transfer-related matters.

<sup>185</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

## 2. Benfica (Portugal)<sup>186</sup>



- Benfica signed an agreement with Robi Plus, whereby the company acquired 100% of the economic rights of one of the club's players. The agreement contained the following provisions:
  - ➔ Benfica SAD will promote the transfer of the player, without any transfer fee, via TMS, to the club to be nominated by Robi Plus after 1 January 2013.
  - ➔ As a result of the previous clauses, Robi Plus herein undertakes to ensure the rescission of the sport employment contract signed between the player and Benfica SAD (...), without any financial compensation to the player.



### Considerations of the FIFA Disciplinary Committee:

The Committee's attention was drawn to the wording of clause 2 of the December 2012 agreement, which undoubtedly stipulates that Benfica undertakes to promote the transfer of the player to the club to be nominated by Robi Plus after 1 January 2013.

The same clause adds that Benfica undertakes to do so without receiving any transfer compensation. As if that were not enough, the following clause of the agreement sets forth that the company will undertake to ensure the termination of the employment contract between the player and Benfica SAD without any financial compensation to be paid to the player.

After analysing the aforementioned clauses, the Committee is convinced that the club entered into a contract – signed on 28 December 2012 – enabling the company Robi Plus, a third party, to acquire the ability to influence (to say the least) the club's independence and policies in employment and transfer-related matters.

Indeed, in the opinion of the Committee, there is no doubt that, besides having agreed on the transfer of the federative and economic rights of the player, Robi Plus also acquired the capacity to decide alone on the future of the player, such as the player's next club, with a direct influence on the player's employment situation with the club. The Committee deems it appropriate to recall that, as per the contract signed in December 2012, the company assured the rescission of the contract of the player without financial compensation to be paid to the latter.

As a result of the foregoing, the Committee established that by entering into such an agreement with a third party, the club is in breach of article 18bis paragraph 1 of the RSTP.

<sup>186</sup> Decision dated 24 January 2014 of the Disciplinary Committee.



### 3.2.6 CLAUSES GRANTING THE THIRD PARTY OTHER TYPES OF INFLUENCE

#### 3.2.6.1 Joint selection of new players to reinforce the club's squad

##### 1. Rayo Vallecano (Spain)<sup>187</sup>



- The club Rayo Vallecano and the company NJQY Sports Management Co, Ltd, registered in China and more commonly known as Qbao, signed a sponsorship agreement on 8 July 2014 so as to promote the company's brand by implementing various measures, inter alia, signing a player of Chinese nationality to play for the club's first team. The agreement stipulated the following:
  - The parties agree that the Club will proceed to the recruitment of ONE football player of Chinese nationality who must be of legal age in order to provide his services preferably on loan (free temporary loan of his federative rights to Rayo Vallecano de Madrid, SAD) for the Rayo Vallecano first team, during the 2014-2015 season, and whose registration with the Club will take place within the first or second registration period for player licences [...] due to the interest of the player as well as the Sponsor in showcasing his professional quality and potential.
  - The sponsoring company undertakes [...] to provide the Rayo Vallecano sports management with detailed information on possible players [...]
  - Rayo Vallecano de Madrid, SAD will sign a professional-player federative contract with the player ultimately decided upon, for one season that [...] may be extended [...] up to a maximum of three seasons, under the following economic conditions assumed by Rayo Vallecano de Madrid, SAD [...]
    - a) EUR 50,000 GROSS divided into 12 monthly payments.
    - B) EUR 25,000 GROSS for staying in the first division.
    - C) EUR 25,000 GROSS if the player plays 25 official matches.
    - D) EUR 30,000 GROSS if the player plays a further 15 matches.
  - In any case and as long as the player is not registered for Rayo Vallecano as a result of a provisional loan of his federative rights, the sponsoring company will be recognised in a private document that is signed between the parties with the player's consent as having full ownership of the economic rights derived from the federative rights of the player. In any case, it is up to the sponsor to decide concerning the destiny of the player at the end of each season.

<sup>187</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.



### Considerations of the FIFA Disciplinary Committee:

The Committee notes that, in accordance with the wording of this clause, the club had to sign a player who met two specific requirements, namely being: a) of Chinese nationality, and b) of age. Hence, the club's decision to sign a player that it deemed suitable was limited to the requirements already predetermined by the company. Similarly, the club could only sign a player who 1) met the previously mentioned requirements, and 2) was on the company's predetermined list.

Furthermore, the clause stipulates that the signed player must preferably be on loan and play for the first team of the club during a specific season, as well as receive a specific salary. This is a clear directive as to when and how to sign the player and for which team, once again undermining the club's independence in signing its players and eliminating the club's freedom to negotiate with the player essential elements of a player's employment contract, namely his salary and the duration of his contract.

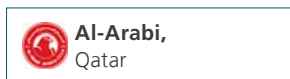
The Committee therefore deems that the club's argument is wrong, since the club was not at any time at liberty to autonomously decide on the signing and employment conditions of its player.

The Committee finds that the said clause imposes the following obligations on the club:

- a. to sign a Chinese player who is of age, preferably on loan and playing for the first team of the club during a specific season;
- b. to select the player from a list of players provided by the company;
- c. to offer the player a contract of a predetermined duration and a salary already agreed with the company;
- d. to give the company the power to decide the player's fate at the end of each season.

Given the above, it is clear that the provisions in clause III of the partnership agreement restrict and directly impact the club's independence and autonomy in employment and transfer-related matters, since in a situation of total independence, the club would not be obliged, at any moment, to sign a player who meets specific requirements predetermined by a third party, or for a specific season. Further still, the Committee notes that this clause in fine deprives the club of its power to decide at the end of each season whether the player will stay with the club or will be transferred, giving that power exclusively to the company.

## 2. Al-Arabi (Qatar)<sup>188</sup>



- Al-Arabi and the sports services company Al Hadaf entered into a memorandum of understanding (MoU) focused on cooperation in the field of sport in general and in football in particular. The agreement included the following clauses:

→ [...] the company commits to buy professional players, local or foreign, cover the costs of trainers at its own expense, in addition to salaries and related expenses for recruiting players, trainers and agents whose contracts are made on behalf of the Second Party [the club], and preserves the ownership of the players and trainers and holds the right to their sale or rent.

[...] the aim is to strengthen Al-Arabi Sports Club so it will achieve excellent results at local, Arab and Asian levels. The First Party [the company] will coordinate with the Second Party [the club] in order to provide local and foreign expertise through trainers, players and technical staff.



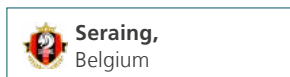
### Considerations of the FIFA Disciplinary Committee:

The Committee considers that the Club has entered into an agreement whereby a third-party company is given the right to engage and employ whatever player it chooses, as well as release any players on loan or permanently. This constitutes blatant interference with the independence and policies of the club in employment and transfer-related matters.

It is clear to the Committee that the fact of having to “coordinate” with the company when deciding upon employment and transfer-related matters is in stark contrast to the concept of the club’s independence in exercising its policies and undermines the club’s autonomy in that regard.

<sup>188</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

### 3. Seraing (Belgium)<sup>189</sup>



- A cooperation agreement was signed between Seraing and Doyen concerning, among others, the sale of 30% of the economic rights of three players from the club to Doyen. One of the provisions contained therein was as follows:
  - DOYEN SPORTS and SERAING UNITED will jointly identify the sports needs of SERAING UNITED to determine together, for each summer transfer period, a minimum of two players (and – in principle – from three to four players) whose engagement by SERAING UNITED is likely to reinforce the potential of the team. Once identified and the terms and conditions for each player have been agreed on, DOYEN SPORTS and SERAING UNITED will conclude – for each player concerned – a specific TPI convention based on the model in Annexe A ('ECONOMIC RIGHTS PARTICIPATION AGREEMENT – ERPA') [...]



#### Considerations of the FIFA Disciplinary Committee:

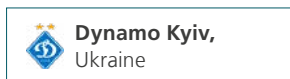
The Committee underlines the fact that Doyen has been granted the ability – “jointly” with the club – to decide which players are “likely to reinforce the potential of the team” and consequently to be transferred to Seraing during each summer transfer period.

As a result of the above, the Committee concludes that the above-analysed clause of the cooperation agreement clearly put Seraing in a position of dependency in transfer or employment-related matters with respect to Doyen and is consequently in breach of article 18bis of the RSTP.

<sup>189</sup> Decision of the FIFA Disciplinary Committee dated 4 September 2015.

### 3.2.6.2 The third party has the right to negotiate the future transfer of the player

#### 1. Dynamo Kyiv (Ukraine)<sup>190</sup>



- Reference is made to an agreement signed between Dynamo Kyiv and the company Newport Management Ltd.
- Subsequently, an appendix to the employment contract signed between the club and one of its players stated that all payments to be made to the Player (i.e. salaries and bonuses) could be executed by the company on behalf of the Club.
- The following clauses were included:
  - Rights to transfer football players and coaches [...] which is defined as the rights of the company to appear at negotiations for executing transfer contracts of football players and coaches from any football clubs and teams in Ukraine and abroad, and the right to determine the terms and conditions of such transfer contracts, to sign them and to receive the respective consideration and payments, including for the purpose of further payment settlements with the Club.
  - [...] the company is entitled to execute agreements with third parties during the 'Contract Period' connected with the exercise of the rights transferred to it by the Club [...]
  - [...] The club undertakes to transfer the rights to the Company for their use and exercise, for the Contract Period, as provided for by the Contract [...]
  - [...] Rights to transfer football players and coaches. Note: All the above-mentioned rights may be exercised independently by the Club, if this matter is properly approved by the Company (or the Company is properly notified about it).
  - [...] The Club shall have the right: [...] to sign contracts which relate to the use and exercise of the transfer rights of football players and coaches jointly with the Company.



#### Considerations of the FIFA Disciplinary Committee:

These clauses clearly demonstrate, in the Committee's opinion, that Newport has the ability to conclude all types of agreements concerning the transfer of both players and officials.

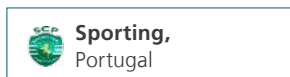
In addition, the Club's capacity to carry out such activity – intrinsic to any club's business – is made subject to

Newport's approval. In this sense, even if the General Contract were to be read as not requesting Newport's approval but just imposing an obligation to inform the third party – as argued by the Club –, the Committee concludes that such an obligation would also show the Club's lack of independence in transfer-related matters.

<sup>190</sup> Decision of the FIFA Disciplinary Committee dated 4 September 2015.

### 3.2.6.3 The club and the third party to mutually decide on the market value of the player

#### 1. Sporting (Portugal)<sup>191</sup>



- Sporting concluded two ERPA's with the investment fund Doyen Sports Investments Limited whereby the latter acquired 75% of the economic rights of one of its players and 35% of the economic rights of another of its players. The following stipulation was included therein:

→ Both the club and the FUND declare that they consider the amount of €8,000,000 [to be] a reasonable Transfer Offer and the market value of the player.



#### Considerations of the FIFA Disciplinary Committee:<sup>192</sup>

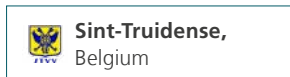
The Committee deems that a club enjoying total freedom would independently determine what a reasonable transfer offer is, taking into account, for example, the sporting performances of the player, and would not set such an amount with a third party before he has even played one single minute for the club. The

fact that the amount to be considered "a reasonable Transfer Offer" has been previously agreed together with a third party allows the latter to influence the Club's independence and policies in transfer-related matters.

<sup>191</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

<sup>192</sup> Please also note the reference to the CAS award related to this case on page 143.

## 2. Sint-Truidense (Belgium)<sup>193</sup>



- Sint-Truidense signed an agreement with KICKRS (an organisation claiming to be a start-up aimed at crowdfunding to secure revenue to be invested in the transfer of football players) regarding one of the club's players, who was transferred from the Greek club PAE Aiginiakos. The following clauses were included:

→ [...] Within 15 working days of the signing of this Agreement, the Club and KICKRS shall each appoint one expert of their choice to comprise a Panel of Experts to evaluate the market value of the Player [...] the Panel of Experts shall jointly decide every three months and in case of a Cash Event [...] on the current Market Value of the Player. [...] When determining the Market Value of the

Player, the Panel of Experts shall prepare a detailed memorandum containing all essential arguments and elements which enables the Panel of Experts to come to the determination of the Market Value. [...] the Market Value in case of a Cash Event finally determines the amount payable to the Investors as set out [...]



### Considerations of the FIFA Disciplinary Committee:

The Committee considers that the aforementioned clauses allow KICKRS to exert influence on the Club's independence in employment and transfer-related matters as well as its policies for the reasons set forth in the following paragraphs.

Furthermore, the Committee notes that in case of a Cash Event, the Club has to pay KICKRS the amount corresponding to the Market Value (i.e. transfer of the Player to another club). The Market Value is calculated by a Panel of Experts, whose members are in part appointed by KICKRS.

In particular, according to clause 5.3 of the Investment Agreement, the Panel of Experts will set the Player's

Market Value every three months or in case of a Cash Event. In this respect, the Committee wishes to recall that, as established under the definition K, a Cash Event can only occur after the transfer of the Player to another Club (cf. par. II/111 above). Finally, clause 5.6 clearly foresees that the "Market Value in case of a Cash Event finally determines the amount payable to the Investors as set out in 6.1".

In this sense, the Committee notes that this section foresees a scenario in which the Club may decide that a certain amount offered by another club for the transfer of the Player is a profitable transaction but may decide not to accept it given that the transfer fee offered is lower than the established Market Value

<sup>193</sup> Decision of the FIFA Disciplinary Committee dated 4 March 2016.

– which is determined by the Panel of Experts every three months by considering several factors, such as *“the offers received by the Club from other clubs for the Player, the salary of the Player, the number of appearances and the general performance of the Player as well as any publicly available information which may directly or indirectly have an impact on or reflect the value of the Player”* (cf. clause 5.4).

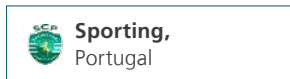
Therefore, there are several factors that can be taken into account, and not only the actual transfer fee received by the Club for the transfer of the Player in

case of a Cash Event. The foregoing is corroborated by the content of clause 8.1.2 of the SPL-Agreement. In this context, if the Panel of Experts in determining the Market Value on a three-monthly basis sets a higher Market Value than any offer that would be received for the Player, the Club could be indirectly forced to refuse any offer below the Market Value in order to avoid the risk of having to repay to KICKRS more than what it would receive for the transfer of the Player. The Committee firmly believes that a club that is fully independent would never subject its transfer-related decisions to any evaluation made by a third party.



### 3.2.6.4 The third party can oblige the club to purchase its share of the player's economic rights

#### 1. Sporting (Portugal)<sup>194</sup>



- Sporting concluded two ERPA's with the investment fund Doyen Sports Investments Limited whereby the latter acquired 75% of the economic rights of one of its players and 35% of the economic rights of another of its players. The following stipulation was included therein:

→ This clause shows the *"put option mechanism"* by which Doyen is entitled to sell to the Club and the Club is obliged to purchase from Doyen the percentage owned by Doyen of the player's economic rights for an amount equal to EUR 3,708,000 for [...] and EUR 1,950,000 for [...]



#### Considerations of the FIFA Disciplinary Committee<sup>195</sup>:

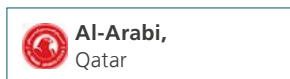
As a result of this clause, the Club would be forced to make a major investment at an undesirable time, losing independence and decision-making power in transfer and employment-related matters.

<sup>194</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

<sup>195</sup> Please also note the reference to the CAS award related to this case on page 143.

### 3.2.6.5 The third party to buy players for the club, cover their expenses, retain their economic rights and hold the decision to transfer them

#### 1. Al-Arabi (Qatar)<sup>196</sup>



- Al-Arabi and the sports services company Al Hadaf entered into a memorandum of understanding (MoU) focused on cooperation in the field of sport in general and in football in particular. The agreement stated as follows:

→ [...] the company commits to buy professional players, local or foreign, cover the costs of trainers at its own expense, in addition to salaries and related expenses for recruiting players, trainers

and agents whose contracts are made on behalf of the Second Party [the club], and preserves the ownership of the players and trainers and holds the right to their sale or rent.



#### Considerations of the FIFA Disciplinary Committee:

In this sense, the Committee considers that the Club has entered into an agreement whereby a third party company is given the right to engage and employ whatever player it chooses, as well as release any

players on loan or permanently. This constitutes blatant interference with the independence and policies of the club in employment and transfer-related matters.

- The following clause was also included:

→ The First Party [Al Hadaf] covers all kinds of payments made to players and trainers, such as advances on salaries, salaries, rewards and expenses, while the Second Party [the club] covers all financial expenses

due to the termination of contracts or emanating from the settlement of disputes related to the players' salaries.



#### Considerations of the FIFA Disciplinary Committee:

In accordance with this clause, the Club is liable for paying the financial dues arising from the termination of the contract of the new players and coaches as well as any costs arising from any dispute resolution procedure in relation to same. The undermining of the Club's autonomy in transfer and employment-related matters

is compounded by the fact that the Club must pay the legal costs of the termination of contracts entered into by a third party. Given that the Club is denied the right, under the agreement, to decide whether or not to contract these individuals, the Club is then exposed to additional potential liability by this clause.

<sup>196</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

## 4 JURISPRUDENCE ON TPO AGREEMENTS



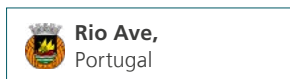
As noted in chapter 2.2 of this document, a total of 13 clubs have been sanctioned for a violation of article 18ter of the RSTP.

**The decisions of FIFA judicial bodies regarding article 18ter have been divided as follows:**

Article 18ter		Number of decisions
<b>Paragraphs 1 and 2</b>	<p>Paragraph 1:</p> <p>→ 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.</p> <p>Paragraph 2:</p> <p>→ The interdiction as per paragraph 1 comes into force on 1 May 2015.</p>	<b>6</b>
<b>Paragraph 4</b>	<p>→ 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.</p>	<b>3</b>
<b>Paragraph 5</b>	<p>→ 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.</p>	<b>6</b>

## 4.1 DECISIONS REGARDING ARTICLE 18TER PARAGRAPHS 1 AND 2

### 1. Rio Ave (Portugal)<sup>197</sup>



- Rio Ave concluded an agreement with the company Gestifute regarding one of the club's players, which stated the following:
  - In the context of the said negotiations, BENFICA has presented RIO AVE with a proposal for the acquisition of the registration rights of the ATHLETE with the following consideration:
    - (i) Cash Consideration: €500,000.00 (five hundred thousand euros);
    - (ii) Consideration in Kind: 50% (fifty per cent) of the plus gain – i.e. of the difference between the transfer price and €500,000.00 (five hundred thousand euros) – that may be generated in the event that the ATHLETE is transferred from BENFICA to another sporting entity, national or foreign, for an amount higher than €500,000.00 (five hundred thousand euros).
- It was further stipulated (in the “First Clause” paragraph 1) that:
  - If the transfer of the ATHLETE from RIO AVE to BENFICA is completed by 31 August 2015, in the terms referred to in Whereas E) above, the Parties agree to split the revenue from such transfer as follows:
    - a) Cash Consideration: 100% to RIO AVE;
    - b) Consideration in Kind: 30% (thirty per cent) of the plus gain to RIO AVE and 20% (twenty per cent) of the plus gain to GESTIFUTE.



#### Considerations of the FIFA Disciplinary Committee:

The Committee recalls that, according to definition 14 of the RSTP,<sup>198</sup> a third party is “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”.

The Committee concludes that the prohibition established in article 18ter of the RSTP is fully applicable since the Agreement was concluded on 20 May 2015, after the entry into force of the prohibition.

The Committee notes that, on the basis of the above-mentioned clauses, the Club received a proposal from the club Benfica for the transfer of the Player, whereby the Club would receive (i) EUR 500,000 in cash consideration and (ii) 50% of the difference between EUR 500,000 and the future transfer price received by the club Benfica. The Committee further notes that Gestifute and the Club contractually stipulated in the “First Clause” paragraph 1 of the 2015 agreement that Gestifute is entitled to receive 20% of the “plus

<sup>197</sup> Decision of the FIFA Disciplinary Committee dated 7 March 2019.

<sup>198</sup> 2018 version.

*gain*" of a future transfer (i.e. the above-mentioned difference between EUR 500,000 and the future transfer price received by the club Benfica).

Based on the foregoing, the Committee concludes that the Club clearly violated article 18ter of the RSTP since it concluded an agreement entitling the third party Gestifute to 20% of the "*plus gain*" of the future transfer of the Player.

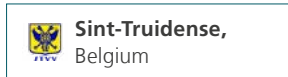
Such 20% of the "*plus gain*" of a future transfer clearly enabled Gestifute to "[...] *participate, either in full or in part, in compensation payable in relation to the future transfer of a player from one club to another, or [...] [be] assigned any rights in relation to a future transfer or transfer compensation*", which is strictly prohibited by article 18ter of the RSTP.

In the Committee's view, the Club's argument that the 2015 agreement is not a new agreement does not hold up. The Committee considers that a new agreement was formed on 20 May 2015 based on the "*binding offer*" for the transfer of the Player from Rio Ave to the

club Benfica. This binding offer included the specific compensation arrangement of: (i) EUR 500,000 in cash consideration and (ii) 50% of the difference between EUR 500,000 and the future transfer price received by the club Benfica. The parties (Rio Ave and Gestifute) then agreed that Gestifute would be entitled to 20% of the "*plus gain*" of the future transfer of the Player. Gestifute, as the third party was entitled, through the agreement of 20 May 2015, 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*". Gestifute was entitled to 20% of the "*plus gain*" of the compensation payable in relation to a future transfer of the Player from Benfica to another club.

Furthermore, the Committee considers the fact that the "*revenue split*" in the 2015 agreement was allegedly "*favourable*" to the club, as argued by the club, to be irrelevant. The wording of and the prohibition established in article 18ter of the RSTP are clear and do not factor in whether or not an arrangement is favourable to a club.

## 2. Sint-Truidense (Belgium)<sup>199</sup>



- Sint-Truidense signed an agreement with KICKRS (an organisation claiming to be a start-up aimed at crowdfunding to secure revenue to be invested in the transfer of football players) regarding one of the club's players, who was transferred from the Greek club PAE Aiginiakos.



### Considerations of the FIFA Disciplinary Committee:

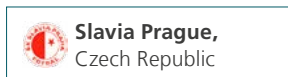
Sint-Truidense is liable for the violation of article 18ter paragraph 1 of the RSTP for entering into an agreement that assigns rights to a third party in relation to a future transfer of a player.

The Committee determines that by entering into the Investment Agreement, the Club entitled KICKRS to participate in the Market Value, a compensation which

is payable in relation to the future transfer of the Player from the Club to another club.

As a result, the Committee concludes that Sint-Truidense contravened the prohibition established in article 18ter paragraph 1 of the RSTP by concluding the Investment Agreement with KICKRS.

## 3. Slavia Prague (Czech Republic)<sup>200</sup>



- Slavia Prague signed a mediation agreement with an agent, which stipulated as follows:
  - ➔ The agent intervened as a mediator before the signature by the club and the player of a contract concerning the period from 01.07.2017 until 30.06.2019.
  - ➔ In the case of a transfer of the player to another club, the agent is entitled to receive a transfer bonus [...]

<sup>199</sup> Decision of the FIFA Disciplinary Committee dated 4 March 2016.

<sup>200</sup> Decision of the FIFA Disciplinary Committee dated 7 March 2019.





### Considerations of the FIFA Disciplinary Committee:

In accordance with the above-mentioned definition of a third party, the Committee notes that the agent, who is clearly not a club, is to be considered a third party as he is extraneous to a transfer agreement that is signed between two clubs.

Additionally, the Committee notes that the mediation agreement establishes that: *“The agent intervened as a mediator before the signature by the club and the player of a contract concerning the period from 1.07.2019 until 30.06.2019. The object of the present agreement is to fix the payment for the agent regarding his work as a player agent [...] For the mediation work done by the agent, SLAVIA will pay the agent: a) EUR 30,000 by 30 June 2017; b) EUR 1,000 for every single official match [...]”* Thus, in the Committee’s view, the aforementioned amounts represent remuneration for the services provided by Mr Goller in connection with the specific transfer of the player to the Club, which is not contrary to the RSTP.

However, where the *“transfer bonus”* is concerned, the Committee underlines that it is related to a future

transfer of the Player, and not to the transfer of the Player to the Club, and therefore it does not represent remuneration for the services provided for that specific transfer. Secondly, the Committee observes that, even though the agent is entitled to receive a fixed amount depending on the value of the transfer fee, such amount represents in all cases a percentage of between 7% and 16% of the transfer fee of the future transfer of the Player. Therefore, the Committee concludes that there is a hidden floating percentage in favour of the agent related to the future transfer of the Player, which is prohibited by article 18ter of the RSTP.

Additionally, the Committee notes that the mediation agreement was signed for the period between 1 July 2017 and 30 June 2019, thus after the entry into force of article 18ter of the RSTP (cf. article 18ter paragraph 2 of the RSTP: *“The interdiction as per paragraph 1 comes into force on 1 May 2015”*).

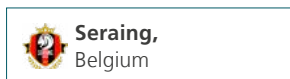
As a result of the above analysis, the Committee is able to conclude that the mediation agreement violates article 18ter paragraph 1 of the RSTP.



The Cameroonian club NKUFO Academy Sports was also sanctioned for a breach of article 18ter in relation to the same matter. However, only the terms of the decision are available.



#### 4. Seraing (Belgium)<sup>201</sup>



- Seraing entered into several agreements with the investment fund Doyen Sports Investments Limited. One of those agreements (an ERPA dated 7 July 2015) was uploaded in TMS and stipulated the following:

→ The Club and Doyen have subscribed a partnership agreement designed to allow the Club to have financial resources at its disposal (the 'Partnership Agreement'). In the framework of that Partnership Agreement, Seraing has requested the financial assistance of DOYEN by means of selling DOYEN 25% of the Economic Rights of the player [ ], for a grant fee equivalent to €50,000. Therefore, DOYEN shall be the owner of 25% of the Economic Rights of the Player and Seraing the owner of the other

75%. Seraing shall be the owner of 100% of the Player's Federative Rights.

Pursuant to all the above, and in recognition of its interest in the Player's Economic Rights, DOYEN shall be entitled, among other proceeds, to a share equal to 25% of the proceeds relating to any Transfer, Loan, and compensation for the termination of the Employment Contract or insurance claim relating to the Player.



#### Considerations of the FIFA Disciplinary Committee:

The ERPA was signed between Seraing and Doyen despite the fact that the prohibition on entering into third-party ownership agreements for players' economic rights was fully in force and the transition period between January and May 2015 had expired.

The Committee notes that by entering into the agreement, Doyen had become the owner of 25% of the Player's economic rights. Thus, Doyen was from then onwards entitled to participate in compensation payable and/or transfer compensation in relation

to the future transfer of the Player from Seraing to another club, as explained, among others, under clause 7 of the said agreement. In this respect, the Committee recalls that the club engaged the Player out of contract, which means that the player was not bound by any existing employment contract and that no transfer compensation was due to another club.

As a result, the Committee concludes that FC Seraing contravened the prohibition established in article 18ter of the RSTP by concluding the ERPA with Doyen.

<sup>201</sup> Decision of the FIFA Disciplinary Committee dated 4 September 2015.

- Furthermore, the following was stated in relation to the employment contract signed between the club and the player:

→ The Club warrants that – today – prior to the signature of the present contract, an Employment Contract has been subscribed by and between the Club and the Player for a minimum term of three (3) seasons, that Employment Contract being enforceable, legal and binding on the parties to it.

In said Employment Contract, the Club has recognised [that] the Player [has] a 20% (twenty percent) interest in the Economic Rights and, therefore, the Player shall be entitled to a share equal to 20% of the proceeds relating to any Transfer, Loan, and compensation for the termination of the Employment Contract or insurance claim relating to the Player.

→ The player confirms that he is aware that his recruitment has been facilitated by the investment to be received from a third-party investor, who, in return, shall receive 25% of the economic rights deriving from the federative rights that the club owns, given that the club and this third party have today concluded a contract to this effect. Taking into account, in particular, the monthly salary that he has accepted, the player shall receive 20% of said rights, with the club therefore retaining 55% of the economic rights deriving from the federative rights. The validity and legal enforceability of these cessions of economic rights to a third party (and consequently the entry into force of the contract concluded by the club and the third party) and to the player constitute a condition precedent to the entry into force of the present contract.



#### Considerations of the FIFA Disciplinary Committee:

The Committee would like to recall that, from the content of the above-mentioned clauses, Seraing had agreed to sell 25% of the Player's economic rights to Doyen while also assigning 20% of the Player's economic rights to the Player himself.

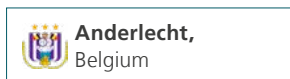
The Employment Contract was signed between Seraing and the Player despite the fact that the prohibition on entering into third-party ownership agreements of players' economic rights was fully in force.

Moreover, clause 11 paragraph 2 of the Employment Contract clearly specified that the Player – a third

party, as explained above – received 20% of his own economic rights.

In this regard, the Committee concludes that the clause is in contradiction with the interdiction established under article 18ter paragraph 1 of the RSTP due to the fact that the club signed an agreement granting a third party a percentage of a future transfer compensation. As a result, the Committee determines that Seraing has also infringed article 18ter of the RSTP as a result of entering into the Employment Contract with the Player.

## 5. Anderlecht (Belgium)<sup>202</sup>



- Anderlecht signed an employment contract with one of its players from 1 July 2015 until 30 June 2018. The contract included the following provision:
  - ➔ If the player is transferred to another club during the term of his contract with the club, he will be entitled to:
    - 8% of the net transfer fee up to EUR 1 million received by the club; 10% of the net transfer fee over EUR 1m up to EUR 2m received by the club; 12% of the net transfer fee over EUR 2m received by the club.



### Considerations of the FIFA Disciplinary Committee:<sup>203</sup>

The Committee recalls the definition of a third party (definition 14): *“Third party: 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.”*<sup>204</sup> For the Committee, there is no doubt that the player is to be considered a third party in this matter.

The Committee then focuses on the agreement itself and recalls the content of article 4 c), which states:

*“If the player is transferred to another club during the term of his contract with the club, he will be entitled to: 8% of the net transfer fee up to EUR 1 million received by the club; 10% of the net transfer fee over EUR 1m up to EUR 2m received by the club; 12% of the net transfer fee over EUR 2m received by the club.”*

Accordingly, the club has entered into an agreement with a third party (i.e. the player) whereby the third party

is being entitled to participate in part in compensation payable in relation to the future transfer of the player from one club to another and is being assigned rights in relation to future transfer compensation.

There is therefore no doubt for the Committee that this agreement is to be understood as an agreement with a third party covered by article 18ter paragraph 1 of the Regulations.

The Committee, as a second step, focuses on article 18 paragraph 4, the content of which is self-explanatory: *“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.”*

Accordingly, it appears that the effective date referred to in article 18ter paragraph 4 of the RSTP is to be understood as the date of the signature. In this sense,

<sup>202</sup> Decision of the FIFA Disciplinary Committee dated 20 July 2017. Further details regarding this decision can be found in section 2.2.4.

<sup>203</sup> On 15 December 2017, the club communicated its intention to appeal the FIFA Disciplinary Committee decision. However, the time limit to do so had already elapsed, meaning that the club failed to comply with the formal requirement of article 120 paragraph 1 of the FIFA Disciplinary Code (2017 edition). Consequently, the appeal was declared inadmissible.

<sup>204</sup> Previous definition of “Third-Party” in the RSTP. Further detail can be found in section 2.2.4.

the Committee notes that the contract was signed on 28 February 2015 and that its end date was 30 June 2018, over three years from the date of the signature.

For the Committee, it is undisputable that the player agreement was signed in the transitional period foreseen under article 18ter paragraph 2 of the RSTP, that is, between 1 January and 30 April 2015. Therefore, the agreement should have had a contractual duration of no more than one year beyond the date of the signature.

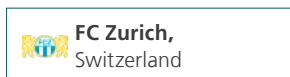
The Committee also takes note that the club itself, in a letter addressed to FIFA TMS on 8 July 2015, declared that *“the contract with the player was signed in February 2015. We are aware that the contract may not have a duration of more than one year. As soon as the training sessions start again, we will regularise the situation.”*

However, and as confirmed by the club itself, *“the situation had been regularised with the signature of a new contract with the player on 2 February 2017 in which no such litigious clause had been inserted”.*

Even though the Committee recognises the regularisation of the situation, it notes that this took place almost two years after the signature of the agreement in the first place, and not *“as soon as the training sessions start again”*, as promised by the club.

In other words, the club has been in breach of article 18ter paragraph 4 of the RSTP for nearly two years and the player agreement indeed had a duration of more than one year. The Committee emphasises that the club was fully aware of the litigious situation [...] but yet, deferred the regularisation of the situation to 2 February 2017.

## 6. FC Zurich (Switzerland)<sup>205</sup>

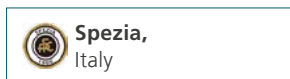


- On 10.06.2016, FC Zurich signed an agreement with the company “Footuro AG” in relation with one of its players. The agreement stated that in case of future transfer of the player to another club, FC Zurich would pay to the company a fee, which depending on the transfer fee, would vary from CHF 75'000 to CHF 1'000'000.

<sup>205</sup> Decision of the FIFA Disciplinary Committee dated 20 September 2019. However, only the terms of the decision are available.

## 4.2 DECISIONS REGARDING ARTICLE 18TER PARAGRAPH 4

### 1. Spezia (Italy)<sup>206</sup>



- Spezia concluded a TPO agreement with a lawyer on 2 February 2015, which only expired at the end of June 2016.

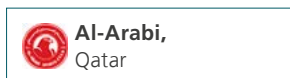


#### Considerations of the FIFA Disciplinary Committee:

The club Spezia Calcio is liable for the violation of article 18ter paragraph 4 of the RSTP for entering into a third-party ownership agreement with an excessive

duration (more than one year) in relation to a future transfer of one of its player.

### 2. Al-Arabi (Qatar)<sup>207</sup>



- Al-Arabi and the sports services company Al Hadaf entered into a memorandum of understanding (MoU) focused on cooperation in the field of sport in general and in football in particular. The agreement was amended on 29 April 2015.



#### Considerations of the FIFA Disciplinary Committee:

The Committee observes that, according to clause 2.1 of the Amendment Agreement, *“The Parties acknowledge and agree that the MoU is stated to have an effective date of 1 March 2014. The Parties confirm that the MoU has been in full force and effect since that date and that they shall continue to perform the terms of the MoU, as amended by this Amendment Agreement, through to the date of the MoU’s expiry, which is 30 June 2020.”*

In addition, clause 5 states that: *“This Amendment Agreement shall automatically terminate on the date of termination of the MoU. However, should any court or body wrongly consider that the contractual term of this Amendment Agreement is only one (1) year because of the terms of Art. 18ter (4) of the FIFA Regulations for [sic] the Status and Transfer of Players 2015 (or otherwise), the Parties agree that upon expiry of this Amendment Agreement, the Parties’ relationship shall be governed by the terms of the MoU, as amended by this Amendment Agreement.”*

<sup>206</sup> Decision of the FIFA Disciplinary Committee dated 1 March 2018. However, only the terms of the decision are available.

<sup>207</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

Furthermore, the Committee notes that clause 6 of each annexe mentions that: *“The Parties agree that this MoU Annexe is intended to be read in conjunction with, and be supplemented by, the MoU. [...] For the avoidance of doubt, therefore, the provisions with respect to governing law and dispute resolution, as set forth in the MoU, are intended to apply to these terms and conditions also, as with the term of the MoU as agreed by the Parties under Clause 5 of the MoU”* (according to clause 5 of the MoU, *“[...] the duration of this memorandum shall be for six years [...] ending on 30/06/2020”*).

In this sense, in accordance with article 18ter paragraph 4 of the RSTP, the validity of any agreement covered by paragraph 1 signed between 1 January 2015 and 30 April 2015 may not have a contractual duration of more than one year beyond the effective date.

Thus, taking into consideration that the annexes can be included under the definition of TPO, that they were agreed between 1 January 2015 and 30 April 2015 and that the duration is for more than one year (i.e. until 2020), the Committee considers that the Club infringed article 18ter paragraph 4 of the RSTP for the seven annexes.

### 3. MFK Kosice (Slovakia)<sup>208</sup>



**MFK Kosice,**  
Slovakia

- On 19.03.2015, MFK Kosice entered into an agreement with the company E-Hold, whereby the club granted to the company an assignment

of the claim of a 10% sell-on fee of one of the players the clubs had transferred. The agreement had no expiration date.

<sup>208</sup> In the decision dated 18.09.2018, the FIFA Disciplinary Committee found the club liable for a breach of article 18ter. However, only the terms of the decision are available.

## 4.3 DECISIONS REGARDING ARTICLE 18TER PARAGRAPH 5

### 1. Rayo Vallecano (Spain)<sup>209</sup>



- The club Rayo Vallecano and the company NJQY Sports Management Co, Ltd, registered in China and more commonly known as Qbao, signed a sponsorship agreement on 8 July 2014 so as to promote the company's brand by implementing various measures, inter alia, signing a player of Chinese nationality to play for the club's first team.

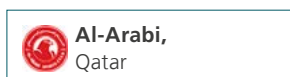


#### Considerations of the FIFA Disciplinary Committee:

In view of the above, by not having entered the Sponsorship Agreement dated 8 July 2014, which granted the Company the right to participate in the

value of a future transfer of the player, in TMS, the Club breached article 18ter paragraph 5 of the RSTP.

### 2. Al-Arabi (Qatar)<sup>210</sup>



- Al-Arabi and the sports services company Al Hadaf entered into a memorandum of understanding (MoU) focused on cooperation in the field of sport in general and in football in particular. The agreement was amended on 29 April 2015.



#### Considerations of the FIFA Disciplinary Committee:

The Committee points out that the MoU appears to satisfy the definition of article 18ter paragraph 1 of the RSTP as it is an agreement concluded with a third party – the Company – that is entitled to participate in compensation payable in relation to the future transfer of the player (cf. "Introduction" MoU ("*...* the First Party preserves the ownership of the players and trainers and holds the right to their sale or rent");

art. 6 ("*remain the sole ownership of the First Party*") and art. 9 ("*...* the sole ownership of this particular player or trainer lies with the First Party"). However, the Committee is not entitled to impose sanctions for the infringement of article 18ter paragraph 1 as the MoU was signed on 1 March 2015 and the interdiction as per article 18ter paragraph 1 came into force on 1 May 2015.

<sup>209</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

<sup>210</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

However, the Committee observes that the MoU was not uploaded into TMS by 30 April 2015 as required by the content of article 18ter paragraph 5 of the RSTP.

Therefore, the Committee considers that the Club violated article 18ter paragraph 5 by not uploading the MoU into TMS by the end of April 2015.

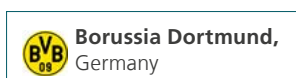
The Committee observes that the annexes entitle the Company to participate in compensation payable in relation to the future transfer of the players (cf.

“Preamble” point B5 and clause 36 of each annexe, in which identical wording was used); therefore, they can be categorised as a TPO agreement.

Once having determined the above, the Committee observes that these agreements were not uploaded into TMS by 30 April 2015 by the Club in respect of the transfer of two players involved in the present case.

Therefore, the Committee is convinced that the Club infringed article 18ter paragraph 5 of the RSTP.

### 3. Borussia Dortmund (Germany)<sup>211</sup>



- Borussia Dortmund signed a transfer commission agreement with the company Isport Worldwide Limited with regard to one of the club's players.



#### Considerations of the FIFA Disciplinary Committee:

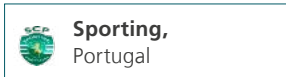
It appears to the Committee that the original agreement dated 8 July 2013 was not uploaded into the TPO library of TMS, but only the amendment dated

1 March 2014. As a result, the Club did not upload the agreement in its “entirety” and is consequently in breach of article 18ter paragraph 5 of the RSTP.

<sup>211</sup> Decision of the FIFA Disciplinary Committee dated 27 March 2019.



#### 4. Sporting (Portugal)<sup>212</sup>



- Sporting concluded two ERPAs with the investment fund Doyen Sports Investments Limited whereby the latter acquired 75% of the economic rights of one of its players and 35% of the economic rights of another of its players.



#### Considerations of the FIFA Disciplinary Committee:<sup>213</sup>

In view of the aforesaid, in 2016, the ERPA agreement concerning the player was still valid and binding between the parties, since Doyen activated clause 15.

In this respect, article 18ter paragraph 5 of the RSTP clearly states that all existing agreements that the Club had signed had to be recorded in TMS. Since the ERPA concerning the player and the addendum to the employment agreement were two agreements signed by the Club that were still existing when the

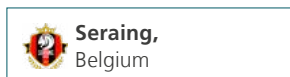
provision came into force, the Club had to upload these agreements in TMS within the deadline foreseen under article 18ter of the RSTP (i.e. 30 April 2015).

In the light of the foregoing, the Committee considers that Sporting failed to abide by its obligation to upload in TMS all existing agreements that it had signed, and therefore violated article 18ter paragraph 5 of the RSTP.

<sup>212</sup> Decision of the FIFA Disciplinary Committee dated 12 April 2018.

<sup>213</sup> Please also note the reference to the CAS award related to this case on page 143.

## 5. Seraing (Belgium)<sup>214</sup>



- A cooperation agreement was signed between Seraing and Doyen concerning, among others, the sale of 30% of the economic rights of three players from the club to Doyen. The agreement included the following provisions:

→ This Agreement shall enter into force on the date of signature and is valid until 1 July 2018 [...]

→ [...] DOYEN SPORTS shall bring to SERAING UNITED €300,000 in funding [...] In return for this investment, DOYEN SPORTS will become the owner of 30% of the economic rights attached to the following three players currently under contract with SERAING UNITED [...]

→ [...] SERAING UNITED shall pay DOYEN SPORTS 30% of any financial value stemming from the players' Federative Rights (the 'Economic Rights') including but not limited to: i) any fee paid as a consequence of the transfer or loan of any of the players; or ii) any payment made to any of the

players in lieu of a transfer fee where the player re-signs with SERAING UNITED rather than being involved in a transfer; or iii) any compensation or payment corresponding to SERAING UNITED arising from the termination of the Employment Contract (i.e. damages imposed against any of the players or any other club for the unjust termination of the Employment Contract or deriving from the inducement to unlawfully terminate the Employment Contract); or iv) any and all values stemming from the assignment or exploitation of the Image Rights of any of the players by any third party; or v) any value attributed to any other footballer that forms part of the transfer of any of the players.



### Considerations of the FIFA Disciplinary Committee:

Given the fact that Doyen will receive 30% of any amount arising from the transfer of any of the Selected Players, i.e. three players who have been clearly defined, such clauses alone allow the Committee to conclude that this is an agreement that entitles Doyen "to participate, [...] in part, in compensation payable in relation to the future transfer of a player from one club to another" and assigns "rights in relation to a future transfer or transfer compensation" as established (and prohibited) in article 18ter paragraph 1 of the RSTP.

However, the Committee further notes that the cooperation agreement was dated 29 January 2015 and signed by Doyen on 30 January 2015. The Committee recalls that the interdiction foreseen in paragraph 1 of article 18ter of the RSTP only came into force on 1 May 2015 and that "third-party ownership" agreements were still able to be concluded prior to such date as long as they complied with certain conditions that were established under article 18ter paragraphs 3 and 4 of the RSTP.

<sup>214</sup> Decision of the FIFA Disciplinary Committee dated 4 September 2015.

Given the above, the Committee examines whether the cooperation agreement complied with such conditions:

- i. The duration may not be extended (article 18ter paragraph 3 of the RSTP); clause 1 of the cooperation agreement foresees the possibility of extending the duration of the agreement with the parties' written consent.
- ii. The validity may not have a contractual duration of more than one year beyond the effective date (article 18ter paragraph 4 of the RSTP); clause 1 of the cooperation agreement establishes: *"This Agreement shall enter into force on the date of signature and is valid until 1 July 2018 [...]"*

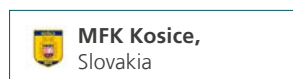
As a result of the above analysis, the Committee is able to conclude that the cooperation agreement did not meet any of the necessary conditions to be considered a valid *"third-party ownership"* agreement to be signed between the period 1 January – 20 April 2015 in accordance with article 18ter of the RSTP.

Consequently, the Committee determines that Seraing has breached article 18ter paragraphs 3 and 4 of the RSTP.

Furthermore, paragraph 5 of the said article imposed an obligation on all clubs that had entered into *"third-party ownership"* agreements to record them within TMS by the end of April 2015. Article 18ter paragraph 5 of the RSTP further stipulates that all clubs that have signed such agreements are required to upload them in TMS in their entirety, including possible annexes or amendments, specifying the details of the third party concerned, the full name of the player and the duration of the agreement.

Seraing did not upload the cooperation agreement in TMS within the deadline stipulated in the regulations, i.e. by 30 April 2015. Instead, the agreement was merely provided to FIFA TMS on 4 June 2015 upon its prior request. Consequently, the Committee also concludes that Seraing breached article 18ter paragraph 5 of the RSTP.

## 6. MFK Kosice (Slovakia)<sup>215</sup>



- On 19.03.2015, MFK Kosice entered into an agreement with the company E-Hold, whereby the club granted to the company an assignment of the claim of a 10% sell-on fee of one of the

players the clubs had transferred. The agreement had no expiration date and was not uploaded in TMS.

<sup>215</sup> In the decision dated 18.09.2018, the FIFA Disciplinary Committee found the club liable for a breach of article 18ter. However, only the terms of the decision are available.



# 5 CONCLUSIONS AND PRACTICAL RECOMMENDATIONS





## CONCLUSIONS AND PRACTICAL RECOMMENDATIONS

Since the purpose of this Manual is to serve as a practical guide for clubs with regard to transfer and contractual agreement provisions that could be in breach of article 18bis and/or article 18ter, it was paramount to analyse the FIFA judicial bodies' considerations with respect to such provisions (and also the considerations of CAS and national and European courts) in detail.

This analysis offers a better understanding of the stance of FIFA's judicial bodies towards this type of contractual arrangements, which has been consolidated over time when it comes to several of these clauses.

To err on the safe side, clubs shall avoid:

- i. the conclusion of agreements with third parties whereby the third parties are entitled to receive any compensation in relation to the future transfer of a player or are assigned any rights in relation to a future transfer or transfer compensation;
- ii. the inclusion of clauses in transfer and contractual agreements with other clubs and/or third parties that could fall into one of the categories below:



### Clauses restricting the new club with respect to the future transfer of the player

- Prohibition on transferring the player (or recruiting any players) without the other club's (or the third party's) consent
- Higher sell-on fee if the player is transferred to a competitor club
- Prohibition on transferring the player to a competitor club (or subject to a high penalty fee)
- The club cannot decide when to transfer the player
- Prohibition on transferring the player for less than a minimum fee
- Prohibition on transferring the player until the transfer fee is paid in full
- Authorisation required to loan the player/inability to freely negotiate the terms of a loan
- Prohibition on assigning the player's economic rights to another party without the other club's (or the third party's) consent
- Both clubs (or the new club and the third party) are entitled to negotiate the transfer of the player



### Clauses related to the employment relationship between the club and the player

- Inability to freely negotiate the terms of engagement of the player/obligation for the club to prevent the player becoming a free agent
- Hindrances to the conclusion of transfer agreements/employment contracts
- Obligation to maintain an insurance policy to insure against the risk of the player's injury or death



#### **Clauses linked to selection in matches**

- Ensure that the player transferred (permanently or on loan) is fielded regularly



#### **Clauses obliging the club to communicate certain information**

- Obligation to inform about a player's injury
- Obligation to disclose every transfer offer



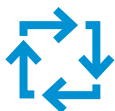
#### **Obligations to transfer/release a player under certain conditions**

- Obligation to accept an offer for a specific transfer fee, subject to a penalty fee
- Obligation to transfer the player before a certain date, subject to a penalty fee
- The club has no say in the future transfer of the player
- Obligation to transfer the player in the event of relegation
- Obligation to release the player for training and friendly matches



#### **Clauses granting other types of influence**

- Joint selection, between the new club and the third party, of new players to reinforce the club's squad
- The club and the third party to mutually decide on the market value of the player
- The third party or the other club can oblige the new club to purchase its share of the player's economic rights
- The third party to buy players for the club, cover their expenses, retain their economic rights and hold the decision to transfer them



However, the above list of clauses, which was compiled on the basis of the investigations initiated by the FIFA administration and the decisions of the FIFA judicial bodies to date, should not be taken as exhaustive.

Certainly, the wording of article 18bis is broad in order to encompass all types of possible influences on clubs' decisions. At the same time, the concept of "*influence*" is a difficult one to establish and pin down, being undetermined and undefined, thus leaving room for diverse interpretations.

Therefore, clubs are advised to undertake a thorough analysis and assessment of a particular clause or contractual arrangement in order to evaluate whether:

- (i) the club could somehow see its autonomy limited when it comes to a transfer and/or employment decision concerning one or more of its players;
- (ii) the degree of influence (potentially) exerted could lead to the conclusion that it goes against the spirit of the provision and the objectives it pursues, taking into consideration the established case law of the FIFA judicial bodies.

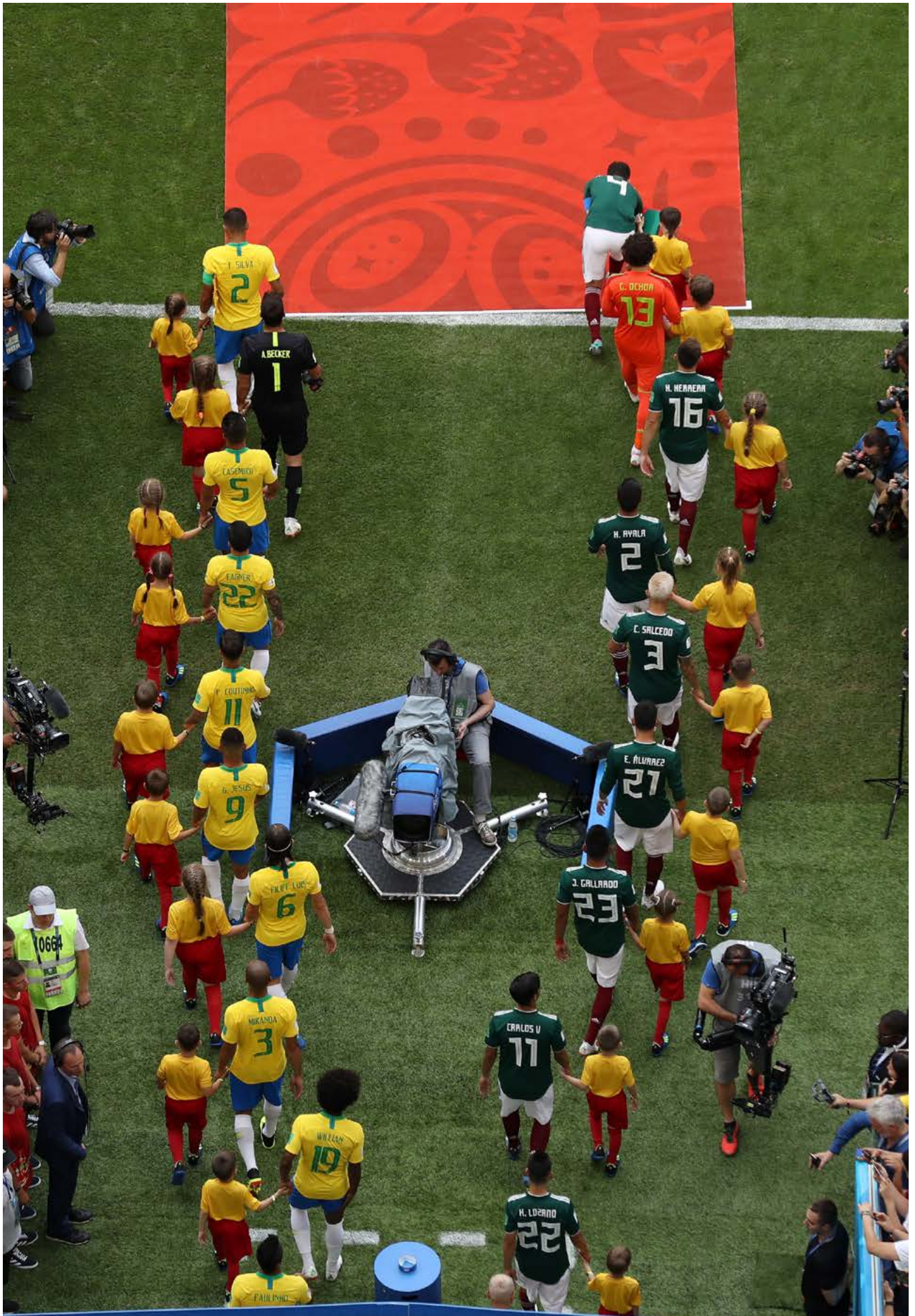
Among other things, the amendment of article 18bis in 2015, which made both clubs involved in a transfer agreement liable for possible breaches and reinforced the protection of clubs from any external influence, led to more detailed scrutiny and analysis of all the different clauses included, especially, in the transfer agreements concluded between clubs.

This more detailed and systematic analysis of transfer agreements automatically allowed FIFA to spot more clauses in potential violation of article 18bis and resulted in a significant increase in the number of proceedings initiated by FIFA on this subject.<sup>216</sup>

The aforementioned increase in the number of proceedings opened by FIFA and, in turn, in the number of decisions by FIFA judicial bodies has also resulted in the establishment of case law concerning clauses that have not been considered by the FIFA administration and/or by the FIFA judicial bodies to run counter to the spirit of article 18bis. These are explored in the section below.

<sup>216</sup> Out of all decisions on article 18bis passed by the FIFA Disciplinary Committee to date, only two were rendered before 2015.









### Contractual arrangements NOT considered against the spirit of article 18bis

The following is a list of provisions/clauses (traditionally) included in transfer agreements that the FIFA

administration and/or the FIFA judicial bodies have not considered to be contrary to this provision.

#### Sell-on fees

- Sell-on clauses are accepted by FIFA and their “economic rationale” has also been upheld by CAS.
- The compatibility of sell-on clauses with article 18bis is only thrown into doubt when clubs try to ensure the protection of the sell-on fees agreed.
- Therefore, the mere existence of a sell-on clause would not trigger a breach of article 18bis, but the different scenarios formulated by clubs to protect their sell-on fees could lead to situations of “influence”.
- The fact that the former club cannot be certain that the new club will subsequently transfer the player must not lead to contractual arrangements designed to have a direct impact on the new club’s decision-making process (for example, by imposing a “penalty” if the player is not transferred or signs a contract extension).

This model of trying to ensure maximum profit from an investment was initially used by investment funds and private companies when entering into agreements with clubs. Over the years, this practice has been extended to clubs themselves, with a clear example being the mechanism to protect sell-on fees in order to safeguard a certain economic interest and minimise (or even eliminate) any risks.

- Entering into a sell-on clause with another club should be regarded as a business transaction, with an acceptance of the possibility that the player will

not subsequently be transferred by the new club and therefore that the sell-on fee may not be triggered.

- During its investigations, TMS Compliance has found several contracts featuring sell-on clauses that did not include any additional obligation for the engaging club and which therefore did not contravene the prohibition laid down under article 18bis. The following is a paradigmatic example of a sell-on clause that fully respects the provision:

#### Assignment of the economic rights<sup>217</sup>

1. In the event of a future transfer of the Player against payment to a third club, CLUB A will inform CLUB B about the dates and amounts of the payments to be made by the third club, sending a copy of the proof of receipt of the amounts due for the transfer in question, as well as a copy of the exchange contract should the amounts received come from abroad.
2. Once the transfer of the Player takes place, CLUB A shall provide CLUB B with the amount relating to the latter’s participation in the economic rights within 5 (five) days as of the day of receipt of the relevant amount by CLUB A, and shall provide all required documents concerning the transaction and discounts established above. The failure of CLUB A to pay CLUB B the amount due within the aforementioned time limit will cause the imposition of a fine totalling 5% (five percent) on the amount due, plus interest of 6% (six percent) per year, which shall accrue until the date of effective payment.

<sup>217</sup> This clause has been anonymised for confidentiality reasons.

3. Taking into account the uncertain nature of the partial assignment of the economic rights, the parties expressly acknowledge that in the event of the unilateral termination or the expiry of the

Player's employment contract, which may occur for any reason, including on CLUB A's initiative, CLUB A will not have to pay any amount to CLUB B with respect to the economic rights partially assigned.

### Performance-related bonuses

#### Example:

→ For the permanent transfer of the Player, the new club shall pay a fixed transfer fee of EUR 2,000,000. Once the Player makes 50 appearances, the new club shall pay the former club an additional amount of €50,000 [...]

- Conditional payments for successful individual and collective results (bonuses) have not been regarded as a breach of article 18bis by the FIFA administration.<sup>218</sup> Therefore, since no investigations have been initiated for agreeing this type of clauses in transfer agreements, no decisions have been

rendered by the FIFA Disciplinary Committee in this respect.

- Although it could be argued (especially in certain scenarios) that performance bonuses have an impact on the decision as to whether or not to field a player, the FIFA administration is of the opinion that considering this impact an "influence" for the purposes of article 18bis would go beyond the rationale of article 18bis and against the reality of the transfer market.

### Matching right/right of first refusal

#### Example:

→ If the new club receives an offer from another club to purchase the Player on or before 30 June 2020 and is willing to accept this offer, the former club shall have three days to match this offer. If it does so, the new club is obliged to transfer the Player to the former club subject to the Player's consent.

- Matching-right options have not been regarded as a breach of article 18bis by the FIFA administration.

Therefore, since no investigations have been initiated for agreeing this type of clauses in transfer agreements, no decisions have been rendered by the FIFA Disciplinary Committee in this respect.

- In these situations, although the new club contractually agrees to limit its autonomy in deciding the club to which the player will be transferred (should the matching right be exercised), this limitation

<sup>218</sup> FIFA's TMS Compliance team is responsible for initiating proceedings for violations of articles 18bis and 18ter.

would not be considered sufficient to constitute “influence” pursuant to article 18bis, since:

- a. The new club is always entitled to decide not to transfer the player, and thus, to reject the initial offer from other clubs.<sup>219</sup>
  - b. The new club will not receive less money for transferring the player back to the former club.
- The FIFA Disciplinary Committee did analyse, in its decision of 17 October 2019, the agreement entered into between Real Madrid and Freiburg for the transfer of a player to the German club, in the context of a matching-right clause, albeit not an archetypal one.

### The clause in question stated the following:

➔ If FREIBURG and the PLAYER receive an official offer to purchase the federative rights of the PLAYER until the end of their employment contract on 30 June 2021 which they are both willing to accept, FREIBURG shall communicate to REAL MADRID all the terms of such offer.

REAL MADRID shall then have seven (7) calendar days to accept or refuse the offer. Should REAL MADRID not answer in such period, the offer shall be considered refused.

- The FIFA Disciplinary Committee decided to dismiss all charges against both clubs.
- Although the grounds of the decision are not available,<sup>220</sup> it is the FIFA administration’s understanding that the Committee may have deemed that the power granted by Freiburg to Real Madrid to “accept or refuse” an offer received by Freiburg to transfer the player was actually intended as a right for Real Madrid to match the offer received if it so wished. Therefore, Real Madrid would under no circumstances have had the power to accept or refuse the offer on Freiburg’s behalf or even to influence Freiburg’s right to decide whether or not to accept the offer.
- Certainly, a different wording of the clause including the verb “to match” – i.e. “REAL MADRID shall then have seven (7) calendar days to agree or refuse TO MATCH the offer [...]” – would have made the idea behind its inclusion much more immediately apparent.

<sup>219</sup> It is important to highlight that it must be solely the new club’s decision as to whether or not to accept the transfer offer from another club, as in the example provided: “[...] If the new club receives an offer [...] and is willing to accept this offer [...]”

<sup>220</sup> The parties did not request the grounds of the decision. Therefore, only the terms of the decision are available.

## Buy-back options

### Example:

→ Club X has the first option to purchase the Player back for a transfer fee of:

- EUR 5,000,000 in the 2020/21 season;
  - EUR 10,000,000 in the 2021/22 season; and
  - EUR 15,000,000 in the 2022/23 season.
- Buy-back options have also not been regarded as a breach of article 18bis by the FIFA administration. Therefore, no decisions have been rendered by the FIFA Disciplinary Committee in this respect.
  - The FIFA administration considers that the mutual predetermination of a certain fee for a club to acquire a player should not be considered sufficient to trigger a breach of article 18bis, since:
    - a. Both clubs mutually agree in advance the transfer fee applicable to exercise the “buy-back” option.
    - b. Both clubs (can) also mutually agree in advance the timing to exercise the said option.

The reality of the transfer market also shows that predetermined fees have traditionally been agreed in loan agreements and employment contracts. For example:

- Predetermined fees to engage a player are commonly seen in loan agreements, when giving the new club the option to acquire the player on a permanent basis following a loan.
- Buy-out clauses are often included in employment contracts whereby both the player and the club also predetermine the amount the player (or a new club) would need to pay for the player to be released from the contract.
- Notwithstanding the above, the new regulations concerning loans<sup>221</sup> will inevitably lead to further scrutiny of the mutually predetermined fees to acquire a player.

## Automatic exercise of option and permanent transfer in loan agreements

- The FIFA Disciplinary Committee has considered that those loan agreements including certain conditions that, if satisfied, automatically oblige the loan club to engage the player on a permanent basis are not to be considered a breach of article 18bis.
- The case analysed by the FIFA Disciplinary Committee<sup>222</sup> derives from the agreement signed between Atlético Madrid and Wolverhampton Wanderers to loan a player to the English club.

<sup>221</sup> <https://www.fifa.com/who-we-are/news/football-stakeholders-agree-further-steps-in-the-reform-of-the-transfer-system>.

<sup>222</sup> Decision dated 26 October 2019 – Atlético Madrid (Spain) and Wolverhampton Wanderers (England). Further information is available in section 3.1.1.

→ Clause 12 of the loan agreement obliged Wolverhampton to engage the player permanently in any of the following scenarios:

- the club was promoted to the Premier League in that season
- the player scored at least 15 goals
- the player made 35 starting appearances

As per the wording of the clause, *"it is sufficient for one of the aforementioned conditions to be met in order for Wolves to be obliged to exercise*

*the purchase option [...] In the event that, once the purchase option has been triggered, Wolves then refuses to exercise it or make the payments, the Parties agree a penalty in favour of AM of EUR 15,000,000"*.

- The FIFA Disciplinary Committee decided to dismiss all charges against both clubs.

Since the grounds of the decision were not requested by either of the clubs, the FIFA Disciplinary Committee only released the terms of the decision and, therefore, its considerations are unavailable.

### **Automatic payment of a fee to the former club every time the employment contract between the new club and the player is renewed**

- The FIFA Disciplinary Committee ruled in its decision dated 7 March 2019<sup>223</sup> that a clause in the agreement signed between Slavia Prague and the club NKUFO Academy Sports for the transfer of a player to the Czech club, whereby NKUFO Academy Sports would receive EUR 150,000 every time the player's contract with Slavia Prague was renewed, was not contrary to the spirit of article 18bis.

- The FIFA Disciplinary Committee decided to dismiss all charges against both clubs.

Since the grounds of the decision were not requested by either of the clubs, the FIFA Disciplinary Committee only released the terms of the decision and, therefore, its considerations are unavailable.

<sup>223</sup> Regarding Slavia Prague (Czech Republic) and NKUFO Academy Sports (Cameroon).

**Sell-on fee calculated on the basis of the offer received from a third club (and provided by the former club) – even if the club decides to transfer the player to another club for a lower transfer fee**

- In the above-mentioned decision of the FIFA Disciplinary Committee dated 7 March 2019 concerning Slavia Prague and the Cameroonian club NKUFO Academy Sports, the Committee analysed another clause in relation to article 18bis.

→ Clause 6 of the agreement stated as follows:

The parties have also agreed that Academy [NKUFO Academy Sports] is entitled to receive a share from the next transfer of the Player, calculated as follows:

- Academy will receive 25% of the selling PLUS from transfer fees of over EUR 500,000;
- Academy will receive 35% of the selling PLUS from transfer fees of between EUR 400,000 and 499,000;
- Academy will receive 50% of the selling PLUS from transfer fees of between EUR 300,000 and 399,000;
- [...]

The term 'selling PLUS' means the transfer fee after deducting all payments already paid to Academy. For the avoidance of any doubts, examples of calculations are listed in Annexe 2 to this contract.

If Academy delivers to SK Slavia an offer from a third club with a higher transfer fee, the selling PLUS will be calculated on the basis of this higher proposal even if SK Slavia decides to sell the Player to a club offering a lower transfer fee.

- The FIFA Disciplinary Committee decided to dismiss all charges against both clubs.

Since the grounds of the decision were not requested by either of the clubs, the FIFA Disciplinary Committee only released the terms of the decision and, therefore, its considerations are unavailable.

**Recommendations:****how to avoid entering into agreements in potential conflict with article 18bis**

The following list of questions and contractual scenarios may help clubs to better understand whether a particular provision would contradict article 18bis.

- = does not qualify as “influence” pursuant to article 18bis
- = qualifies as “influence” pursuant to article 18bis

QUESTION/SCENARIO	OUTCOME
Is my club the only one that has a say in the transfer and employment conditions of the player?	<span style="color: green;">●</span>
Does any other party have a direct or indirect impact on that decision-making process?	<span style="color: red;">●</span>
Can my club cause an impact on the transfer and employment decisions of the new club?	<span style="color: red;">●</span>
Does my club, to any extent, need to adapt its decisions to another party’s interests?	<span style="color: red;">●</span>
Is my club entering into a provision that falls into any of the categories of clauses that FIFA’s judicial bodies have already considered to be in breach of article 18bis?	<span style="color: red;">●</span>
Is my club (as the former club) agreeing to receive a percentage of the future transfer of the player and obliging the new club to transfer the player before a certain date? Or for a minimum amount?	<span style="color: red;">●</span>
My club is transferring a player to club X and we have agreed that my club will have a priority option to re-sign the player if club X decides to transfer the player.	<span style="color: green;">●</span>
My club and club X are negotiating the permanent transfer of a player to another club. Club X insists on including a clause whereby the other club would need to pay club X EUR [ ] if it subsequently transferred the player to another team in the league of club X.	<span style="color: red;">●</span>
My club wishes to engage a player from club X on a permanent basis and purchase a certain percentage of the player’s economic rights, leaving the remaining percentage with club X. However, club X wants to include a clause in the transfer agreement prohibiting my club from subsequently transferring the player without the authorisation of club X.	<span style="color: red;">●</span>
My club wishes to engage a player from club X on a permanent basis. Club X wants to include a clause in the transfer agreement stating that, in the event of an offer from a third club to engage the player, club X will have the right to match the offer made by the third club, in which case my club would be obliged to transfer the player back to club X.	<span style="color: green;">●</span>
My club wishes to engage a player from club X in country X. Club X accepts the offer but wishes to include a clause stating that if my club subsequently transfers the player to another club in country X, my club would need to pay club X EUR [ ].	<span style="color: red;">●</span>

QUESTION/SCENARIO	OUTCOME
<p>My club wishes to engage a player from club X in country X. Club X accepts the offer but wishes to include a clause stating that if my club subsequently transfers the player to another club in any country (except country X), my club would need to pay club X a sell-on fee of [ ]. However, if the subsequent transfer is to a club in country X (the same country as club X), then the sell-on fee would be higher.</p>	●
<p>My club wishes to engage a player from club X on a permanent basis and also purchase a certain percentage of the player's economic rights. Since club X would remain the owner of the rest of the player's economic rights, club X wants to make sure that the player is not subsequently transferred to another club for a fee of less than EUR [ ]. If my club does not comply and sells the player for a lower amount, my club would need to pay club X a penalty fee of EUR [ ].</p>	●
<p>My club wishes to engage a player from club X on a permanent basis and also purchase a certain percentage of the player's economic rights. Since club X would remain the owner of the rest of the player's economic rights, club X wants to make sure that the player is not subsequently transferred to another club without the consent of club X.</p>	●
<p>My club wishes to sign an agreement to sell a player to club X and to include a sell-on clause whereby my club would receive [ ] of the future transfer of the player from club X to another club.</p>	●
<p>My club wishes to sign an agreement to sell a player to club X for EUR [ ] and to include a clause whereby club X would need to pay my club an additional EUR [ ] once the player has played [ ] games for club X.</p>	●
<p>My club wishes to sign an agreement to engage a player on loan from club X. Club X wants to include a clause stating that if the player plays more than X games and/or scores X goals in the season, my club will be obliged to sign the player on a permanent basis.</p>	●
<p>My club wishes to engage a player on a permanent basis from club X and also purchase a percentage of the player's economic rights. Since club X would remain the owner of the rest of the player's economic rights, club X wants to make sure that (i) my club signs a contract with the player lasting at least X years, and (ii) the player will not be transferred to any other club before year X.</p>	●



**Recommendations:**

**how to avoid entering into agreements in potential conflict with article 18ter**

The following list of scenarios may help clubs to better understand whether a particular provision would contradict article 18ter.

- = not contrary to article 18ter
- = contrary to article 18ter

SCENARIO	OUTCOME
My club has been contacted by a company that would like to purchase 30% of one of our players' economic rights in exchange for being entitled to receive 30% of any fee involved in the future transfer of the player.	<span style="color: red;">●</span>
On 1 January 2015, my club entered into an agreement with an investor regarding the economic rights of one of our players. The duration of the agreement was one year and my club uploaded the relevant agreement in TMS.	<span style="color: green;">●</span>
On 1 January 2014, my club entered into an agreement with a third party regarding the economic rights of one of our players. However, for confidentiality reasons, my club never uploaded the agreement in TMS.	<span style="color: red;">●</span>

# 6 FINAL REMARKS





## FINAL REMARKS

As thoroughly explained in this Manual, since the implementation of art. 18bis and art. 18ter of the RSTP, the FIFA judicial bodies and CAS have rendered several decisions with respect to violations committed by clubs.

The football transfer system is in constant evolution and clubs are always looking for new and more sophisticated contractual solutions to engage players, maximize their profits and minimize their risks. For these reasons, FIFA is required to continuously monitor these new trends, regulate them and, when needed, impose appropriate sanctions. This is an essential process for FIFA to guarantee full compliance with its regulations.

In view of the dynamism of football, this first version of the Manual should not be considered a permanent document, but rather a useful tool to understand the position that FIFA and its judicial bodies have with respect to the application of arts. 18bis and 18ter of the RSTP to those clauses that have been investigated so far. Likewise, the precious insights provided with

this Manual will certainly help clubs to understand how FIFA would receive new contractual schemes.

FIFA's intention is always to ensure a correct and realistic application of its own rules. In this context, FIFA has received a detailed report from the European Club Association (ECA) regarding potential operational problems deriving from the current interpretation given to articles 18bis and 18ter of the RSTP. Against this background, FIFA is committed in engaging discussions with ECA and all FIFA's stakeholders in the next months. The goal of this exercise should be focused on analyzing the current application of articles 18bis and 18ter of the RSTP and explore whether these should be adapted in the future, always ensuring that the interests protected by these provisions remain safeguarded.

In case of doubts or questions concerning the scope, interpretation and application of these rules, please do not hesitate to send your inquiries to [TMShelpdesk@fifa.org](mailto:TMShelpdesk@fifa.org).



