Reforming the 2008 Players’ Agent Regulations

Shortly after the introduction of the 2008 PAR, FIFA embarked on a reform process with a view to replace the regulations with a new version. Much of the justification for the need to reform the 2008 PAR stemmed from a statistic produced by FIFA. Marco Villiger, Director of Legal Affairs at FIFA stated at the EU Conference on Sports Agents in 2011 that “only 25-30% of transfers are managed by official FIFA licensed agents”. If accurate this figure is concerning as it raises the possibility that a large number transactions have been undertaken by either “exempt” individuals, or more worrying, unregulated individuals. If unregulated individuals are parties to transactions, this means that clubs and players were not discharging their duties under the regulations suggesting that a culture of non-compliance is evident within the sector.

However, the headline FIFA figure is not sufficiently sensitive to illuminate whether the source of this problem lies within or outside the territory of the EU and whether amending the existing regulations risks undermining good practice evident in a number of the large football markets within the EU. As Lombardi argued, whereas some national associations, particularly the large national associations in the EU, adopted a high level of regulation, others merely paid “lip service” to the 2008 PAR and adopted either minimal or no regulation of agent activity in their territory. Lombardi observed a correlation between those national associations with a culture of regulation who returned low pass rates for the agent’s examination, and those associations with lower standards who returned high pass rates.

FIFA presented a more formal critique of the 2008 PAR at its 59th Congress in 2009. Here FIFA identified three problems with the 2008 version. First, a recognition that the system was inefficient and had resulted in many international transfers being concluded without the use of licensed agents. Second, even transfers concluded with the use of licensed agents were often intransparent and thereby not verifiable. Third, the regulations led to confusion regarding the differences between club representatives and players’ agents and their respective financial obligations.

In light of the above, FIFA initiated a reform process leading the adoption of a new set of agent regulations. The FIFA Executive Committee approved the new regulations in March 2014 and the amendments to the FIFA Statutes were approved at the 64th FIFA Congress in June 2014. The new Regulations on Working with Intermediaries entered into force on 1 April 2015 replacing the 2008 PAR. FIFA’s stated objectives with the new regulations were four fold. First, FIFA wanted to promote transparency by securing full disclosure and

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3 Ibid.
publication of the remuneration and payments made to intermediaries as a result of transactions that they are involved in. Second, they wanted clarification regarding the payment of intermediary fees and identification of which party, clubs or players, are responsible for paying intermediary fees and what percentage intermediaries are paid. Third, FIFA sought proper disclosure of any conflicts of interest by all parties involved and finally they wanted to safeguard minors by prohibiting payment of commission if the player concerned is a minor.5

The main, and some would say revolutionary, departure from the 2008 PAR is that FIFA is no longer regulating access to the agent’s profession. Instead, the new regulations require national associations to adopt a registration system underpinned by new minimum standards but the focus lies not in regulating the agent but the transaction between the club and the player.

The 2015 RWWI

Definition of an Intermediary

The first notable change contained with the 2015 RWWI is that agents are now referred to as intermediaries and are no longer required to hold a licence. The 2015 regulations define an intermediary as “A natural or legal person who, for a fee or free of charge, represents players and/or clubs in negotiations with a view to concluding an employment contract or represents clubs in negotiations with a view to concluding a transfer agreement”. Intermediaries can now be natural or legal persons whereas under the 2008 PAR, an agent had to be a natural person. The provision of free agent services, as opposed to only paid for services, is also now brought with the scope of the regulations. The definition also reveals that an intermediary can now represent a player and a club in the same negotiation which marks another significant departure from the 2008 PAR.

Preamble

The preamble to the regulations states that “…. one of FIFA’s key objectives is to promote and safeguard considerably high ethical standards in the relations between clubs, players and third parties, and thus to live up to the requirements of good governance and financial responsibility principles”. In this connection, the regulations aim to protect players and clubs from being involved in unethical & illegal practices. However, unlike the previous PAR, the RWWI serve only as ‘minimum standards / requirements’ that must be implemented by each national association, with each association able to adopt higher standards.

Art.1. Scope

The RWWI are aimed at national associations in relation to engagement of an intermediary by players and clubs with a view to conclude an employment contract or transfer between the two. The national associations are required to draw up regulations that incorporate the principles established in the RWWI, although they can go beyond these minimum standards.

5 Ibid.
This means that the requirements to become an agent under the 2008 PAR have been dispensed with and with the entry into force of the RWWI, the previous licensing system was abandoned and all existing licences lost validity with immediate effect and must be returned to the associations that issued them (see Art.11).

Art.2. General Principles

Article 2.2 states that “In the selection and engaging process of intermediaries, players and clubs shall act with due diligence. In this context, due diligence means that players and clubs shall use reasonable endeavours to ensure that the intermediaries sign the relevant Intermediary Declaration and the representation contract concluded between the parties”. The phrase reasonable endeavours implies a less stringent standard than a requirement to use best endeavours. Regardless of wording, the reference to endeavours carries with it an expectation of performance and a possible sanction for non-performance.

Art.3. Registration of intermediaries

Each time an intermediary is involved in a transaction, the RWWI state that they must be registered with the national association to which the club is affiliated. The national association must keep an intermediary register which is publically available. It is the responsibility of the club or player who engages the intermediary to register the relevant documents with the national association and this must include at least the Intermediary Declaration.

Art.4. Requisites

Before the relevant intermediary can be officially registered, the national association concerned is required to be satisfied that the intermediary involved has an impeccable reputation. If the intermediary concerned is a legal person, the association responsible for registering the transaction will also have to be satisfied that the individuals representing the legal entity within the scope of the transaction in question have an impeccable reputation. National associations must ensure that the intermediary has no connection with football stakeholders that could lead to a conflict of interest. The above duties are discharged when the national association receives the signed Intermediary Declaration. A failure to submit the Declaration could lead to a sanction for a failure to act with due diligence as per Art.2. The representation contract that the intermediary concludes with a player and/or a club must also be deposited with the association when the registration of the intermediary takes place.

Art.5. Representation Contract

Prior to working on behalf of a player or a club, an intermediary must have in place a representation contract which must be deposited with the association when the registration of the intermediary takes place. The representation contract must contain the names of the parties, the scope of services, the duration of the legal relationship, the remuneration due to the intermediary, the general terms of payment, the date of conclusion, the termination provisions and the signatures of the parties. The 2008 PAR contained a similar list but the
2015 version added the requirement to specify the nature of the legal relationship, the scope of the services and the termination provisions. Under the 2008 PAR a standard representation contract was provided for in the annexes and the duration of the representation contract was restricted to two years. Both these elements have been withdrawn under the 2015 RWWI.

If the player is a minor, the player’s legal guardian(s) must also sign the representation contract in compliance with the national law of the country in which the player is domiciled.

**Art. 6. Disclosure and Publication**

In another departure from the 2008 PAR, players and clubs are now under a duty to disclose to the national association all agreed payments to intermediaries. They must also disclose other information upon request for the purpose of investigations, such as by leagues, associations and FIFA. Clubs or players must also ensure that any transfer agreement or employment contract concluded with the services of an intermediary bears the name and signature of the intermediary and if the club / player have not used an intermediary, they must declare this.

National associations are required to publish, for example on a website, a list of intermediaries they have registered (by end of March). They must also publish the total amount of payments to intermediaries. National associations must also make available to clubs and players any information relating to transactions that have been found to be in breach of the provisions.

**Art. 7. Payments to Intermediaries**

One of the most controversial elements of the new regulations is its approach to the capping of the remuneration of intermediaries. An intermediary’s remuneration, when engaged to act on a player’s behalf, is calculated on the basis of the player’s basic gross income for the entire duration of the contract. If a club engages the services of an intermediary, remuneration is by way of a lump sum agreed prior to the conclusion of the relevant transaction, paid in instalments if agreed by the parties.

Article 7 makes the recommendation to national associations that if the intermediary is engaged by player a 3% remuneration cap of the player’s income for the duration of the contract should be imposed. If the intermediary is engaged by a club in order to conclude an employment contract, a 3% remuneration cap of the player’s eventual income for the duration of the contract should be imposed. Finally, if the intermediary is engaged by a club in order to conclude a transfer, a 3% remuneration cap of transfer fee should be imposed. Payments for the services of an intermediary must be made by the client of the intermediary although a club can pay the intermediary on behalf of the player with the agreement of the parties.

Clubs must ensure that payments made by one club to another club in connection with a transfer, such as transfer compensation, training compensation or solidarity contributions, are not paid to intermediaries and that the payment is not made by intermediaries.

Article 7 prohibits ‘officials’ from receiving payment and also prevents any payments being paid to an intermediary in relation to an employment contract or transfer of a minor.
Art.8. Conflicts of Interest

One recurring concern with agency work is the issue of conflicts of interest. One such practice in agency work that potentially amounts to a conflict of interest is dual representation whereby an agent represents both a player and a club in the same transaction. This practice was prohibited under the 2008 PAR. Under the 2015 RWWI, prior to engaging the services of an intermediary, players and/or clubs are required to use ‘reasonable endeavours’ to ensure that no conflicts of interest exist or are likely to exist either for the players and/or clubs or for the intermediaries. No conflicts exist when they have been disclosed in writing by the intermediary and consent given in writing by the parties. In a departure from the 2008 PAR, clubs and players are now permitted to engage the services of the same intermediary in a transaction by giving written consent. They must disclose to the national association who will pay the intermediary.

Art.9. Sanctions

Under the 2008 PAR, domestic disputes arising from the activity of an agent had to be resolved by independent arbitration at national level, whilst international disputes could be referred to the FIFA Players’ Status Committee with disciplinary matters being referred to the Disciplinary Committee. Under the RWWI, national associations are now responsible for the imposition of sanctions on any party under their jurisdiction that violates the provisions of the 2015 regulations, their statutes or regulations. It appears that national associations are to decide on what sanctions can be applied as the FIFA regulations are silent on this. National associations are required to publish and to inform FIFA of any disciplinary sanctions taken against any intermediary. The FIFA Disciplinary Committee will then decide on the extension of the sanction to have worldwide effect in accordance with the FIFA Disciplinary Code.

Art.10. Enforcement

FIFA’s role is to monitor the implementation of these RWWI and take steps if they are not complied with. FIFA’s Disciplinary Committee is competent to deal with such matters in accordance with the FIFA Disciplinary Code.

Art.11. Transitional Measures

The entry into force of the 2015 RWWI means that the previous licensing system was abandoned and all existing licences lost validity with immediate effect and had to be returned to the associations that issued them.

Conclusion

The headline developments in terms of the adoption of the 2015 RWWI are as follows:
The regulations no longer speak of agents but refer to intermediaries.

An intermediary can be both a natural or legal person.

Intermediaries no longer require a licence. They now have to certify that they have no conflicts of interest (unless declared) and that they have an impeccable reputation.

Each time an intermediary is involved in a transaction, they must be registered with the national association to which the club is affiliated. National associations are required to maintain the register.

FIFA has recommended remuneration caps on the services provided by intermediaries.

Intermediaries cannot be remunerated in terms of employment contracts and/or transfer agreements if the player concerned is a minor.

Breaches of the RWWI are enforced by national associations and any sanctions imposed may be extended by the FIFA Disciplinary Committee.

A full text of the 2015 FIFA Regulations on Working with Intermediaries can be found here: https://www.fifa.com/mm/document/affederation/administration/02/36/77/63/regulationsonworkingwithintermediariesii_neutral.pdf

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